

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Special Commission Meeting
Hearing Room 1
Wednesday, October 9, 2024
5:30 p.m.



In-Person Meetings: Effective March 1, 2023, all City of Oakland boards and commissions will conduct in-person meetings. Please check www.oaklandca.gov for the latest news and important information about the City's [return to in-person meetings](#).

Public Comment: A member of the public may speak on any item appearing on the agenda. All speakers will be allotted a maximum of three minutes unless the Chair allocates additional time.

Members of the public may also submit written comments in advance of the meeting to EthicsPublicComment@oaklandca.gov. Please indicate the agenda item # you are commenting on in the subject line of the email.

Commissioners: Ryan Micik (Chair), Francis Upton IV (Vice-Chair), Alea Gage, Vincent Steele, and Karun Tilak.

Commission Staff to attend: Simon Russell, Enforcement Chief

Legal Counsel: Christina Cameron, Partner, Devaney Pate Morris & Cameron, LLP

PUBLIC ETHICS COMMISSION SPECIAL MEETING AGENDA

PRELIMINARY ITEMS

1. **Roll Call and Determination of Quorum.**
2. **Staff and Commission Announcements.**
3. **Open Forum.**
 - Please state your name each time you make public comment if you wish it to be included in the meeting minutes.
 - The Commission urges members of the public not to make complaints or ask the Commission to investigate alleged legal violations at public meetings since public disclosure of such complaints or requests may undermine any subsequent investigation undertaken. Contact staff at ethicscommission@oaklandca.gov for assistance filing a complaint.

ACTION ITEMS

4. **Proposed Settlement Agreements:** In the Matter of Oaklanders For Responsible Leadership, *et al.* (PEC # 22-09.01), In the Matter of Committee For An Affordable East



Bay, et al. (PEC # 20-41.01), In Matter of Oakland Fund For Measure AA, et al. (PEC # 19-01.01). At its meeting of September 16, 2024, the Commission considered proposed settlement agreements in Enforcement cases ## 22-09.01, 20-41.01 and 19-01.01. The Commission voted to send the agreements back to Enforcement staff, with instructions to return with a breakdown of how much money each individual respondent would be paying. Enforcement is now presenting the requested information, included as Exhibit #2 to each of the proposed agreements. (Note that respondents OAKPAC, Barbara Leslie, and Robert Zachary Wasserman are not included in the current proposed agreements for logistical reasons; Enforcement staff will be presenting those respondents' revised agreements separately at a later Commission meeting). ([Proposed Settlement Agreement, PEC # 22-09.01](#)); ([Proposed Settlement Agreement, PEC # 20-41.01](#)); ([Proposed Settlement Agreement, PEC # 19-01.01](#))

The meeting will adjourn upon the completion of the Commission's business.

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- **Television:** KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99, locate City of Oakland KTOP – Channel 10
- **Livestream online:** Go to the City of Oakland's KTOP livestream page here: <https://www.oaklandca.gov/services/ktop-tv10-program-schedule> click on "View"
- **Online video teleconference (via ZOOM):** Click on the link to join the webinar: <https://uso2web.zoom.us/j/89169308829>. Please note: the Zoom link and access number are to view/listen to the meetings only. Public comment via Zoom is not supported at this time.
- **Telephone:** Dial (for higher quality, dial a number based on your current location): US: +1 669 900 6833 or +1 669 444 9171 or +1 719 359 4580 or +1 253 205 0468 or +1 253 215 8782 or +1 346 248 7799 or +1 360 209 5623 or +1 386 347 5053 or +1 507 473 4847 or +1 564 217 2000 or +1 646 931 3860 or +1 689 278 1000 or +1 929 205 6099 or +1 301 715 8592 or +1 305 224 1968 or +1 309 205 3325 or +1 312 626 6799 Webinar ID: 891 6930 8829
- **International numbers available:** <https://uso2web.zoom.us/j/89169308829>

Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Public Ethics Commission at ethicscommission@oaklandca.gov or visit our webpage at www.oaklandca.gov/pec.

Nicolas Heidorn

10/4/24

Approved for Distribution

Date

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Special Commission Meeting
Hearing Room 1
Wednesday, October 9, 2024
5:30 p.m.



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Item 4 - PEC Case 22-09.01 Settlement Agreement

1 Simon Russell
2 Enforcement Chief
3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
4 1 Frank Ogawa Plaza, Rm. 104
5 Oakland, CA 94612
6 Telephone: (510) 238-4976

7
8 Petitioner

9
10 BEFORE THE CITY OF OAKLAND
11 PUBLIC ETHICS COMMISSION

12
13 In the Matter of

) Case No.: 22-09.01

14 OAKLANDERS FOR RESPONSIBLE
15 LEADERSHIP; LIBBY SCHAAF; DOUG
16 LINNEY;

) **STIPULATION, DECISION AND
ORDER**

17 Respondents.
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23 **STIPULATION**

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25 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and
26 respondents OAKLANDERS FOR RESPONSIBLE LEADERSHIP, LIBBY SCHAAF, and
27 DOUG LINNEY, and, agree as follows:
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Item 4 - PEC Case 22-09.01 Settlement Agreement

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- 1. This Stipulation will be submitted for consideration by the City of Oakland Public Ethics Commission (Commission) at its next regularly scheduled meeting;
- 2. This Stipulation resolves all factual and legal issues raised in this matter and represents the final resolution to this matter without the necessity of holding an administrative hearing to determine the liability of, or penalties and/or other remedies to be imposed upon, Respondents;
- 3. Respondents knowingly and voluntarily waive all procedural rights under the Oakland City Charter, Oakland Municipal Code, the Public Ethics Commission Complaint Procedures, and all other sources of procedural rights applicable to this PEC enforcement action. These procedural rights include, but are not limited to, the right to personally appear at an administrative hearing held in this matter, to be represented by an attorney at their own expense, to confront all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, and to have the matter judicially reviewed;
- 4. Respondents represent that they have accurately furnished to the Commission all discoverable information and documents that are relevant to the Commission’s determination of a fair and comprehensive resolution to this matter;
- 5. Upon approval of this Stipulation and full performance of the terms outlined in this Stipulation, the Commission will take no future action against Respondents, including any officer, director, employee, or agent of Respondents, regarding the activities described in Exhibit #1 to this Stipulation, and this Stipulation shall constitute the complete resolution of all claims by the Commission against Respondents, including any officer, director, employee, or agent of Respondents, related to such activities and any associated alleged violations;
- 6. If Respondents fail to comply with the terms of this Stipulation, then the Commission may reopen this matter and prosecute Respondents to the full extent permitted by law, except that the Statute of Limitations shall be waived for any violations that were not discoverable or actionable by the Commission due to non-compliance with any provision of this Stipulation;

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- 1 7. This Stipulation is not binding on any other law enforcement or regulatory agency, and
2 does not preclude the Commission or its staff from cooperating with, or assisting any
3 other government agency with regard to this matter, or any other matter related to it;
4 except that neither the Commission nor its staff shall refer this matter, or any other
5 matter related to it, as pertains to any alleged violation by Respondents, to any other
6 government agency;
- 7 8. Respondents admit that they committed the violation(s) of the Oakland Municipal Code
8 with which they are specifically identified in Exhibit #1 to this Stipulation, and in the
9 manner set forth in that Exhibit, which is expressly incorporated by reference in its
10 entirety to this Stipulation and represents a true and accurate summary of the facts in
11 this matter;
- 12 9. The Commission will impose upon Respondents the penalties and/or other remedies
13 specified in Exhibit #1 and Exhibit #2, as they pertain to each of the named
14 Respondents;
- 15 10. Respondents will pay the amount specified in Exhibit #1 and Exhibit #2 to this
16 Stipulation to the City of Oakland general fund within sixty (60) calendar days of the
17 date on which the Commission votes to accept this Stipulation. Commission staff may
18 extend the payment deadline at its discretion;
- 19 11. In the event the Commission refuses to accept this Stipulation, it shall become null and
20 void, and within fifteen business days after the Commission meeting at which the
21 Stipulation is rejected, any payments already tendered by Respondents in connection
22 with this Stipulation will be reimbursed to them;
- 23 12. In the event the Commission rejects this Stipulation and a full evidentiary hearing
24 becomes necessary, this Stipulation and all references to it are inadmissible as evidence,
25 and neither any member of the Commission, nor the Executive Director or any member
26 of PEC staff, shall be disqualified from that hearing because of prior consideration of
27 this Stipulation;
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Doug Linney, Respondent

Dated

Item 4 - PEC Case 22-09.01 Settlement Agreement

DECISION AND ORDER

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The foregoing Stipulation of the parties to “In the Matter of OAKLANDERS FOR RESPONSIBLE LEADERSHIP; LIBBY SCHAAF; DOUG LINNEY;” PEC Case No. 22-09.01, including all attached Exhibits, is hereby accepted as the final Decision and Order of the City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

So ordered:

Ryan Micik, Chair
City of Oakland Public Ethics Commission

Dated

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EXHIBIT

In the Matter of Oaklanders For Responsible Leadership, et al.

PEC 22-09.01 Case Summary

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INTRODUCTION

This case concerns an independent expenditure committee active in the Oakland election in 2018 that was called “Oaklanders For Responsible Leadership” (ORL) with a primary purpose to oppose the re-election of incumbent Councilmember Desley Brooks to the District 6 City Council seat.

Any campaign committee over which an elected official exercises “significant influence” must be registered as a candidate-controlled committee. It is also subject to stricter rules than other types of campaign committees, including the contribution limit. In this case, Oakland voters were not informed on any of ORL’s ads or campaign forms that it was a candidate controlled committee, significantly influenced by Mayor Schaaf.

In addition, leaders of the Oakland Metropolitan Chamber of Commerce’s political committee, called OAKPAC, acted as a pass-through vehicle for certain donors to give money to the ORL campaign committee which had the effect of those donors’ names not appearing

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1 on its campaign finance forms or on the face of its ads (as committees of the type opposing
2 Brooks were legally required to do – but not OAKPAC, since it was not officially engaged in
3 active campaign activity that year).

4 PEC staff and Respondents have agreed to settle this matter without an administrative
5 hearing. They are now presenting their stipulated agreement, summary of the facts, and legal
6 analysis to the City of Oakland Public Ethics Commission for its approval. Together, PEC staff
7 and Respondents recommend approval of their agreement and imposition of administrative
8 penalties as described in more detail below.

FACTUAL SUMMARY

Organization of Oaklanders For Responsible Leadership (ORL)

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14 In 2018, Desley Brooks was sitting on the City Council District 6 seat and was running
15 for re-election. Sometime around the summer of that year, Mayor Schaaf contacted a political
16 consultant she had used on her successful 2014 mayoral run, Ace Smith, seeking advice about
17 a possible independent expenditure campaign against Brooks' re-election. (“Independent
18 expenditure,” also called an “IE,” refers to a political campaign that is not directly connected
19 to any of the candidates that it supports or opposes. The legal rules surrounding IEs are
20 discussed in detail later in this Exhibit).

21 Given that his own professional background was focused on different types of races,
22 Smith did not believe he would be a good fit to run an IE against a local candidate, so he and
23 Mayor Schaaf approached campaign consultant Doug Linney to see if he would be interested.
24 Linney later told the PEC that during his initial meeting with Mayor Schaaf and Smith, Schaaf
25 told him, “Let's do an IE campaign against Desley, and let me see if I can get some other folks
26 involved to make it happen” (the quote is from Linney, paraphrasing what Mayor Schaaf had
27 said to him).

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1 Following that meeting with Mayor Schaaf, Linney agreed to work on the effort. Mayor
2 Schaaf then asked Linney to produce a formal campaign plan. Although Linney typically ran
3 campaigns on a tight budget, he told the PEC that Mayor Schaaf encouraged him to approach
4 this campaign with a larger budget in mind.

5 At Mayor Schaaf's request, Linney produced a document on July 10, 2018, called
6 "District 6 IE Proposal." It envisioned a two-pronged campaign, consisting of anti-Brooks
7 messaging focused on allegations of corruption and bullying behavior, as well as a voter
8 turnout drive focused on newly registered voters and midterm skippers. The centerpiece of
9 the strategy, in the words of Linney's proposal, was the use of an "aggressive and highly
10 targeted field campaign to 'create' 3,500 votes." Linney conceived a campaign timeline that
11 included August polling and canvassing, September "voter ID, persuasion" and advertising,
12 and October pursuit of identified supporters as well as additional advertising. The campaign
13 team would consist of Linney (overall management, mail), Nathan Stalnaker (field canvassing)
14 and Andrew Truman Kim (phone banking), as well as an initial itemized budget of \$181,400.
15 The subsequent campaign largely followed this plan, including in its selection of the key
16 campaign personnel (Linney, Stalnaker and Truman Kim). Linney later described this
17 document to the PEC as "our working plan."

18 Linney shared the plan with Mayor Schaaf, as well as with Smith's campaign firm. He
19 did not share it with any other people at this time. Mayor Schaaf took part in subsequent
20 group discussion of the plan with Linney and Smith's firm. At one point, she suggested raising
21 the budget to more than \$200,000 because (as she stated in an email to Linney and Smith) "I
22 think raising \$200k shouldn't be hard and could shoot for more." Linney corresponded with
23 Mayor Schaaf about formally registering the committee, but held off as she worked to involve
24 others.

25 After receiving Linney's proposal, Mayor Schaaf met with Barbara Leslie and Zachary
26 Wasserman of the Oakland Metropolitan Chamber of Commerce and its campaign committee,
27 called OAKPAC, who Schaaf knew were also contemplating campaign activities. Mayor Schaaf
28

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1 provided them with Linney’s campaign plan, as well as feedback on the plan that she had
2 received from Smith. She invited Leslie, Wasserman and others to join a series of weekly
3 phone conferences with Linney “to discuss strategy and stay in touch on the campaign”
4 (Schaaf’s words in an email to Leslie and Wasserman at that time).

5 Around this same time, Linney enlisted the services of polling firm EMC Research and
6 its President/CEO, Ruth Bernstein. EMC produced a draft poll for the IE campaign, which was
7 shared with Mayor Schaaf for her feedback. Mayor Schaaf also provided the draft to Leslie
8 and Wasserman for purposes of discussion at the group’s upcoming weekly phone
9 conferences (despite Linney’s reluctance to share the draft too widely). The poll had been
10 scheduled to begin in early August, but was halted at the last minute at Mayor Schaaf’s
11 request, in order to incorporate feedback from OAKPAC. Following several rounds of
12 discussion (including direct conversations between Mayor Schaaf and Bernstein, as well as
13 between Mayor Schaaf and Linney) and revision, polling finally began in mid-August.

14 On August 8, 2018, the first phone conference of the IE team (which still had not yet
15 been officially registered or given a name) was held between Mayor Schaaf, Leslie,
16 Wasserman, Linney, Stalnaker (the consultant who would be overseeing the field program, as
17 described earlier in Linney’s campaign plan), and Andreas Cluver of the Alameda County
18 Building Trades Council. This was the first of what became a weekly series of phone
19 conferences to discuss the progress of the IE campaign. Topics of discussion at these
20 meetings included fundraising, polling, messaging, endorsements, and the recruitment of
21 “public-facing members” (described below). Linney and Stalnaker would also provide
22 updates on the progress of the campaign, particularly the field program. Attendance at these
23 meetings fluctuated over the course of the campaign; Mayor Schaaf did not attend every
24 meeting, but she made an effort to call in for at least a portion of the meeting if she were able.
25 She also remained in direct communication with Linney through email and text message,
26 outside of the weekly meetings.

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1 An early topic of discussion among the group was the need to find “public facing
2 members” (in the words of an email from Leslie to Linney on the subject) whose names could
3 appear on the group’s campaign forms and represent the campaign to the public. In the words
4 of an email that Linney sent to Mayor Schaaf at the time, they needed someone who would
5 be “believable as a decision-maker on this.” Around this time, the group had also received
6 advice from Linney to the effect that Mayor Schaaf could assist the IE as long as she did not
7 hold decision-making authority for the campaign. As discussed later in this Exhibit, this is not
8 an accurate statement of the law concerning candidate-controlled committees (the correct
9 rule is that Mayor Schaaf could not have “significant participation” in the campaign, which is
10 not the same thing as being a “decision-maker”). The group was particularly concerned with
11 finding people to fill that role who lived in District 6, because no one involved with the group
12 to this point lived in the district where the campaign was occurring. Mayor Schaaf suggested
13 names, and other members of the group tried to recruit those people, but they were
14 unsuccessful.

15 Finally, Linney suggested that Police Commissioner Jose Dorado could fill this role.
16 Linney ran this idea by the group, including Mayor Schaaf, and did not receive any objection.
17 Dorado then joined the group and began attending the weekly phone conferences as of
18 August 29, 2018 (about a month after the weekly meetings had started, and more than two
19 months after Linney had produced ORL’s campaign plan). In interviews with the PEC, Linney
20 and Dorado both confirmed that this was largely a ministerial role. Neither Mayor Schaaf, nor
21 any other member of ORL appeared on any of the committee’s campaign forms as a principal
22 officer, despite being more closely involved in the committee’s strategy and fundraising than
23 Dorado.

24 Once Dorado was brought on board, the group formally registered as a campaign
25 committee on August 24, 2018, with Dorado as its principal officer. The name given for the
26 committee on its registration form (Form 410) was “Oaklanders For Responsible Leadership,
27 Opposing Desley Brooks For Oakland City Council 2018” (referred to hereafter in this Exhibit
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1 as “ORL”). ORL did not identify itself as a candidate-controlled committee on its registration
2 form, nor did it list Mayor Schaaf as a controlling candidate. Mayor Schaaf did not sign the
3 form.

4 In September, ORL began its field program, in which it visited prospective voters door-
5 to-door in District 6. Neither the committee’s field script, nor its talking points for the field
6 staff, mentioned Mayor Schaaf’s role with the committee. According to ORL’s internal (non-
7 public) talking points, field staff were instructed to identify ORL by its committee name (which
8 did not mention Mayor Schaaf). If asked who was behind the committee, campaign workers
9 were to name Jose Dorado and “city leaders who believe there is a need for better, more
10 responsible leadership in District 6” (according to the script ORL gave its canvassers). If asked
11 directly whether Mayor Schaaf was involved with the campaign, field staff were instructed to
12 respond that the “Mayor supports the effort. We expect the Mayor to help with the
13 fundraising, but [she] isn't a part of the decision making process...”

14 Similarly, phone bankers for ORL were given a script that instructed them to say that
15 they were calling from “Oaklanders For Responsible Leadership.” The call script made no
16 reference to Mayor Schaaf’s involvement with the group, instead telling phone bankers to
17 state that ORL “was formed in response to many residents deeply concerned with Desley
18 Brooks’ unacceptable pattern of behavior on our City Council.”

19 On September 9, 2018, Linney shared a draft of an ORL “doorhanger” (an ad that can
20 be physically left on a door handle) with Mayor Schaaf, Leslie, Wasserman, Cluver, and
21 Dorado. The draft doorhanger told voters that Brooks was facing four opponents in the
22 election, and encouraged voters to select any of the other candidates besides Brooks, without
23 indicating any preference among them. The District 6 election was a ranked-choice contest in
24 which voters could select only up to three candidates for the seat.

25 Mayor Schaaf responded privately to Linney about her concerns over not encouraging
26 voters to select three specific candidates. Linney said that he had not considered such a
27 possibility. ORL then discussed the matter at its weekly meeting of September 12, 2018, and
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1 Linney produced a memo for the group that described each of Brooks' four opponents, for
2 purposes of choosing which three to promote in ORL's campaign messaging. By the end of
3 September, ORL began promoting Loren Taylor, Natasha Middleton, and Maria "Marlo"
4 Rodriguez as its preferred candidates.

5 On September 30, 2018, Mayor Schaaf took a photo of those three candidates at an
6 endorsement event and emailed it to Linney under the subject line "Photo of our 3." The
7 photo subsequently appeared in one of ORL's mailers.

8 As the campaign continued, ORL had difficulty raising enough money to pay Linney in
9 addition to its other campaign expenses. Nevertheless, Linney continued to work with ORL
10 despite the uncertainty over whether he would be fully paid. Linney indicated to the PEC that
11 he believed that fundraising by the Mayor, labor and OAKPAC would be sufficient to cover his
12 fees. Following the election, Mayor Schaaf helped ORL raise enough money to pay Linney's
13 outstanding fee.

14 Ultimately, Desley Brooks lost the election. She received 5,483 first-round votes versus
15 9,858 for the winning candidate in this ranked-choice contest.

16 Following payment of an outstanding debt to Linney (including a win bonus), ORL filed
17 a Form 410 with the PEC on June 15, 2020, terminating itself as a committee. At no time during
18 its existence did ORL ever report Mayor Schaaf as its controlling candidate, or change its name
19 to reflect her controlling candidate status.¹

ORL Files Campaign Forms that Fail to Disclose It Was Candidate-Controlled

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21
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23 Throughout the campaign, ORL filed numerous campaign forms with the PEC in
24

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26 _____
27 ¹ The evidence does not indicate that the treasurers for ORL or OAKPAC were aware of the Mayor's influence
28 over ORL.

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1 compliance with rules governing independent expenditure campaign committees rather than
2 in compliance with rules governing candidate controlled campaign committees.

Form 410

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6 The first type of form that ORL filed with the PEC is called a Form 410 (“Statement of
7 Organization”). These are forms that a committee must file when it first registers, and
8 whenever it changes its name, purpose, or main personnel. It must also disclose on this form
9 whether it is a controlled committee of a candidate or officeholder. A Form 410 must be signed
10 by the controlling candidate, under penalty of perjury. Finally, it is the form on which a
11 committee declares what its name will be. As explained in more detail later in this Exhibit,
12 candidate-controlled committees are required to put the last name of their controlling
13 candidate in the committee’s name (e.g. “Committee X, a Controlled Committee of Oakland
14 Mayor Smith”). The purpose of the form is to inform voters of who is running a particular
15 campaign committee.

16 The table below shows all of the dates that ORL filed a Form 410. On none of these
17 forms did it disclose that it was a controlled committee, nor did it identify Mayor Schaaf as its
18 controlling candidate. It also failed to include Mayor Schaaf’s last name in its committee name
19 on any of these forms. Mayor Schaaf did not sign any of these forms.

Form 410s Filed By ORL	
Date Filed	Committee Name Given on Form
August 24, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
August 31, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
September 20, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
June 15, 2020	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”

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Form 460

ORL also filed multiple forms known as a Form 460 (“Recipient Committee Campaign Statement”). These are periodic reports that a committee must file in order to report all of the money that it has raised and spent throughout the campaign. It must use its full committee name on the form, and report whether it is a controlled committee of a candidate or officeholder. The forms must be signed by the controlling candidate or officeholder, under penalty of perjury. The purpose of the form is to inform voters where committees are getting their money from, and what they are spending it on.

The table below shows all of the dates that ORL filed a Form 460 with the PEC, reporting the money it had raised and spent. On each of these forms, it gave its name as “Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018.” Mayor Schaaf’s last name did not appear in its committee name, did not state that it was a controlled committee, and did not identify Mayor Schaaf as its controlling candidate on any of these forms. Mayor Schaaf did not sign any of the forms as its controlling candidate:

Form 460s Filed By ORL		
Date Filed	Dates Covered	Committee Name Given on Form
September 27, 2018	January 1 – September 22, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
October 10, 2018	January 1 – September 22, 2018 (amendment)	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
October 25, 2018	September 23 – October 20, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”

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1 2 3 4 5 6 7 8 9 10	January 31, 2019	October 21 – December 31, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
	July 30, 2019	January 1, 2019 – June 30, 2019	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
	January 29, 2020	July 1, 2019 – December 31, 2019	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
	June 10, 2020	January 1, 2020 – June 10, 2020	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”

Form 497

ORL also filed what are known as Form 497s (“Contribution Reports”, sometimes informally referred to as “24-hour contribution reports” or “late contribution reports”). These forms must be submitted within 24 hours, whenever a primarily-formed committee (such as ORL) receives \$1,000 or more from a single donor in the 90 days before the election concerning the candidate that the committee is supporting or opposing. The purpose of the form is to the inform voters -- before the election -- of which donors are making large contributions benefitting or opposing certain candidates.

The table below shows all of the dates that ORL filed a Form 497 with the PEC, reporting the contributions over \$1,000 it had raised in the ninety days before the 2018 election. On each of these forms, it gave its name as “Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018.” to the forms did not include Mayor Schaaf’s last name in its committee name on all of these forms:

Form 497s Filed By ORL		
Date Filed	Committee Name Given on Form	Activity Reported

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1	August 31, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$2,500 in contributions received
2			
3	September 14, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,999 in contributions received
4			
5	September 20, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,000 in contributions received
6			
7	September 25, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$10,000 in contributions received
8			
9	September 26, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$12,499 in contributions received
10			
11	September 27, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,990 in contributions received
12			
13	September 28, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$12,500 in contributions received
14			
15	October 5, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$7,500 in contributions received
16			
17	October 8, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$1,000 in contributions received
18			
19	October 11, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$5,000 in contributions received
20			
21	October 12, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$2,500 in contributions received
22			
23	October 16, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,990 in contributions received
24			
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1 2 3 4 5 6 7 8 9	October 18, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$10,000 in contributions received
	October 26, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$14,000 in contributions received
	November 2, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$5,000 in contributions received
	November 3, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$12,500 in contributions received

Form 496

Finally, ORL filed what are known as Form 496s (“Independent Expenditure Reports”, sometimes informally referred to as “24-hour independent expenditure reports” or “late independent expenditure reports”). These are forms that must be filed whenever a committee makes an independent expenditure (such as an ad) that costs \$1,000 or more in the 90 days before an election. The form must include the committee’s full name. The purpose of the form is to inform voters – before the election – of who is making independent expenditures, and where the money for those independent expenditures is coming from.

On the following dates, ORL filed a Form 496 with the PEC, in which it gave its name as “Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018.” Mayor Schaaf’s last name did not appear in its committee name on all of these forms:

Form 496s Filed By ORL While Libby Schaaf Was Controlling Candidate		
Date Filed	Committee Name Given on Form	Activity Reported
October 2, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$5,470.73 of canvassing opposing Desley Brooks

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		\$12,500 in contributions received
1 2 3 4 5 6	October 2, 2018 (amendment) “Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,774.82 of canvassing opposing Desley Brooks \$7,490 in contributions received \$2,500 in contributions returned
7 8 9	October 3, 2018 “Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$8,052 of literature opposing Desley Brooks \$39,980 in contributions received
10 11 12 13	October 9, 2018 “Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$17,282 of polling, literature, photography, and consulting opposing Desley Brooks \$21,300 in contributions received
14 15 16	October 15, 2018 “Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$5,000 of web costs opposing Desley Brooks \$56,280 in contributions received
17 18 19 20	October 16, 2018 “Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$12,491.55 of polling, photography, staff time, consulting, and literature opposing Desley Brooks \$4,990 in contributions received
21 22	October 17, 2018 “Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,104.60 of canvassing opposing Desley Brooks
23 24 25 26 27	October 25, 2018 “Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$21,164 of polling, consulting, photography, literature, and web costs opposing Desley Brooks \$20,440 in contributions received

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1 2 3 4	October 30, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$12,178 of photography and web costs opposing Desley Brooks \$16,948 in contributions received
5 6 7	October 30, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$13,212.06 of canvassing and literature opposing Desley Brooks \$16,948 in contributions received
8 9 10	October 31, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$19,291 of literature opposing Desley Brooks \$16,948 in contributions received
11 12 13 14 15	November 6, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$16,000 of staff time opposing Desley Brooks \$34,848.99 in contributions received \$5,000 in contributions returned

ORL Publishes Ads that Fail to Disclose It is Candidate Controlled

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In addition to its field program of door-to-door voter contact, ORL also released a number of physical ads during the campaign. These included what is known as a “doorhanger” (an ad that is left around a voter’s door handle), as well as four mailers. All of these ads included a disclaimer that said “This mailing was not authorized, approved or paid for by a candidate for city office, a committee controlled by a candidate for city office, or an election official.” None of the disclaimers on these mailers or doorhanger listed that ORL was a candidate controlled committee.

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1 ORL was not required to break down the costs of each of its individual mailers on the
2 campaign finance forms it filed. Its internal records also do not clearly indicate precisely how
3 much money was spent on the design, production, and delivery of each of its mailers and the
4 doorhanger (nor are they required to). However, in total ORL reported spending \$82,194.14
5 on “literature” (i.e. printed campaign ads) during the 2018 election. This does not include
6 related costs that might have also gone into making these mailers and the doorhanger, such
7 as the cost of legal review, the portion of the door-to-door canvassing budget that went into
8 delivering the doorhangers, or Linney’s precise consulting fee per piece of literature.
9 However, based on this aggregate literature cost, it can be said that each of the mailers and
10 the doorhanger cost the following, at minimum:

Approximate Cost of Each ORL Mailer, As Percentage of Total Reported “Literature” Expenses			
Mailer	Copies Printed (Approx.)	% of Total Copies Printed	% of “Literature” Expenses
Doorhanger	9,000	18.5%	\$15,205.92
Mailer #1	12,730	26%	\$21,370.44
Mailer #2	9,000	18.5%	\$15,205.92
Mailer #3	9,000	18.5%	\$15,205.92
Mailer #4	9,000	18.5%	\$15,205.92

ORL Receives Contributions In Excess Of The Legal Limit

21
22
23 In 2018, candidate campaign committees in Oakland were prohibited from receiving
24 contributions of more than \$800 from all contributors except “broad-based committees”
25 (such as labor union PACs or OAKPAC), for which the limit was \$1,600 per election. In 2019
26 that limit went up to \$1,700 per election for broad-based committees, but remained the same
27 for all other contributors.

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1 Throughout the 2018 campaign and into 2019, ORL received the following direct²
2 contributions in excess of \$800 from a single contributor:

Direct Contributions Received By ORL Over The Contribution Limit			
Donor	Date Received	Total Amount of Contribution	Amount of Contribution In Excess of Limit
McGrath Properties, Inc. ³	08/30/2018	\$2,500	\$1,700
David Roe	09/13/2018	\$4,990	\$4,190
Jennifer L. Pahlka	09/19/2018	\$4,000	\$3,200
Patricia Kernighan	09/20/2018	\$950	\$150
International Brotherhood of Electrical Workers Local 595 PAC	09/24/2018	\$10,000	\$8,400
Kenneth J. Schmier	09/25/2018	\$4,999	\$4,199
Sprinkler Fitters & Apprentices Local 483 PAC	09/25/2018	\$7,500	\$5,900
Lisa Schmier	09/26/2018	\$4,999	\$4,199
Sheet Metal Workers' International Association Local Union No. 104	09/27/2018	\$10,000	\$8,400
Eugene Zahas	09/27/2018	\$2,500	\$1,700
Sprinkler Fitters & Apprentices Local 483 PAC	10/04/2018	\$7,500	\$5,900
Bruce Beasley	10/05/2018	\$1,000	\$200
U.A. Local 342 PAC Fund	10/10/2018	\$5,000	\$3,400
Kim A. Thompson	10/11/2018	\$2,500	\$1,700
Libitzky Holdings, L.P.	10/15/2018	\$4,999	\$4,199

22
23
24 ² We use the word “direct” here because, as shown below, ORL also received earmarked contributions through
25 OAKPAC. We are therefore not including purported contributions from OAKPAC in this table; we will account
26 for those earmarked donations from third parties in later in this Exhibit.

27 ³ This contribution was returned on 9/11/18.

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State Building & Construction Trades Council of California Independent Expenditure PAC	10/17/2018	\$10,000	\$8,400
Carmel Partners	10/25/2018	\$5,000	\$4,200
Danny W. Wan	10/25/2018	\$1,500	\$700
Salvatore T. Fahey	10/29/2018	\$999	\$199
Libby Schaaf	10/29/2018	\$999	\$199
Cannaroyalty ⁴	10/31/2018	\$5,000	\$4,200
DRIVE Committee	11/08/2018	\$5,000	\$4,200
Elaine Brown	11/19/2018	\$1,000	\$200
Andrew Fremder	11/19/2018	\$1,000	\$200
Ron Gershoni	11/19/2018	\$2,500	\$1,700
Michael McDonald	11/19/2018	\$1,000	\$200
Robert (Zachary) Wasserman	11/19/2018	\$1,000	\$200
Total Amount of Contributions = \$108,435			
Total Received Over The Contribution Limit = \$82,035			

In addition, ORL received the following donations via OAKPAC (see section below) that were also over the legal contribution limit:

⁴ This contribution was returned on 11/5/18.

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Contributions Over the Limit to ORL (Made Via OAKPAC)			
Donor (per 460)	Date of Contribution to OAKPAC	Amount	Amount Over the Limit
Bay Area Citizens PAC	10/23/2018	\$2,500	\$1,700
Horizon Beverage Company	10/26/2018	\$5,000	\$4,200
Equity and General Trade Association	11/05/2018	\$5,000	\$4,200
Holiday Inn Express Hotel & Suites - Balaji Enterprises, LLC	11/05/2018	\$5,000	\$4,200
Kiva Sales and Service	11/05/2018	\$2,500	\$1,700
Lane Partners	11/05/2018	\$10,000	\$9,200
Best Bay Apartments, Inc.	11/16/2018	\$10,000	\$9,200
TMG Partners	11/16/2018	\$10,000	\$9,200
Wilson Meany LP AAF / 11 West Ninth Street Property Owner LP	05/20/2019	\$10,000	\$9,200
Abid	07/02/2019	\$3,000	\$2,200
Argent Materials, Inc.	07/02/2019	\$5,000	\$4,200
Foster Interstate Media, Inc. and Affiliated Entities	07/02/2019	\$5,000	\$4,200
Oakland Lofts, LLC	07/02/2019	\$5,000	\$4,200
Wasserman	07/02/2019	\$1,000	\$200
CCSAC, Inc.	07/22/2019	\$5,000	\$4,200
Comcast Financial Agency Corporation, A Comcast Cable Communications Group Company	12/18/2019	\$5,000	\$5,000
Total Amount of contributions = \$89,800			
Total over the limit = \$77,000			

OAKPAC & ORL Fail to Properly Report Intermediary (Conduit) Contributions

In the course of their fundraising efforts, OAKPAC was effectively used as a pass-through vehicle for donors who wished to contribute money to ORL.

When soliciting donations to ORL, some ORL principals gave donors the option of contributing directly to ORL or waiting until October 20, 2018, and giving their money to

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1 OAKPAC instead. This was done because ORL, as a primarily-formed committee⁵ opposing
2 Desley Brooks, was legally required to publicly report all of its large donors within 24 hours.
3 OAKPAC, on the other hand, was not officially engaged in an IE against Brooks, and therefore
4 did not have to make any such disclosures. All it was required to do was file periodic (not daily)
5 reports on its finances, the last of which (before the election) covered all money it had
6 received up to October 20. Donors who wished to keep their names out of the public record
7 until after the election were given the option of holding off on donating until after October
8 20, and then giving their money to OAKPAC. OAKPAC then contributed that money to ORL
9 under its own name (it is unclear whether any donors were told that their money would go
10 specifically to ORL, but most were told that that OAKPAC was “supporting” efforts to unseat
11 Brooks). Meanwhile, ORL was informed of these pledges (before October 20) and could make
12 its spending decisions accordingly, knowing that this money would eventually be coming its
13 way “via OAKPAC” (in the words of ORL’s internal accounting document).

14 In addition, ORL principals also encouraged donors who wished to give \$5,000 or more
15 to send their money to OAKPAC instead of ORL, with the understanding that OAKPAC would
16 give the money to ORL. This was done in order to avoid Oakland’s law requiring IE committees
17 such as ORL to disclose their top two donors over \$5,000 on the face of ads that they send
18 out to public. By reportedly giving money to OAKPAC rather than ORL, donors could avoid
19 being named on the face of ORL’s ads.

21 ⁵ A “primarily-formed committee” is a campaign committee that spends at least 70% of its funds to support or
22 oppose one or more specific candidates (or ballot measures) in a particular election, or has the primary
23 purpose of supporting or opposing one or more specific candidates (or ballot measures). ORL was a primarily-
24 formed committee because it spent 100% of its funds opposing Desley Brooks; it therefore had to comply with
25 the particular disclosure rules applying to primarily-formed committees (including the requirement to report
26 large contributions it received within 24 hours). OAKPAC was not a primarily-formed committee and therefore
27 did not have to file those 24-hour disclosure reports.

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1 Fundraising for ORL in this manner continued even after the election concluded. ORL
2 owed a debt to Linney's firm after the election, including a \$40,000 win bonus. In order to pay
3 back the debt, Leslie, Wasserman and Mayor Schaaf organized a fundraising dinner in which
4 guests were encouraged to contribute up to \$5,000. All of these donors were told to make
5 their checks out to OAKPAC, though the event was advertised as a joint fundraising event for
6 ORL and OAKPAC. That event took place on July 1, 2019. The funds were split between ORL
7 and OAKPAC.

8 Neither ORL nor OAKPAC reported any of these transactions as "intermediary
9 contributions" on their campaign finance reports, as required under the law.

10 The donors to OAKPAC whose contributions were passed on to ORL without being properly
11 reported were the following:

Contributions to ORL Made Via OAKPAC		
Donor (per 460)	Date of Contribution to OAKPAC	Amount
Bay Area Citizens PAC	10/23/2018	\$2,500
Horizon Beverage Company	10/26/2018	\$5,000
Equity and General Trade Association	11/05/2018	\$5,000
Holiday Inn Express Hotel & Suites - Balaji Enterprises, LLC	11/05/2018	\$5,000
Kiva Sales and Service	11/05/2018	\$2,500
Lane Partners	11/05/2018	\$10,000
Best Bay Apartments, Inc.	11/16/2018	\$10,000
TMG Partners	11/16/2018	\$10,000
Wilson Meany LP AAF / 11 West Ninth Street Property Owner LP	05/20/2019	\$10,000
Abid	07/02/2019	\$3,000
Argent Materials, Inc.	07/02/2019	\$5,000
Foster Interstate Media, Inc. and Affiliated Entities	07/02/2019	\$5,000
Oakland Lofts, LLC	07/02/2019	\$5,000
Wasserman	07/02/2019	\$1,000
CCSAC, Inc.	07/22/2019	\$5,000

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Comcast Financial Agency Corporation, A Comcast Cable Communications Group Company	12/18/2019	\$5,000
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This money was given by OAKPAC to ORL on the following dates:

Earmarked Funds From OAKPAC to ORL		
Contributor	Date	Amount
Oakland Metropolitan Chamber of Commerce (OAKPAC)	11/02/2018	\$2,500
Oakland Metropolitan Chamber of Commerce (OAKPAC)	11/02/2018	\$10,000
Oakland Metropolitan Chamber of Commerce (OAKPAC)	11/12/2018	\$17,500
Oakland Metropolitan Chamber of Commerce (OAKPAC)	11/26/2018	\$20,000
Oakland Metropolitan Chamber of Commerce (OAKPAC)	05/30/2019	\$10,000
Oakland Metropolitan Chamber of Commerce (OAKPAC)	07/10/2019	\$19,000
Oakland Metropolitan Chamber of Commerce (OAKPAC)	08/13/2019	\$5,000
Oakland Metropolitan Chamber of Commerce (OAKPAC)	12/20/2019	\$5,000

The following is a breakdown of how the donations to OAKPAC were contributed to ORL in several batches:

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Earmarked Funds From OAKPAC to ORL (Precise Breakdown)				
Original Donor to OAKPAC	Date Given (per 460)	Amount	Date of Donation from OAKPAC to ORL	Amount
Bay Area Citizens PAC	10/23/18	\$2,500	-	-
Horizon Beverage Company	10/26/18	\$5,000	-	-
-	-	-	11/01/18	\$10,000
-	-	-	11/01/18	\$2,500
Equity and General Trade Association	11/05/18	\$5,000	-	-
Total =		\$12,500		\$12,500
Holiday Inn Express Hotel & Suites - Balaji Enterprises, LLC	11/05/18	\$5,000	-	-
Kiva Sales and Service	11/05/18	\$2,500	-	-
Lane Partners	11/05/18	\$10,000	-	-
-	-	-	11/08/18	\$17,500
Total =		\$17,500		\$17,500
Best Bay Apartments, Inc.	11/16/18	\$10,000	-	-
TMG Partners	11/16/18	\$10,000	-	-
-	-	-	11/21/18	\$20,000
Total =		\$20,000		\$20,000
Wilson Meany LP AAF / 11 West Ninth Street Property Owner LP	5/20/19	\$10,000	-	-
-	-	-	5/23/19	\$10,000
Total =		\$10,000		\$10,000
Abid	7/02/19	\$3,000	-	-
Argent Materials, Inc.	7/02/19	\$5,000	-	-
Foster Interstate Media, Inc. & Affiliated Entities	7/02/19	\$5,000	-	-
Oakland Lofts, LLC	7/02/19	\$5,000	-	-
Wasserman	7/02/19	\$1,000	-	-
-	-	-	7/02/19	\$19,000
Total =		\$19,000		\$19,000
CCSAC, Inc.	07/22/2019	\$5,000	-	-
-	-	-	08/13/2019	\$5,000
Total =		\$5,000		\$5,000

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Comcast Financial Agency Corporation	12/18/2019	\$5,000	-	-
-	-	-	12/20/2019	\$5,000
Total =		\$5,000		\$5,000

The pass-through donations under investigation totaled \$89,800. This represented nearly half of the total money raised by ORL over the course of its existence from 2018-2019 (\$202,808.99) and for which the names of the true donors were not reported to the public. Note that nearly half of this money was given after the 2018 election was over.

SUMMARY OF LAW & LEGAL ANALYSIS

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the violations.

All definitions of terms are the same as those set forth in the California Political Reform Act (California Government Code Sections 81000 through 91014), as amended, unless the term is specifically defined in Oakland's Campaign Reform Act (Oakland Municipal Code Chapter 3.12) or the contrary is stated or clearly appears from the context.⁶

Provisions of the California Political Reform Act relating to local elections, including any subsequent amendments, are incorporated into the Oakland Campaign Reform Act (OCRA), except as otherwise provided in, or inconsistent with, other provisions of local law.⁷

ORL Was a Candidate-Controlled Committee

Many of the alleged violations in this matter hinge on whether ORL was "candidate-controlled." Being a candidate-controlled committee is not a violation in-and-of itself, but candidate-controlled committees have additional disclosure requirements and must abide by

⁶ OMC § 3.12.140.

⁷ OMC § 3.12.240(d).

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1 Oakland’s campaign contribution limit. Therefore, to determine whether ORL violated any of
2 the laws applicable to candidate-controlled committees, it must first be established that it was
3 indeed “candidate-controlled.”

4 A committee is candidate-controlled if a candidate or elected official has a significant
5 influence on the actions or decisions of the committee.⁸ Neither the Political Reform Act, FPPC
6 Regulations, or the Oakland Municipal Code define the term “significant influence.” The
7 applicable standard for determining when a candidate exercises “significant influence” over
8 a campaign committee can only be found in advice letters published by the FPPC, one of which
9 states, “The definition of ‘controlled committee’ has been interpreted broadly to include any
10 significant participation in the actions of a committee by a candidate... [including] extensive
11 involvement in a committee's fundraising activity.”⁹

12 13 **Element 1: Committee**

14
15 The first element to establish is whether ORL was a “committee.” A “committee” is
16 any person or combination of persons who directly or indirectly receives campaign
17 contributions totaling two thousand dollars (\$2,000) or more in a calendar year, or who makes
18 independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year.¹⁰
19 Here, ORL received contributions in 2018 well in excess of \$2,000 and made independent
20 expenditures well in excess of \$1,000 that same year, according to its sworn campaign
21 reporting forms. It first registered as a committee on August 24, 2018. It crossed the \$2,000
22 threshold for contributions received on August 30, 2018. There is thus no question that ORL
23 was a “committee” for our purposes here.

24
25 ⁸ Cal. Govt. Code § 82016.

26 ⁹ FPPC Lyman Advice Letter No. I-19-163

27 ¹⁰ Cal. Govt. Code § 82013.

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Element 2: Candidate or Elected Official

The second element to establish if a committee is candidate-controlled is to establish whether the person alleged to have controlled the committee was a candidate or elected official. The term “candidate” includes an elected officer.¹¹ “Elected officer” means any person who holds an elective office.¹²

Here, Mayor Schaaf was a candidate or elected official because she was serving as Mayor of Oakland at the time of her involvement with ORL, having been elected to that position in 2014. She also had an open committee at the time, *Libby Schaaf for Mayor 2018*, for which she was also registered as the controlling candidate. She was a candidate for the office of Oakland Mayor in 2018, during the same election in which ORL was active. There is no question that Mayor Schaaf was a “candidate” for our purposes here.

Element 3: Significant Influence on the Actions or Decisions of the Committee

Finally, to establish that a committee is candidate-controlled, there must be sufficient facts to show that a candidate or elected official had “significant influence” on the actions or decisions of the committee.¹³ Neither the Political Reform Act, FPPC Regulations, or the Oakland Municipal Code define the term “significant influence.” The applicable standard for determining when a candidate exercises “significant influence” over a campaign committee can only be found in advice letters published by the FPPC, one of which states, “The definition of ‘controlled committee’ has been interpreted broadly to include any significant participation

¹¹ OMC § 3.12.040(B); Cal. Govt. Code § 82007.

¹² OMC § 3.12.040; Cal. Govt. Code § 82020.

¹³ OMC § 3.12.040; Cal. Govt. Code § 82016.

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1 in the actions of a committee by a candidate... [including] extensive involvement in a
2 committee's fundraising activity.”¹⁴

3 Such influence can be direct or indirect.¹⁵ Reading the FPPC Advice Letters and legal
4 precedent as a whole, examples of the type of behavior that might constitute significant
5 influence include communicating with a committee about its campaign strategy, messaging,
6 or advertising, or making substantial fundraising efforts for a committee.¹⁶ However,
7 fundraising alone is not sufficient to constitute “significant influence” unless a candidate has
8 extensive involvement in the committee's fundraising activities by actively participating in its
9 solicitations, fundraising events and fundraising strategy.¹⁷

10 Actions that do not constitute significant influence include things such as publicly
11 supporting a committee, making donations from the official's own personal funds to a
12 committee, or appearing on a committee's advertisements without working on the
13 messaging of those advertisements.¹⁸ It also does not include providing ministerial or
14 administrative support to a campaign (e.g. bookkeeping).¹⁹ It does not matter whether the
15 candidate has an official title or role on the campaign: “[P]ractical operational realities, rather
16 than job title, determine whether a committee is controlled.”²⁰

17 Here, Mayor Schaaf was fundamental in selecting ORL's personnel, shaping its
18 strategy, and determining its messaging. She also initially reached out to professional
19 campaign consultants about starting an independent expenditure campaign, asked Doug
20

21 ¹⁴ FPPC Lyman Advice Letter No. I-19-163

22 ¹⁵ Id.

23 ¹⁶ *Travis v. Brand*, 62 Cal. App. 5th 240, 251, 261-262 (2021).

24 ¹⁷ *Barker* Advice Letter, FPPC # A-97-478 (1997); FPPC *Pirayou* Advice Letter, No. 1-10-159.

25 ¹⁸ *Travis v. Brand*, 62 Cal. App. 5th 240, 261-262 (2021).

26 ¹⁹ *Lacy* Advice Letter, FPPC #I-03-076 (2003).

27 ²⁰ *Lacy* Advice Letter, FPPC #I-03-076 (2003) at 2 (internal quotation marks omitted).

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1 Linney to produce a written campaign plan, and continued to have significant participation in
2 ORL even after the campaign was underway. She was a regular attendee at ORL meetings,
3 which were meant to discuss ORL strategy. Mayor Schaaf also made suggestions as to who
4 should be the “public face” of ORL, and remained in personal, one-on-one contact with Linney
5 throughout the campaign. However, later in the campaign she did send an e-mail request to
6 the ORL group to be taken off of group emails.

7 In sum, the totality of Mayor Schaaf’s participation rose to the FPPC’s standard for
8 “significant influence” over the decisions and activities of ORL. As such, ORL was a candidate
9 controlled committee.

10 *ORL Failed to Publicly Identify Itself as a Controlled Committee On Its Campaign Forms*

11
12
13 All committees must register with the appropriate filing officer²¹ and file periodic
14 campaign forms itemizing their contributions and expenditures.²² For committees that are
15 controlled by an Oakland elected officer, or which are primarily-formed to support or oppose
16 a candidate in an Oakland election, their filing officer is the PEC.²³ The forms they must file
17 (including any amendments to those forms) include:

- 18
19
- the committee’s initial registration and termination statements (Form 410)²⁴
 - its pre-election and semi-annual campaign statements (form 460)²⁵
- 20
21
22

23 ²¹ Cal. Govt. Code § 84101.

24 ²² Cal. Govt. Code § 84215.

25 ²³ OMC §§ 3.12.240, 3.12.260, Cal. Govt. Code §§ 84101, 84215(d).

26 ²⁴ Cal. Govt. Code § 84101; Cal. Code of Regulations §18410(a)(3); OMC §§ 3.12.240, 3.12.260.

27 ²⁵ Cal. Govt. Code §§ 82006, 84200, 84200.8; OMC §§ 3.12.240, 3.12.260.

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- 1 • its 24-hour contribution reports (Form 497)²⁶, and
- 2 • its 24-hour independent expenditure reports (Form 496).²⁷

3
4 Each of those reports, including amendments, must include the committee's full
5 name.²⁸ For a candidate-controlled committee, its name must include the last name of its
6 controlling candidate²⁹ (e.g. "... a controlled committee of Mayor Smith"). The Form 410 and
7 Form 460 must also be signed by the controlling candidate, under penalty of perjury.³⁰

8 9 **Element 1: Candidate-controlled committee**

10
11 The first element to establish whether ORL failed to file campaign forms identifying
12 Mayor Schaaf as its controlling candidate, is to show that Mayor Schaaf did indeed control
13 ORL. As demonstrated above, ORL was a candidate-controlled committee of Mayor Schaaf,
14 an Oakland elected official. ORL was therefore required to file the above-listed forms with the
15 PEC.

16 17 **Element 2: Failure to Disclose Candidate-Controlled Status on Forms**

18
19 The next element to establish whether ORL failed to file campaign forms identifying
20

21 ²⁶ Cal. Govt. Code § 84203; OMC §§ 3.12.240, 3.12.260.

22 ²⁷ Cal. Govt Code §§ 84204(c), 84215(d); OMC §§ 3.12.240, 3.12.260.

23 ²⁸ Cal. Govt. Code §§ 84102, 84106.5 (full committee name required on Form 410); § 84211(o) (full committee
24 name required on Form 460); § 84203(a) (full committee name required on late contribution report); 84204(b)
25 (full name required on late independent expenditure report).

26 ²⁹ Cal. Govt. Code § 84106.5; Cal. Code of Regulations § 18402(c)(1).

27 ³⁰ Cal. Govt. Code §§ 84101, 84213(a); Cal. Code of Regulations §18410(a)(13).

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1 Schaaf as its controlling candidate, is to demonstrate that it filed forms that lacked the
2 required disclosure particular to each form.

3 4 *Form 410*

5
6 A Form 410 must include the committee's full name. For a candidate-controlled
7 committee, its name must include the last name of its controlling candidate (e.g. "...a
8 controlled committee of Mayor Smith"). The Form 410 must also expressly disclose that it is a
9 controlled committee, and identify its controlling candidate. The controlling candidate must
10 sign the form under penalty of perjury.

11 Here, ORL filed Form 410s with the PEC on the following dates August 24, 2018; August
12 31, 2018; September 20, 2018; June 15, 2020. None of those forms disclosed that ORL was a
13 controlled committee, identified Mayor Schaaf as its controlling candidate, or included Mayor
14 Schaaf's last name in the committee name. Mayor Schaaf did not sign any of the forms.

15 16 *Form 460*

17
18 A Form 460 must include the committee's full name. For a candidate-controlled
19 committee, its name must include the last name of its controlling candidate (e.g. "...a
20 controlled committee of Mayor Smith"). The Form 460 must also expressly disclose that it is
21 a controlled committee, and identify its controlling candidate. The controlling candidate must
22 sign the form under penalty of perjury.

23 On the following dates, ORL filed a Form 460 with the PEC, in which it did not disclose
24 that it was a controlled committee, did not identify Mayor Schaaf as its controlling candidate,
25 and failed to include Mayor Schaaf's last name in its committee name: September 27, 2018
26 (covering January 1 – September 22, 2018); October 10, 2018 (covering January 1 – September
27 22, 2018); October 25, 2018 (covering September 23 – October 20, 2018); January 31, 2019

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1 (covering October 21 – December 31, 2018); July 30, 2019 (covering January 1, 2019 – June 30,
2 2019); January 29, 2020 (covering July 1, 2019 – December 31, 2019); and June 10, 2020
3 (covering January 1, 2020 – June 10, 2020). Mayor Schaaf did not sign any of the forms.

4 5 *Form 497*

6
7 A Form 497 must include the committee’s full name. For a candidate-controlled
8 committee, its name must include the last name of its controlling candidate (e.g. “...a
9 controlled committee of Mayor Smith”).

10 On the following dates, ORL filed a Form 497 with the PEC, in which it failed to include
11 Mayor Schaaf’s last name in its committee name (all dates are from 2018): August 31,
12 September 14, September 20, September 25, September 26, September 27, September 28,
13 October 5, October 8, October 11, October 12, October 16, October 18, October 26, November
14 2, and November 3.

15 16 *Form 496*

17
18 A Form 496 must include the committee’s full name. For a candidate-controlled
19 committee, its name must include the last name of its controlling candidate (e.g. “...a
20 controlled committee of Mayor Smith”).

21 On the following dates, ORL filed a Form 496 with the PEC, in which it failed to include
22 Mayor Schaaf’s last name in its committee name (all dates are from 2018): October 2 (twice),
23 October 3, October 9, October 15, October 16, October 17, October 25, October 30 (twice),
24 October 31, and November 6.

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1
2 *ORL Failed to Publicly Identify Itself As a Candidate Controlled Committee On Its Mass Mailers*

3
4 Any committee that makes independent expenditures for a mass mailing or other
5 campaign materials which support or oppose any candidate must place a disclaimer on the
6 mailing containing certain information. Among the information to be disclosed is the
7 committee's name.³¹

8 Here, ORL put out a doorhanger and four mailers that gave its name as "Oaklanders
9 For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018," without
10 identifying Mayor Schaaf as its controlling candidate in the committee name. As
11 demonstrated below, this was a violation of Oakland's disclaimer rules.

12 13 **Element 1: Mass mailing**

14
15 "Mass mailing" means over two hundred substantially similar pieces of mail.³² Here,
16 ORL produced a doorhanger (9,000 copies) and four mailers (12,730 copies of the first mailer,
17 and approximately 9,000 copies each of the remaining three mailers). These quantities mean
18 that the doorhanger and four mailers qualified as mass mailings.

19 20 **Element 2: Independent expenditure**

21
22 An independent expenditure is an expenditure made by a committee in connection
23 with a communication (e.g. a television ad or mailer) which expressly advocates the election
24

25
26 ³¹ OMC § 3.12.230(A).

27 ³² Cal Govt Code § 82041.5.

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1 or defeat of a clearly identified candidate, but which is not made to or at the behest of the
2 affected candidate or their campaign committee.³³

3 Here, ORL produced a doorhanger and mailers that expressly advocated the defeat of
4 Desley Brooks and supported the election of her opponents (Loren Taylor, Natasha
5 Middleton, Maria Rodriguez, and sometimes Mya Whitaker). There is no evidence that ORL
6 coordinated in any way with any of the affected candidates or their campaign committees in
7 the production of its doorhanger or four mailers. Mayor Schaaf did take a photo of three
8 candidates (Loren Taylor, Natasha Middleton, and Maria Rodriguez) that appeared on one of
9 ORL's mailers, but there is no evidence gathered that she informed them that it would be used
10 on one of ORL's mailers, or otherwise discussed ORL's expenditures with them.

11 As such, ORL's mass mailings supported or opposed particular candidates but were
12 not produced in coordination with those candidates. They therefore qualified as independent
13 expenditures.

14 **Element 3: Disclaimer including committee's name**

15
16
17 The final element to consider is whether ORL placed a disclaimer on its doorhanger
18 and mailers that included all of the information required, including the committee's name.
19 Here, the doorhanger and mailers all included a disclaimer which gave the committee's name
20 as "Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council
21 2018." This name did not include language to the effect of, "a controlled committee of
22 Oakland Mayor Schaaf," as required. All of the mailers also included a disclaimer stating that
23 the ads were not authorized by a "candidate" or "a committee controlled by a candidate,"
24 which was untrue – all of the ads were authorized by a candidate controlled committee.

25
26
27 ³³ Cal. Govt. Code § 82031.

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1 As such, ORL distributed five mass mailings that were independent expenditures and
2 failed to meet the City of Oakland's disclaimer requirements.

3 *ORL Received Contributions Over The Legal Limit*

4
5
6 In the 2018 election, candidate-controlled committees in Oakland were prohibited
7 from receiving contributions in excess of eight hundred dollars (\$800) from any person, other
8 than broad-based committees such as labor union PACs or OAKPAC, for which the
9 contribution limit was one-thousand six dollars (\$1,600).³⁴ ORL was a candidate-controlled
10 committee that received contributions in excess of these amounts, as demonstrated
11 immediately below.

12 13 **Element 1: Candidate-controlled committee**

14
15 The first element to establish whether a violation of the contribution limit took place,
16 is to show that ORL was candidate-controlled. As demonstrated above, ORL was a candidate-
17 controlled committee of Mayor Schaaf.

18
19
20
21
22 ³⁴ OMC §§ 3.12.050(B) (individual limit), 3.12.060(B) (broad-based committees). A broad-based committee is a
23 committee of persons which has been in existence for more than six (6) months, receives contributions from
24 one hundred (100) or more persons, and acting in concert makes contributions to five (5) or more candidates.
25 OMC § 3.12.040(A). Both the labor unions PACs that contributed to ORL, as well as OAKPAC, fit within this
26 definition because they are long-standing committees funded by dues-sharing from their large member base,
27 and have supported five or more candidates throughout their existence.

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Element 2: Receiving contributions over the legal limit

The next element to establish whether a violation of the contribution limit took place, is to show that ORL received contributions in excess of \$800 from contributors who were not broad-based committees, and in excess of \$1,600 from contributors who were broad-based committees (such as labor union PACs or OAKPAC).

The following table shows all direct contributions received by ORL in excess of the contribution limit:

Direct Contributions Received By ORL Over The Contribution Limit			
Donor	Date Received	Total Amount of Contribution	Amount of Contribution In Excess of Limit
McGrath Properties, Inc. ³⁵	08/30/2018	\$2,500	\$1,700
David Roe	09/13/2018	\$4,990	\$4,190
Jennifer L. Pahlka	09/19/2018	\$4,000	\$3,200
Patricia Kernighan	09/20/2018	\$950	\$150
International Brotherhood of Electrical Workers Local 595 PAC	09/24/2018	\$10,000	\$8,400
Kenneth J. Schmier	09/25/2018	\$4,999	\$4,199
Sprinkler Fitters & Apprentices Local 483 PAC	09/25/2018	\$7,500	\$5,900
Lisa Schmier	09/26/2018	\$4,999	\$4,199
Sheet Metal Workers' International Association Local Union No. 104	09/27/2018	\$10,000	\$8,400
Eugene Zahas	09/27/2018	\$2,500	\$1,700
Sprinkler Fitters & Apprentices Local 483 PAC	10/04/2018	\$7,500	\$5,900
Bruce Beasley	10/05/2018	\$1,000	\$200
U.A. Local 342 PAC Fund	10/10/2018	\$5,000	\$3,400

³⁵ This contribution was returned on 9/11/18.

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1	Kim A. Thompson	10/11/2018	\$2,500	\$1,700
2	Libitzky Holdings, L.P.	10/15/2018	\$4,999	\$4,199
3	State Building & Construction Trades Council of California Independent Expenditure PAC	10/17/2018	\$10,000	\$8,400
4	Carmel Partners	10/25/2018	\$5,000	\$4,200
5	Danny W. Wan	10/25/2018	\$1,500	\$700
6	Salvatore T. Fahey	10/29/2018	\$999	\$199
7	Libby Schaaf	10/29/2018	\$999	\$199
8	Cannaroyalty ³⁶	10/31/2018	\$5,000	\$4,200
9	DRIVE Committee	11/08/2018	\$5,000	\$4,200
10	Elaine Brown	11/19/2018	\$1,000	\$200
11	Andrew Fremder	11/19/2018	\$1,000	\$200
12	Ron Gershoni	11/19/2018	\$2,500	\$1,700
13	Michael McDonald	11/19/2018	\$1,000	\$200
14	Robert (Zachary) Wasserman	11/19/2018	\$1,000	\$200
Total Amount of Contributions = \$108,435				
Total Received Over The Contribution Limit = \$82,035				

In addition, ORL received the following donations via OAKPAC (see section below) that were also over the legal contribution limit:

Contributions Over the Limit to ORL (Made Via OAKPAC)			
Donor (per 460)	Date of Contribution to OAKPAC	Amount	Amount Over the Limit
Bay Area Citizens PAC	10/23/2018	\$2,500	\$1,700
Horizon Beverage Company	10/26/2018	\$5,000	\$4,200
Equity and General Trade Association	11/05/2018	\$5,000	\$4,200
Holiday Inn Express Hotel & Suites - Balaji Enterprises, LLC	11/05/2018	\$5,000	\$4,200
Kiva Sales and Service	11/05/2018	\$2,500	\$1,700
Lane Partners	11/05/2018	\$10,000	\$9,200
Best Bay Apartments, Inc.	11/16/2018	\$10,000	\$9,200

³⁶ This contribution was returned on 11/5/18.

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1	TMG Partners	11/16/2018	\$10,000	\$9,200
2	Wilson Meany LP AAF / 11 West Ninth Street Property Owner LP	05/20/2019	\$10,000	\$9,200
3	Abid	07/02/2019	\$3,000	\$2,200
4	Argent Materials, Inc.	07/02/2019	\$5,000	\$4,200
5	Foster Interstate Media, Inc. and Affiliated Entities	07/02/2019	\$5,000	\$4,200
6	Oakland Lofts, LLC	07/02/2019	\$5,000	\$4,200
7	Wasserman	07/02/2019	\$1,000	\$200
8	CCSAC, Inc.	07/22/2019	\$5,000	\$4,200
9	Comcast Financial Agency Corporation, A Comcast Cable Communications Group Company	12/18/2019	\$5,000	\$5,000
10	Total Amount of contributions = \$89,800			
11	Total over the limit = \$77,000			

11 In conclusion, ORL was a candidate-controlled committee that received contributions
12 totaling \$159,035.00 over the legal limit.

OAKPAC Made Earmarked Contributions to ORL

16 No campaign contributions shall be made via a third-party intermediary unless it is
17 reported as such by all parties who are required to file campaign finance reports.³⁷

18 Here, OAKPAC principals solicited contributions to ORL and gave the donors the
19 option to make their checks payable to OAKPAC; and then directed OAKPAC's treasurer to
20 make contributions of an equivalent amount to ORL. Neither OAKPAC nor ORL publicly
21 reported that OAKPAC was acting as an intermediary for others. The original donors' names
22 were therefore never publicly identified with ORL, though they were listed on reports filed
23 by OAKPAC after the election was over.

27 ³⁷ OMC § 3.12.240, incorporating Cal. Govt. Code §§ 84211, 84215 and 85704.

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Liability

Any person who violates any provision of the Oakland Campaign Reform Act, who causes any other person to violate any provision of this Act, or who aids and abets any other person in the violation of the Act, may be found liable for an administrative violation by the PEC. If two or more persons are responsible for any violation, they shall be jointly and severally liable.³⁸

"Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business, trust, company, corporation, association, committee, and any other organization or group of persons acting in concert.³⁹

The principal officer of a committee is any individual primarily responsible for approving the political activity of the committee including, but not limited to authorizing the content of the communications made by the committee, the committee's contributions or expenditures, or the committee's campaign strategy. If more than one individual shares in the primary responsibility for those activities, each such individual is a principal officer.⁴⁰

In addition to a committee itself, persons who qualify as principal officers of the committee are jointly and severally liable for violations by the committee. For committees controlled by a candidate, the candidate and the committee's treasurers are deemed to be principal officers.⁴¹ In addition, an agent acting on behalf of a person is jointly and severally liable for a violation that arises out of the agent's actions. There is a rebuttable presumption that "agents" of a committee include any current or former officer of the committee; any person who has received compensation or reimbursement from the committee; and any

³⁸ OMC 3.12.270(C)

³⁹ OMC 3.12.040(J)

⁴⁰ 2 Cal. Code of Regulations § 18402.1.

⁴¹ OMC 3.12.230(A)

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1 person who holds or has held a position within the committee organization that reasonably
2 appears to be able to authorize expenditures for committee activities.⁴²

3 “Aiding and abetting” is not itself a violation but rather a legal rule that allows the
4 Enforcement Unit to charge anyone who caused, encouraged, or participated in the
5 underlying violation, even if they were not the direct perpetrator. The test of whether a
6 person aided or abetted in the commission of a violation is whether that person in any way,
7 directly or indirectly, aided the perpetrator(s) by acts or encouraged the perpetrator(s) by
8 words or gestures, instigated or advised the commission of the violation, or was present for
9 the purpose of assisting in its commission.⁴³ An aider and abettor must have knowledge of
10 the illegal purpose of the perpetrator(s) and have intentionally assisted them in the violation.
11 The aider and abettor is not only liable for the particular violation that to their knowledge their
12 confederates were contemplating committing, but they are also liable for the natural and
13 reasonable or probable consequences of any act that they knowingly aided or encouraged.⁴⁴

VIOLATIONS:

OAKLANDERS FOR RESPONSIBLE LEADERSHIP; MAYOR SCHAAF; DOUG LINNEY

14
15
16
17
18 Respondents, Oaklanders For Responsible Leadership; Mayor Schaaf (its controlling
19 candidate); and Doug Linney (who caused, aided and abetted the violations), violated the
20 following Oakland Municipal Code(s):
21
22
23

24 ⁴² OMC 3.12.230(B)

25 ⁴³ *People v. Villa*, 156 Cal. App. 2d 128, 133, 134 (1957) (applying California Penal Code section 31, which contains a
26 similar “aiding and abetting” provision to that found under OMC 3.12.270(C)).

27 ⁴⁴ *Id.* at 134.

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Count 1: Failure to Disclose Controlling Candidate on Campaign Forms

On the following dates, Oaklanders For Responsible Leadership filed a Statement of Organization (“Form 410”) with the PEC, on which it did not disclose that it was a controlled committee, did not identify Mayor Schaaf as its controlling candidate, and failed to include Mayor Schaaf’s last name in its committee name. Mayor Schaaf did not sign any of the forms.

Form 410s Filed By ORL While Libby Schaaf Was Controlling Candidate	
Date Filed	Committee Name Given on Form
August 24, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
August 31, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
September 20, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
June 15, 2020	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”

As the controlling candidate, Mayor Schaaf’s last name was required to be included as part of the committee’s name for all purposes. Also, Mayor Schaaf was required to be identified as the controlling candidate on the committee’s Form 410, and she was required to sign the committee’s Form 410.

On the following dates, Oaklanders For Responsible Leadership filed a Recipient Committee Campaign Statement (“Form 460”) with the PEC, in which it gave its name as “Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018.” It failed to include Mayor Schaaf’s last name in its committee name, did not disclose that it was a controlled committee, and did not identify Mayor Schaaf as its controlling candidate. Mayor Schaaf did not sign any of the forms as its controlling candidate:

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Form 460s Filed By ORL While Libby Schaaf Was Controlling Candidate

Date Filed	Dates Covered	Committee Name Given on Form
September 27, 2018	January 1 – September 22, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
October 10, 2018	January 1 – September 22, 2018 (amendment)	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
October 25, 2018	September 23 – October 20, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
January 31, 2019	October 21 – December 31, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
July 30, 2019	January 1, 2019 – June 30, 2019	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
January 29, 2020	July 1, 2019 – December 31, 2019	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
June 10, 2020	January 1, 2020 – June 10, 2020	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”

As the controlling candidate, Mayor Schaaf’s last name was required to be included as part of the committee’s name for all purposes. Also, Mayor Schaaf was required to be identified as the controlling candidate on the committee’s Form 460, and she was required to sign the committee’s Form 460.

On the following dates, Oaklanders For Responsible Leadership filed a Contribution Report (“Form 497”) with the PEC, in which it failed to include Mayor Schaaf’s last name in its committee name:

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Form 497s Filed By ORL While Libby Schaaf Was Controlling Candidate

Date Filed	Committee Name Given on Form	Activity Reported
August 31, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$2,500 in contributions received
September 14, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,999 in contributions received
September 20, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,000 in contributions received
September 25, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$10,000 in contributions received
September 26, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$12,499 in contributions received
September 27, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,990 in contributions received
September 28, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$12,500 in contributions received
October 5, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$7,500 in contributions received
October 8, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$1,000 in contributions received
October 11, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$5,000 in contributions received
October 12, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$2,500 in contributions received

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1 2 3 4 5 6 7	October 16, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,990 in contributions received
8 9 10 11 12	October 18, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$10,000 in contributions received
13 14 15 16 17 18	October 26, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$14,000 in contributions received
19 20 21 22 23 24 25 26 27	November 2, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$5,000 in contributions received
28	November 3, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$12,500 in contributions received

As the controlling candidate, Mayor Schaaf’s last name was required to be included as part of the committee’s name for all purposes.

On the following dates, Oaklanders For Responsible Leadership filed an Independent Expenditure Report (“Form 496”) with the PEC, in which it failed to include Mayor Schaaf’s last name in its committee name:

Form 496s Filed By ORL While Libby Schaaf Was Controlling Candidate		
Date Filed	Committee Name Given on Form	Activity Reported
October 2, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$5,470.73 of canvassing opposing Desley Brooks \$12,500 in contributions received
October 2, 2018 (amendment)	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,774.82 of canvassing opposing Desley Brooks \$7,490 in contributions received \$2,500 in contributions returned

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1 2 3	October 3, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$8,052 of literature opposing Desley Brooks \$39,980 in contributions received
4 5 6	October 9, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$17,282 of polling, literature, photography, and consulting opposing Desley Brooks \$21,300 in contributions received
7 8 9	October 15, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$5,000 of web costs opposing Desley Brooks \$56,280 in contributions received
10 11 12 13	October 16, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$12,491.55 of polling, photography, staff time, consulting, and literature opposing Desley Brooks \$4,990 in contributions received
14 15 16	October 17, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,104.60 of canvassing opposing Desley Brooks
17 18 19 20	October 25, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$21,164 of polling, consulting, photography, literature, and web costs opposing Desley Brooks \$20,440 in contributions received
21 22 23 24	October 30, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$12,178 of photography and web costs opposing Desley Brooks \$16,948 in contributions received
25 26 27	October 30, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$13,212.06 of canvassing and literature opposing Desley Brooks

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		\$16,948 in contributions received
October 31, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$19,291 of literature opposing Desley Brooks \$16,948 in contributions received
November 6, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$16,000 of staff time opposing Desley Brooks \$34,848.99 in contributions received \$5,000 in contributions returned

As the controlling candidate, Mayor Schaaf’s last name was required to be included as part of the committee’s name for all purposes.

In this way, Respondent violated OMC § 3.12.240, incorporating Cal. Govt. Code §§ 84102(f), 84106.5, 84203, 84211(o)-(p), 84213(a), and Regulation 18402(c)(1) and 18410(a)(13).

Count 2: Failure to Disclose Controlling Candidate On A Mass Mailer

On or around September 21, 2018, Respondents distributed approximately 9,000 copies of a mass mailer in Oakland. That mass mailer failed to identify the subject committee as candidate-controlled by Mayor Schaaf. The approximate value of the unlawful expenditure was \$15,205.92.

On or around October 3, 2018, Respondents distributed approximately 12,730 copies of a second mass mailer in Oakland. That mass mailer failed to identify the subject committee as a candidate-controlled committee of Mayor Schaaf. The approximate value of the unlawful expenditure was \$21,370.44.

In or around October 2018, Respondents distributed approximately 9,000 copies of a third mass mailer in Oakland. That mass mailer failed to identify the subject committee as

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1 candidate-controlled by Mayor Schaaf. The approximate value of the unlawful expenditure
2 was \$15,205.92.

3 In or around October 2018, Respondents distributed approximately 9,000 copies of a
4 fourth mass mailer in Oakland. That mass mailer failed to identify the subject committee as
5 candidate-controlled by Mayor Schaaf. The approximate value of the unlawful expenditure
6 was \$15,205.92.

7 In or around October 2018, Respondents distributed approximately 9,000 copies of a
8 fifth mass mailer in Oakland. That mass mailer failed to identify the subject committee as
9 candidate-controlled by Mayor Schaaf. The approximate value of the unlawful expenditure
10 was \$15,205.92.

11 In this way, Respondents violated OMC § 3.12.230.

VIOLATIONS:

OAKLANDERS FOR RESPONSIBLE LEADERSHIP; MAYOR SCHAAF

15
16 Respondents, Oaklanders For Responsible Leadership; and Mayor Schaaf (its
17 controlling candidate who caused the violation), violated the following Oakland Municipal
18 Code(s):

Count 3: Failure to Properly Report Intermediary (Conduit) Contributions

21
22 On their campaign statements (Form 460), Respondents reported the following
23 contributions as being received from OAKPAC rather than from the true source of the
24 contributions:

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Contributions Over the Limit to ORL (Made Via OAKPAC)			
Donor (per 460)	Date of Contribution to OAKPAC	Amount	Amount Over the Limit
Bay Area Citizens PAC	10/23/2018	\$2,500	\$1,700
Horizon Beverage Company	10/26/2018	\$5,000	\$4,200
Equity and General Trade Association	11/05/2018	\$5,000	\$4,200
Holiday Inn Express Hotel & Suites - Balaji Enterprises, LLC	11/05/2018	\$5,000	\$4,200
Kiva Sales and Service	11/05/2018	\$2,500	\$1,700
Lane Partners	11/05/2018	\$10,000	\$9,200
Best Bay Apartments, Inc.	11/16/2018	\$10,000	\$9,200
TMG Partners	11/16/2018	\$10,000	\$9,200
Wilson Meany LP AAF / 11 West Ninth Street Property Owner LP	05/20/2019	\$10,000	\$9,200
Abid	07/02/2019	\$3,000	\$2,200
Argent Materials, Inc.	07/02/2019	\$5,000	\$4,200
Foster Interstate Media, Inc. and Affiliated Entities	07/02/2019	\$5,000	\$4,200
Oakland Lofts, LLC	07/02/2019	\$5,000	\$4,200
Wasserman	07/02/2019	\$1,000	\$200
CCSAC, Inc.	07/22/2019	\$5,000	\$4,200
Comcast Financial Agency Corporation, A Comcast Cable Communications Group Company	12/18/2019	\$5,000	\$5,000

These contributions should have been reported as contributions from the true sources, with OAKPAC reported as an intermediary; but they were not.

In this way, Respondents violated OMC § 3.12.240, incorporating Cal. Govt. Code §§ 84211, 84215 and 85704.

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VIOLATIONS:

OAKLANDERS FOR RESPONSIBLE LEADERSHIP

Respondent, Oaklanders For Responsible Leadership, violated the following Oakland Municipal Code(s):

Count 4: Receiving Contributions in an Amount Over the Legal Limit

On the following dates, Respondent received direct monetary contributions in excess of \$800, which was the contribution limit for candidate-controlled committees in 2018:

Direct Contributions Received By ORL Over The Contribution Limit			
Donor	Date Received	Total Amount of Contribution	Amount of Contribution In Excess of Limit
McGrath Properties, Inc. ⁴⁵	08/30/2018	\$2,500	\$1,700
David Roe	09/13/2018	\$4,990	\$4,190
Jennifer L. Pahlka	09/19/2018	\$4,000	\$3,200
Patricia Kernighan	09/20/2018	\$950	\$150
International Brotherhood of Electrical Workers Local 595 PAC	09/24/2018	\$10,000	\$8,400
Kenneth J. Schmier	09/25/2018	\$4,999	\$4,199
Sprinkler Fitters & Apprentices Local 483 PAC	09/25/2018	\$7,500	\$5,900
Lisa Schmier	09/26/2018	\$4,999	\$4,199
Sheet Metal Workers' International Association Local Union No. 104	09/27/2018	\$10,000	\$8,400
Eugene Zahas	09/27/2018	\$2,500	\$1,700

⁴⁵ This contribution was returned on 9/11/18.

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Sprinkler Fitters & Apprentices Local 483 PAC	10/04/2018	\$7,500	\$5,900
Bruce Beasley	10/05/2018	\$1,000	\$200
U.A. Local 342 PAC Fund	10/10/2018	\$5,000	\$3,400
Kim A. Thompson	10/11/2018	\$2,500	\$1,700
Libitzky Holdings, L.P.	10/15/2018	\$4,999	\$4,199
State Building & Construction Trades Council of California Independent Expenditure PAC	10/17/2018	\$10,000	\$8,400
Carmel Partners	10/25/2018	\$5,000	\$4,200
Danny W. Wan	10/25/2018	\$1,500	\$700
Salvatore T. Fahey	10/29/2018	\$999	\$199
Libby Schaaf	10/29/2018	\$999	\$199
Cannaroyalty ⁴⁶	10/31/2018	\$5,000	\$4,200
DRIVE Committee	11/08/2018	\$5,000	\$4,200
Elaine Brown	11/19/2018	\$1,000	\$200
Andrew Fremder	11/19/2018	\$1,000	\$200
Ron Gershoni	11/19/2018	\$2,500	\$1,700
Michael McDonald	11/19/2018	\$1,000	\$200
Robert (Zachary) Wasserman	11/19/2018	\$1,000	\$200
Total Amount of Contributions = \$108,435			
Total Received Over The Contribution Limit = \$82,035			

And on the following dates, Respondent received monetary contributions in excess of \$800, which was the contribution limit for candidate-controlled committees in 2018, via OAKPAC:

Contributions Over the Limit to ORL (Made Via OAKPAC)			
Donor (per 460)	Date of Contribution to OAKPAC	Amount	Amount Over the Limit
Bay Area Citizens PAC	10/23/2018	\$2,500	\$1,700
Horizon Beverage Company	10/26/2018	\$5,000	\$4,200
Equity and General Trade Association	11/05/2018	\$5,000	\$4,200

⁴⁶ This contribution was returned on 11/5/18.

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Holiday Inn Express Hotel & Suites - Balaji Enterprises, LLC	11/05/2018	\$5,000	\$4,200
Kiva Sales and Service	11/05/2018	\$2,500	\$1,700
Lane Partners	11/05/2018	\$10,000	\$9,200
Best Bay Apartments, Inc.	11/16/2018	\$10,000	\$9,200
TMG Partners	11/16/2018	\$10,000	\$9,200
Wilson Meany LP AAF / 11 West Ninth Street Property Owner LP	05/20/2019	\$10,000	\$9,200
Abid	07/02/2019	\$3,000	\$2,200
Argent Materials, Inc.	07/02/2019	\$5,000	\$4,200
Foster Interstate Media, Inc. and Affiliated Entities	07/02/2019	\$5,000	\$4,200
Oakland Lofts, LLC	07/02/2019	\$5,000	\$4,200
Wasserman	07/02/2019	\$1,000	\$200
CCSAC, Inc.	07/22/2019	\$5,000	\$4,200
Comcast Financial Agency Corporation, A Comcast Cable Communications Group Company	12/18/2019	\$5,000	\$5,000
Total Amount of contributions = \$89,800			
Total over the limit = \$77,000			

As a candidate-controlled committee, the Respondent committee was prohibited from receiving contributions from a single source in excess of \$800 per person or \$1,600 per broad-based committee during the 2018 election.

In this way, Respondent violated OMC § 3.12.050.

VIOLATIONS:

LIBBY SCHAAF; DOUG LINNEY

Respondents, Libby Schaaf (controlling candidate of ORL, who also caused the violations); and Doug Linney (who caused the violations), violated the following Oakland Municipal Code(s):

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Count 5: Receiving Contributions in an Amount Over the Legal Limit

On the dates listed above in Count 4, Respondents received direct monetary contributions in excess of \$800, which was the contribution limit for candidate-controlled committees in 2018.

As principals of a candidate-controlled committee, Respondents were prohibited from receiving contributions from a single source in excess of \$800 per person or \$1,600 per broad-based committee during the 2018 election.

In this way, Respondents violated OMC § 3.12.050.

PENALTY ANALYSIS

Oakland's Campaign Reform Act authorizes the Commission to impose the following base-level and maximum penalties for the following types of violations:

Violation	Counts	Base-Level Per Violation	Statutory Limit Per Violation
Failure to Disclose Controlling Candidate on Campaign Forms	1	\$1,000	\$5,000
Failure to Disclose Controlling Candidate on a Mass Mailer	2	\$1,000	\$5,000 or three times the value of the unlawful expenditure, whichever is greater
Failure to Properly Report Intermediary Contributions	3	\$1,000	\$5,000 or three times the amount not

50

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			properly reported, whichever is greater
Receiving Contributions Over The Legal Limit	4-5	\$1,000, plus the unlawful amount	\$5,000 or three times the amount of the unlawful contribution, whichever is greater.

In addition to monetary penalties, the Commission may issue warnings or require other remedial measures.⁴⁷

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;
8. The relative experience of the respondent;
9. The respondent's ability to pay the contemplated penalty without suffering undue financial hardship. This factor shall not apply to the portion of a penalty that

⁴⁷ OMC § 3.12.270(C).

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1 constitutes a repayment or disgorgement of the unlawful amount, except in cases of
2 extreme financial hardship.

3
4 The PEC has broad discretion in evaluating a violation and determining the appropriate
5 penalty based on the totality of circumstances. This list of factors to consider is not an
6 exhaustive list, but rather a sampling of factors that could be considered. There is no
7 requirement or intention that each factor – or any specific number of factors - be present in
8 an enforcement action when determining a penalty. As such, the ability or inability to prove
9 or disprove any factor or group of factors shall in no way restrict the PEC’s power to bring an
10 enforcement action or impose a penalty.

Analysis of the Present Case

11
12
13
14 The circumstances of the Respondents’ conduct establish the following aggravating
15 and mitigating factors that should be taken into account when determining an appropriate
16 penalty in this case.

17 The Respondents’ violations in this case are serious. The strict rules applying to
18 candidate-controlled committees go directly to the very purpose of campaign finance law.
19 Candidates for office, and particularly high-ranking officeholders such as the Mayor, have a
20 disproportionate ability to bring in campaign money. This includes donations from sources
21 whose business interests could benefit from being in a candidate or official’s good favor, even
22 if that relationship never rises to a formal quid pro quo. Here, there is no evidence of any quid
23 pro quo. However, the contribution restrictions serve to reduce the actuality or appearance
24 of corruption, and (in the case of officeholders) to reduce the unfair fundraising benefits that
25 can come with political power.

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1 In this case, Mayor Schaaf and her associates' actions were negligent. All of them were
2 fully aware that Mayor Schaaf had significant participation in the IE campaign against Brooks,
3 including its creation, strategy, budgeting decisions, and selection of personnel.

4 In an interview with PEC staff, Mayor Schaaf conveyed that she believed at the time
5 that she had an understanding of the rules concerning what makes a committee "candidate-
6 controlled." Specifically, she said the rules would have required her to only have a "supporting
7 role" and "limited involvement" on the committee, and "being more responsive or reactive
8 to requests that people make for your help." Mayor Schaaf did receive advice from Doug
9 Linney regarding what he believed his attorneys had told him regarding permissible activities
10 that would not constitute "significant activity." However, the advice as conveyed by Mr.
11 Linney was not accurate and articulated a greater level of permissible activity than that
12 permitted under FPPC Advice Letters. Mayor Schaaf told the PEC that she guided her behavior
13 based on this erroneous information.

14 To be clear, candidates and officeholders are allowed to fundraise for existing
15 committees, including independent expenditure committees. What they cannot do is create
16 or repurpose an existing committee, and then exercise significant influence over the
17 committee. Here, Mayor Schaaf was negligent in determining her obligations to avoid
18 "significantly influencing" the campaign committee, resulting in the listed violations related
19 to this influence.

20 For his part, though Doug Linney was aware of the extent Mayor Schaaf's role with
21 ORL, he later told the PEC that it was his understanding that Mayor Schaaf was not the final
22 "decision-maker" for ORL and that therefore she was not its controlling candidate. Linney
23 facilitated the filing of ORL's campaign forms that failed to disclose her controlling role. While
24 stating to PEC staff that this was his first independent expenditure campaign, as a generally
25 experienced campaign consultant, Linney should have been aware that ORL's solicitation and
26 receipt of contributions were over the legal limit. He also facilitated the publication of mailers
27 that did not disclose Mayor Schaaf's controlling role on the campaign.

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1 However, in mitigation, the Brooks campaign distributed campaign mailers and made
2 press statements that stated that Mayor Schaaf was involved with the committee, therefore
3 the public was provided with some information about Mayor Schaaf's possible involvement,
4 albeit not on the face of ORL's mailers or campaign forms.

5 In further aggravation, regarding Respondent Schaaf, the Mayor's actions could be
6 considered as part of a pattern. This is evidenced by PEC cases #19-01 and #22-09, concerning
7 similar activity in the 2018 election, and which are also being brought to the PEC at the same
8 time as this case. However, the Mayor contends she was acting under the same mistaken
9 advice provided to her by Mr. Linney in these matters. The Mayor has also been involved in a
10 prior PEC case (though not as a respondent) involving contributions from a City contractor to
11 one of her committees (PEC #18-19).

12 As an additional aggravating factor, the violations may have had some impact on the
13 election. The candidate opposed by this committee ultimately lost.

14 In mitigation, the Mayor and Linney were forthcoming when providing documents to
15 PEC investigators. This included documents that evidenced the violations in this case. The
16 Mayor and other witnesses also voluntarily provided interviews to PEC staff without a
17 subpoena. Schaaf and Linney's actions appear to have been motivated by a misunderstanding
18 of the law.

19
20 None of the respondents in this case have prior PEC or FPPC violations in which they
21 were named individually. Finally, respondents are now admitting liability to the violations in
22 this agreement, thereby taking responsibility for what occurred and working with the PEC to
23 redress any harm caused.

24 As an additional mitigating factor, PEC staff notes that it has reviewed the personal
25 finances of Mayor Schaaf and Linney and found that the penalties contemplated in this
26 settlement agreement are sufficiently large to act as a deterrent to future violations, without
27 being so large as to cause an undue financial burden for them.

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RECOMMENDED PENALTIES

In light of the above factors, PEC staff and respondents have mutually agreed upon the following penalties and recommend that the Commission vote to approve them:

Count	Violation	Respondent(s)	Amount at Issue	Recommended Penalty
1	Failure to Disclose Controlling Candidate on Campaign Forms	Oaklanders For Responsible Leadership; Libby Schaaf; Doug Linney	-	\$5,000
2	Failure to Disclose Controlling Candidate on a Mass Mailer	Oaklanders For Responsible Leadership; Mayor Schaaf; Doug Linney	\$82,194.12	\$10,000
3	Failure to Properly Report Intermediary Contributions	Oaklanders For Responsible Leadership; Mayor Schaaf	\$89,800	\$5,000
4	Receiving Contributions in an Amount Over The Legal Limit	Oaklanders For Responsible Leadership	\$159,035	\$80,518
5	Receiving Contributions in an Amount Over The Legal Limit	Mayor Schaaf; Doug Linney	(Same as Counts 4 above)	\$5,000

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1 Simon Russell
2 Enforcement Chief
3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
4 1 Frank Ogawa Plaza, Rm. 104
5 Oakland, CA 94612
6 Telephone: (510) 238-3593

7
8 Petitioner

9
10 BEFORE THE CITY OF OAKLAND
11 PUBLIC ETHICS COMMISSION

12
13 In the Matter of

) Case No.: 22-09.01

14 OAKLANDERS FOR RESPONSIBLE
15 LEADERSHIP; LIBBY SCHAAF; DOUG
16 LINNEY,

) **AGREEMENT REGARDING
) MINIMUM ALLOCATION OF
) JOINT PENALTIES**

17 Respondents.
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22
23 **AGREEMENT REGARDING MINIMUM ALLOCATION OF JOINT PENALTIES**

24
25 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and
26 respondents OAKLANDERS FOR RESPONSIBLE LEADERSHIP, LIBBY SCHAAF, and
27 DOUG LINNEY, agree as follows:
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- 1. Respondents commit to individually paying the following aggregate amounts towards any penalties or other settlement amounts for which they are individually and/or joint liable in PEC cases ## 19-01.01, 20-41.01 and/or 22-09.01:
 - a. Libby Schaaf: \$21,000
 - b. Doug Linney: \$5,000
 - c. Jonathan Bair: \$3,300
 - d. Ernest Brown: \$3,300
 - e. Oaklanders For Responsible Leadership: \$94,768
 - f. Oakland Police Officers Association: \$23,930
 - g. Committee for an Affordable East Bay: \$230,860
- 2. The amounts specified in Item 1 above are the minimum amounts to which the respondents have committed to paying with respect to their individual and/or joint liabilities. Nothing in this Exhibit #2 shall be interpreted as reducing the overall amount to which each respondent has agreed to be individually or jointly liable as specified in Exhibit #1 to PEC cases ## 19-01.01, 20-41.01 and/or 22-09.01. Respondents remain liable for any uncollected joint or individual penalties even if the collection of such penalties would cause them to pay an amount exceeding those listed above.

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1 Simon Russell
2 Enforcement Chief
3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
4 1 Frank Ogawa Plaza, Rm. 104
5 Oakland, CA 94612
6 Telephone: (510) 238-4976

7
8 Petitioner

9
10 BEFORE THE CITY OF OAKLAND
11 PUBLIC ETHICS COMMISSION

12
13 In the Matter of

) Case No.: 20-41.01, 22-17

14 COMMITTEE FOR AN AFFORDABLE
15 EAST BAY; ERNEST BROWN; LIBBY
16 SCHAAF; JONATHAN BAIR; OAKLAND
POLICE OFFICERS ASSOCIATION;

) **STIPULATION, DECISION AND
ORDER**

17 Respondents.
18
19

20 **STIPULATION**

21
22 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and
23 respondents COMMITTEE FOR AN AFFORDABLE EAST BAY; ERNEST BROWN;
24 LIBBY SCHAAF; JONATHAN BAIR; and OAKLAND POLICE OFFICERS
25 ASSOCIATION, agree as follows:

- 26
27 1. This Stipulation will be submitted for consideration by the City of Oakland Public
28 Ethics Commission (Commission) at its next regularly scheduled meeting;

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- 1 2. This Stipulation resolves all factual and legal issues raised in this matter and represents
2 the final resolution to this matter without the necessity of holding an administrative
3 hearing to determine the liability of, or penalties and/or other remedies to be imposed
4 upon, Respondents;
- 5 3. Respondents knowingly and voluntarily waive all procedural rights under the Oakland
6 City Charter, Oakland Municipal Code, the Public Ethics Commission Complaint
7 Procedures, and all other sources of procedural rights applicable to this PEC
8 enforcement action. These procedural rights include, but are not limited to, the right to
9 personally appear at an administrative hearing held in this matter, to be represented by
10 an attorney at their own expense, to confront all witnesses testifying at the hearing, to
11 subpoena witnesses to testify at the hearing, and to have the matter judicially reviewed;
- 12 4. Respondents represent that they have accurately furnished to the Commission all
13 discoverable information and documents that are relevant to the Commission's
14 determination of a fair and comprehensive resolution to this matter;
- 15 5. Upon approval of this Stipulation and full performance of the terms outlined in this
16 Stipulation, the Commission will take no future action against Respondents, including
17 any officer, director, employee, or agent of Respondents, regarding the activities
18 described in Exhibit #1 to this Stipulation, and this Stipulation shall constitute the
19 complete resolution of all claims by the Commission against Respondents, including
20 any officer, director, employee, or agent of Respondents, related to such activities and
21 any associated alleged violations;
- 22 6. If Respondents fail to comply with the terms of this Stipulation, then the Commission
23 may reopen this matter and prosecute Respondents to the full extent permitted by law,
24 except that the Statute of Limitations shall be waived for any violations that were not
25 discoverable or actionable by the Commission due to non-compliance with any
26 provision of this Stipulation;
- 27 7. This Stipulation is not binding on any other law enforcement or regulatory agency, and
28 does not preclude the Commission or its staff from cooperating with, or assisting any

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1 other government agency with regard to this matter, or any other matter related to it;
2 except that neither the Commission nor its staff shall refer this matter, or any other
3 matter related to it, as pertains to any alleged violation by Respondents, to any other
4 government agency;

5 8. Respondents admit that they committed the violation(s) of the Oakland Municipal Code
6 with which they are specifically identified in Exhibit #1 to this Stipulation, and in the
7 manner set forth in that Exhibit, which is expressly incorporated by reference in its
8 entirety to this Stipulation and represents a true and accurate summary of the facts in
9 this matter;

10 9. The Commission will impose upon Respondents the penalties and/or other remedies
11 specified in Exhibit #1 and Exhibit #2, as they pertain to each of the named
12 Respondents;

13 10. Respondents will pay the amount specified in Exhibit #1 and Exhibit #2 to this
14 Stipulation to the City of Oakland general fund within sixty (60) calendar days of the
15 date on which the Commission votes to accept this Stipulation. Commission staff may
16 extend the payment deadline at its discretion;

17 11. In the event the Commission refuses to accept this Stipulation, it shall become null and
18 void, and within fifteen business days after the Commission meeting at which the
19 Stipulation is rejected, any payments already tendered by Respondents in connection
20 with this Stipulation will be reimbursed to them;

21 12. In the event the Commission rejects this Stipulation and a full evidentiary hearing
22 becomes necessary, this Stipulation and all references to it are inadmissible as evidence,
23 and neither any member of the Commission, nor the Executive Director or any member
24 of PEC staff, shall be disqualified from that hearing because of prior consideration of
25 this Stipulation;

26 13. This Stipulation may not be amended orally. Any amendment or modification to this
27 Stipulation must be in writing duly executed by all parties and approved by the
28 Commission at a regular or special meeting, except for any extension to the payment

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1 deadline described in paragraph 10, which Commission staff may grant at its sole
2 discretion and which need only be in writing not requiring execution;

3 14. This Stipulation shall be construed under, and interpreted in accordance with, the laws
4 of the State of California and the City of Oakland. If any provision of the Stipulation is
5 found to be unenforceable, the remaining provisions shall remain valid and enforceable;
6 and

7 15. The parties hereto may sign different copies of this Stipulation, which will be deemed to
8 have the same effect as though all parties had signed the same document. Verified
9 electronic signatures shall have the same effect as wet signatures. The parties need not
10 sign this agreement until after the Commission has voted to accept it.

11
12 So agreed:

13
14
15 _____
16 Simon Russell, Chief of Enforcement
17 City of Oakland Public Ethics Commission, Petitioner

_____ Dated

18
19 _____
20 Ernest Brown, on behalf of Committee For An
21 Affordable East Bay

_____ Dated

22
23 _____
24 Ernest Brown, Respondent

_____ Dated

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26 _____
27 Libby Schaaf, Respondent

_____ Dated

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Jonathan Bair, Respondent

Dated

Oakland Police Officers Association, Respondent

Dated

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INTRODUCTION

This case concerns a political campaign committee active in the Oakland 2020 election that was called the “Committee For An Affordable East Bay” and supported the City Council At-Large candidacy of Derreck Johnson against incumbent Rebecca Kaplan.

A campaign committee has the right to raise and expend unlimited campaign funds, unless it is “controlled” by a City candidate. Mayor Schaaf, then Mayor of Oakland and a candidate as defined by California Government Code 82061, participated in the activities of this committee to an extent that the committee became a “candidate-controlled committee” with the meaning of the statute. Once the committee became a “candidate-controlled”

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1 committee it committed several violations of the Oakland Municipal Code, as detailed in this
2 stipulation. These violations include failing to register properly, accepting contributions over
3 the city’s campaign contribution limit, and accepting contributions from City contractors.

4 In addition, the committee also received a copy of non-public polling data that had
5 been commissioned by the city’s police union. The polling data was first provided to the
6 Derreck Johnson campaign and it was eventually received by the candidate controlled
7 committee. Neither the Johnson campaign nor the candidate controlled committee publicly
8 disclosed any of this activity, as required.

9 PEC staff and Respondents have agreed to settle this matter without an administrative
10 hearing. They are now presenting their stipulated agreement, summary of the facts, and legal
11 analysis to the City of Oakland Public Ethics Commission for its approval. Together, PEC staff
12 and Respondents recommend approval of their agreement and imposition of administrative
13 penalties, as described in more detail below.

FACTUAL SUMMARY

Organization of the Campaign Committee

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19 Around late 2019 and early 2020, Jonathan Bair was volunteering with a housing policy
20 movement called Yes In My Backyard (YIMBY). Bair conceived of creating a political action
21 committee (PAC) that could campaign for YIMBY-allied candidates and ballot measures in the
22 greater East Bay. He developed this idea in collaboration with a handful of other YIMBY
23 volunteers, though Bair remained the point person for the project. Their initial plans focused
24 on supporting upcoming candidate races for the Oakland and Berkeley City Councils. The
25 committee was registered on July 30, 2020, as a general purpose committee called “East Bay
26 Housing Action.”
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1 At this early point in the campaign season, Bair's group did not plan to campaign in the
2 Oakland City Council At-Large race, in which incumbent Rebecca Kaplan was facing various
3 opponents including Derreck Johnson. Bair even obtained the pro bono services of one of
4 Johnson's campaign advisors when developing his PAC, an arrangement that could possibly
5 have violated campaign finance laws prohibiting "coordination" between candidate-
6 controlled campaigns and independent PACs such as Bair's, if they had been planning to use
7 Bair's PAC to campaign in the At-Large race. Bair was also in direct communication with the
8 Johnson campaign at this time, offering advice as a volunteer, something that could possibly
9 have been illegal if Bair had also been planning an independent expenditure for Johnson at
10 the time.

11 Around this same time, Oakland Mayor Schaaf requested a meeting with the Oakland
12 Metropolitan Chamber of Commerce's political action committee, called "OAKPAC." OAKPAC
13 had been considering getting involved in various Oakland races. During her meeting with
14 OAKPAC, Mayor Schaaf sent a text message to Bair and asked if he was considering using his
15 PAC to campaign in the At-Large race. Bair said he was not, because he was unsure if he could
16 raise enough money to be effective across such a large district. Mayor Schaaf promised to get
17 back in touch with him. The same day, Mayor Schaaf contacted a political consulting firm and
18 a polling firm, to inquire about the costs of running TV ads and polling in Oakland's At-Large
19 race.

20 Over the next week and a half, Mayor Schaaf gathered more information from
21 consultants about the likely costs of an independent expenditure ("IE") campaign in the At-
22 Large race. She then resumed contact with Bair on August 22, 2020, at which Mayor Schaaf
23 told Bair that she believed she could help raise enough money for the PAC to be effective. She
24 also provided Bair with the cost estimates she had obtained from various consultants.
25 Following two days of correspondence with Mayor Schaaf, on August 24, 2020, Bair broke off
26
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1 contact with the advisor with whom he had been working (one of the Johnson campaign's
2 consultants), as well as with the Johnson campaign itself.

3 Mayor Schaaf then contacted Todd David, the Executive Director of Bay Area Housing
4 Action Committee, another YIMBY organization affiliated with Bair's. Mayor Schaaf informed
5 David of the plans underway to conduct an IE in Oakland's At-Large race. David advised that
6 it would be helpful to split the efforts between a primarily-formed PAC for the At-Large race,
7 and to create a slate mail organization (SMO) for any other races that the group might want
8 to get involved in. At Mayor Schaaf's invitation, David met with her, Bair, and others on August
9 26 and 27, 2020, to discuss this and other ideas for the proposed campaigns. During the
10 meeting, Mayor Schaaf supported David's proposal to create a SMO, which (like the PAC)
11 would also be administered by Bair and his fellow YIMBY volunteers. Per David's
12 recommendation, ultimately the SMO was used to support all of the other races which Bair
13 had originally envisioned using his PAC to support; while the PAC was then re-oriented to
14 focus on the At-Large race.

15 Another meeting involving the same people took place on August 29, 2020, this time
16 joined by political consultant Maggie Muir. David had been working with Muir on other
17 campaigns at the time and recommended her services. At this meeting (also attended by
18 Mayor Schaaf), it was decided that the PAC would support Derreck Johnson and oppose
19 Rebecca Kaplan in the At-Large race, through the use of TV ads and mailers, at an approximate
20 budget of \$200,000. Muir produced a campaign planning document to this effect, and
21 distributed it to Mayor Schaaf, Bair, David, and others. The PAC also changed its name around
22 this point, to "Committee For An Affordable East Bay."

23 Around this same time, Mayor Schaaf contacted the President of Lyft, John Zimmer,
24 and solicited a \$100,000 contribution to the PAC for purposes of opposing Kaplan's re-
25 election. (Kaplan had recently proposed a tax on ride-share companies such as Lyft, which Lyft
26 had opposed). Zimmer agreed, and Bair, who had also tried soliciting the contribution from
27

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1 Jordan Markwith of Lyft, handled the logistics of wiring the money from Lyft to the PAC. At
2 the time, Lyft was under contract with the City of Oakland to provide bike-sharing services
3 and a substantial change to its contract was pending that would require City Council approval.
4 (The Council eventually rejected the proposal in its meeting of November 10, 2020).¹ After
5 realizing that a matter concerning Lyft would be coming to the City Council, Mayor Schaaf
6 sought advice from Public Ethics Commission Director Whitney Barazoto regarding the
7 contribution and how best to proceed. Also, Schaaf publicly disclosed her solicitation of the
8 contribution from Lyft as a City contractor the day after it was made, on September 23, 2020,
9 by filing a Form 303 as required by Oakland law.

10 Meanwhile, Bair met with the original YIMBY volunteers of his committee (without
11 Mayor Schaaf, Muir, David, or others present) after Schaaf had obtained the \$100,000 pledge
12 from Lyft. Bair informed the group that Lyft had pledged a \$100,000 contribution and urged
13 that they now create a SMO to campaign in Berkeley and the Oakland District 3 race, and
14 change the PAC to a primarily-formed committee for the Oakland At-Large race supporting
15 Derreck Johnson and opposing Rebecca Kaplan. Although this group had a practice of taking
16 votes on major decisions, no vote was taken on these decisions. Several YIMBY volunteers
17 disagreed with the decision to accept this money from Lyft and quit the group soon
18 afterward.

19 Throughout September 2020, Bair and his treasurer Ernest Brown met weekly with
20 Mayor Schaaf, Muir, David, and others, to discuss fundraising, strategy, and messaging for the
21 PAC's At-Large campaign. They also corresponded about these matters over group emails and
22 text messages.

23 Bair's group of YIMBY volunteers also met separately on its own most weeks, but
24 consultant Muir did not attend most of those meetings (nor did Mayor Schaaf or others). In
25 its meetings, Bair's group of YIMBY volunteers focused on implementing the At-Large race's

26 _____
27 ¹ Lyft entered a separate settlement in this matter with the PEC; see case # 20-41.2

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1 strategy that had been developed by Muir following her meeting with the larger group; as
2 well as on its own, separate efforts in various Berkeley City Council and ballot measure races
3 (through the use of the SMO).

4 As the campaign progressed, Muir began working on drafts of television ads to be run
5 by the PAC. Muir sent drafts of the PAC's television ads to Mayor Schaaf, Bair, and others, and
6 invited their feedback. Mayor Schaaf emailed Muir links to some news articles that could be
7 used in ads, as well as quotes from the articles that could be used in ads. Muir subsequently
8 used the same articles and one of the quotes Mayor Schaaf sent in the TV ad for the PAC that
9 she was developing at that time.

The Campaign Committee's Receipt of an Unreported In-kind Contribution of a Poll

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11
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13 In late August 2020, the city's police union commissioned a poll concerning the
14 upcoming elections and voter sentiments about a police union endorsement in the wake of
15 the recent George Floyd protests. The polling results showed that Johnson performed better
16 if voters were informed of certain aspects of his personal background; and that a police union
17 endorsement would be perceived negatively by voters. The poll had cost \$38,760.

18 The police union had been in contact with the Johnson campaign and provided it with
19 the polling results, along with a portion of a PowerPoint presentation the pollster had put
20 together for the police union that summarized key takeaways from the Kaplan-Johnson data.
21 The Johnson campaign never reported this in-kind contribution on any of its campaign finance
22 reporting forms, and the police union never reported making this contribution either (because
23 the contribution was worth \$10,000 or more, this made the police union a "major donor" and
24 it incurred reporting obligations under the law, including the obligation to report this
25 particular contribution to the Johnson campaign).

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1 Johnson's campaign manager, Michelle Hailey, then emailed the poll results and
2 analysis on September 2, 2020, to Barbara Leslie (the President of the Chamber of Commerce).
3 Leslie then emailed the file to Mayor Schaaf, whom Leslie knew to be involved with the pro-
4 Johnson PAC as a general matter.

5 Mayor Schaaf then emailed the same document to Muir (the PAC's consultant who
6 was designing its ads), saying "I happened to get this poll from someone who got it from
7 someone who got it from someone. It has helpful info. Until I get permission from the person
8 I got it from, I don't want to share with the whole group² but you should see it now." Muir
9 replied, "Very helpful, thank you!" Mayor Schaaf later stated to the PEC that she believed the
10 poll had been sent to Leslie directly by the police union and had no reason to believe it had
11 been received by or come from the Johnson campaign.

12 Language used by Muir subsequently for a television ad to be run by the PAC,
13 supporting Derreck Johnson (the ad was called "Had Her Chance") used language similar to
14 the poll's. The television ad cost \$40,000. The PAC reported the cost of these ads, as required,
15 on public campaign finance reporting forms.

16 Neither the Johnson campaign nor the campaign committee ever reported a
17 contribution of the polling results and analysis on their respective campaign finance reporting
18 forms.

Campaign Committee Fundraising

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22 Throughout the campaign, Mayor Schaaf solicited another \$57,000 from 12 donors, in
23 addition to Lyft, which ended up comprising 82% of the total monetary contributions received
24 by the campaign committee, by directly contacting potential donors and persuading them to

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26 ² This refers to the other people working on the PAC and the SMO.
27
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1 make a donation. She described the campaign committee as being created and run solely by
2 YIMBYs. She also described it as an “independent” committee, i.e. one without a contribution
3 limit.

4 The table below shows all monetary contributions raised by the PAC in 2020.³
5 Contributions that Schaaf personally solicited (as evidenced in documents and testimony
6 received by the PEC) are highlighted in yellow:

All Contributions Raised by “Committee For An Affordable East Bay” PAC (those solicited by MayorSchaaf are in yellow)		
Donor	Date	Amount
Victoria Fierce for Alameda County Democratic Central Committee	08/24/2020	\$1,251.61
Bay Area Housing Advocacy Coalition	09/21/2020	\$1,000
Cestra Butner	09/21/2020	\$5,000
Californians for Independent Work, Sponsored by Lyft, Inc.	09/21/2020	\$100,000
Edward Gerber	09/21/2020	\$1,000
Alvin Attles	09/22/2020	\$1,000
Erik Moore	09/22/2020	\$1,000
Charles Freiberg	09/29/2020	\$2,500
David Roe	09/29/2020	\$2,000
Martha Siegel	09/29/2020	\$10,000
Robert Spears	09/29/2020	\$2,500
Reuben, Junius & Rose LLP	09/30/2020	\$9,999
Alexander Riaz Taplin	10/13/2020	\$10,000
Adelin Cai	10/14/2020	\$8,000
Michael Yang	10/15/2020	\$7,000
Jennifer Pahlka	10/17/2020	\$2,500
William Witte	10/21/2020	\$7,500

23 _____
24 ³ The campaign committee subsequently raised a small amount of funds in 2021-2022, but those are not
25 relevant to this case because the PEC has found no evidence that Schaaf continued to be involved with the
26 campaign committee at that point.

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1	Ron Conway ⁴	10/22/2020	\$15,000
2	East Bay Rental Housing Association PAC	10/29/2020	\$3,000
3	(1) Total Monetary Contributions Solicited by Schaaf = \$157,000.00		
4	(2) Total Monetary Contributions Raised = \$190,250.61		
5	Total Percentage of Monetary Contributions Solicited by Schaaf (Line 1 ÷ Line 2) = 82%		

Contributions From City Contractors

6
7
8 The campaign committee received contributions from two City contractors. Both
9 contributions were solicited by Mayor Schaaf, and she publicly reported soliciting both of
10 these contributions in full compliance with Oakland's campaign disclosure ordinances.

11 The Lyft contribution was made on September 22, 2020, by Lyft's sponsored campaign
12 committee called Californians For Independent Work. Lyft's work with the City is detailed
13 above. Upon being informed that Lyft was a City contractor, Mayor Schaaf filed a Form 303
14 on September 23, 2020, publicly reporting that she had solicited the contribution.

15 The second contractor, William Witte, gave \$7,500 to the campaign committee on
16 October 21, 2020. Mayor Schaaf solicited that contribution, while Bair handled the logistics of
17 receiving the funds. At the time, Witte was the part-owner of a subsidiary company (95th &
18 International Housing Partners, L.P.) that was seeking to lease City-owned property in East
19 Oakland for purposes of an affordable housing and commercial retail development. (The City
20 Council approved the proposed lease on September 15, 2020). More than a week after making
21 his donation, Witte informed Mayor Schaaf that he might qualify as a City contractor. Mayor

22
23
24 ⁴ This contributor also made a \$15,000 contribution to this campaign committee on 10/16/2020 (solicited by
25 Mayor Schaaf), and the campaign committee returned that contribution on 10/21/2020. We are choosing not to
26 include the contribution of 10/16/2020 here because the contributor appears to have only intended to make a
27 single contribution of \$15,000, and the campaign committee ultimately only kept that amount.

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1 Schaaf then timely filed a Form 303 on November 9, 2020, publicly reporting that she had
2 solicited the contribution.⁵

3 *The Campaign Committee Files Campaign Forms That Fail to State It Is Candidate Controlled*

4
5
6 Throughout the campaign, the campaign committee filed its numerous campaign
7 forms with the PEC as if it were an independent expenditure committee and not a
8 “candidate controlled” committee as defined by California Government Code 82061 nor did
9 any of the filings disclose Mayor Schaaf’s name or involvement. This included all its Form
10 410s, 460s, 497s and 496s.

11 *Form 410*

12
13
14 The first type of form that the campaign committee filed with the PEC is called a Form
15 410 (“Statement of Organization”). These are forms that a campaign committee must file
16 when its first registers as a campaign committee, and whenever it changes its name, purpose,
17 or main personnel. It must also disclose on these forms whether it is a controlled committee
18 of a candidate or officeholder. The forms must be signed by the controlling candidate, under
19 penalty of perjury. Finally, it is the form on which a committee declares what its name will be.
20 As explained in more detail later in this Exhibit, candidate-controlled committees are required
21 to put the last name of their controlling candidate in the committee’s name (e.g. “Committee
22 X, a Controlled Committee of Oakland Mayor Smith”). The purpose of the form is to inform
23 the public of who is running a particular campaign committee and controlling its funds.

24 The table below shows all of the dates that the campaign committee filed a Form 410
25 from September – December 2020 (i.e., the time period when Mayor Schaaf was involved with

26
27 ⁵ Witte is also seeking to settle with the PEC regarding this contribution; see case # 20-41.3.

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1 the campaign committee). It did not disclose that it was a controlled committee, did not
2 identify Schaaf as its controlling candidate, and failed to include Mayor Schaaf's last name in
3 its committee name on any of these forms. Mayor Schaaf did not sign any of the forms.

Form 410s Filed by the PAC between September 1 – December 31, 2020

Date Filed	Committee Name Given on Form
September 10, 2020	"Oaklanders for more housing, supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020."
September 18, 2020	"Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020."
September 22, 2020	"Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020."
September 25, 2020 (1)	"Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020."
September 25, 2020 (2)	"Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020."
September 30, 2020 (1)	"Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020, Sponsored by Lyft, Inc."
September 30, 2020 (2)	"Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020."

22 Form 460

24 The campaign committee also filed multiple forms known as a Form 460 ("Recipient
25 Committee Campaign Statement"). These are periodic reports that a campaign committee
26 must file in order to report all of the money that it has raised and spent throughout a
27

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1 campaign. It must use its full committee name on the form, and report whether it is a
2 controlled committee of a candidate or officeholder (such as a Mayor). The forms must be
3 signed by the controlling candidate, under penalty of perjury. The purpose of the form is to
4 inform the public where campaign committees are getting their money from, and what they
5 are spending it on.

6 The table below shows all of the dates that the PAC filed a Form 460 with the PEC,
7 reporting the money it had raised and spent from September – December 2020 (i.e. the time
8 period when Mayor Schaaf was involved with the committee). On each of these forms, it gave
9 its name as “Committee for an Affordable East Bay supporting Derreck Johnson and opposing
10 Rebecca Kaplan for Oakland City Council At-Large 2020.” It failed to include Mayor Schaaf’s
11 last name in its committee name, did not disclose that it was a controlled committee, and did
12 not identify Mayor Schaaf as its controlling candidate on any of these forms. Mayor Schaaf
13 did not sign any of the forms as its controlling candidate:

Form 460s Filed by the PAC Covering September 1 – December 31, 2020		
Date Filed	Dates Covered	Committee Name Given on Form
September 24, 2020	January 1 – September 19, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”
October 22, 2020	September 20 – October 17, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”
January 30, 2021	October 18 – December 31, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”

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1 Form 497

2
3 The campaign committee also filed what are known as Form 497s (“Contribution
4 Reports”, sometimes informally referred to as “24-hour contribution reports”). These forms
5 must be submitted within 24 hours, whenever a primarily-formed committee (such as the
6 campaign committee in this case) receives \$1,000 or more from a single donor in the 90 days
7 before the election concerning the candidate that the committee is supporting or opposing.
8 The purpose of the form is to the inform the public -- before the election -- of which donors
9 are making large contributions benefitting or opposing certain candidates.

10 The table below shows all of the dates that the campaign committee filed a Form 497
11 with the PEC, reporting the contributions over \$1,000 it had raised from September 2020 until
12 the election in November (i.e. the time period when Mayor Schaaf was involved with the
13 campaign committee). On each of these forms, it gave its name as “Committee for an
14 Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland
15 City Council At-Large 2020.” It failed to include Mayor Schaaf’s last name in its committee
16 name:

Form 497s Filed by the PAC While Mayor Schaaf Was Controlling Candidate		
Date Filed	Committee Name Given on Form	Activity Reported
September 22, 2020	“Oaklanders for more housing, supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$109,000 in contributions received
September 30, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$17,000 in contributions received
October 1, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and	\$9,999 in contributions received

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1		opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	
2		“Committee for an Affordable East Bay supporting Derreck Johnson and	\$2,000 in contributions
3	October 2, 2020	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	received
4			
5		“Committee for an Affordable East Bay supporting Derreck Johnson and	\$10,000 in contributions
6	October 14, 2020	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	received
7			
8		“Committee for an Affordable East Bay supporting Derreck Johnson and	\$15,000 in contributions
9	October 15, 2020	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	received
10			
11		“Committee for an Affordable East Bay supporting Derreck Johnson and	\$15,000 in contributions
12	October 19, 2020	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	received
13			
14		“Committee for an Affordable East Bay supporting Derreck Johnson and	\$7,500 in contributions
15	October 21, 2020	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	received
16			
17		“Committee for an Affordable East Bay supporting Derreck Johnson and	\$15,000 in contributions
18	October 22, 2020	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	received
19			
20		“Committee for an Affordable East Bay supporting Derreck Johnson and	\$3,000 in contributions
21	October 29, 2020	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	received
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1 Form 496

2
3 Finally, the campaign committee filed what are known as Form 496s (“Independent
4 Expenditure Reports”, sometimes informally referred to as “24-hour independent
5 expenditure reports”). These are forms that must be filed whenever a committee makes an
6 independent expenditure (such as an ad) that costs \$1,000 or more in the 90 days before an
7 election. The form must include the committee’s full name. The purpose of the form is to
8 inform the public of who is making independent expenditures, and where the money for
9 those independent expenditures is coming from.

10 On the following dates, the campaign committee filed a Form 496 with the PEC, in
11 which it gave its name as “Committee for an Affordable East Bay supporting Derreck Johnson
12 and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.” It failed to include
13 Mayor Schaaf’s last name in its committee name:

14

Form 496s Filed While Mayor Schaaf Was Controlling Candidate		
Date Filed	Committee Name Given on Form	Activity Reported
September 23, 2020 (1)	“Oaklanders for more housing, supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$16,000 of TV ads opposing Rebecca Kaplan \$109,251.61 in contributions received
September 23, 2020 (2)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$64,000 of TV ads supporting Derreck Johnson
October 1, 2020 (1)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$4,000 of digital ads opposing Rebecca Kaplan
October 1, 2020 (2)	“Committee for an Affordable East Bay supporting Derreck Johnson and	\$16,000 of digital ads supporting Derreck Johnson

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1		opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$26,999 in contributions received
2			(amendment to above)
3	October 9, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$25,000 of digital ads and production supporting Derreck Johnson
4			\$26,999 in contributions received
5			
6			
7	October 13, 2020 (1)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$8,000 of digital ads supporting Derreck Johnson
8			
9			
10	October 13, 2020 (2)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$2,000 of digital ads opposing Rebecca Kaplan
11			
12			
13	October 20, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$7,100 slate mailer supporting Derreck Johnson
14			\$42,500 in contributions received
15			
16	October 22, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$29,000 slate mailer supporting Derreck Johnson
17			\$22,500 in contributions received
18			\$15,000 in contributions returned
19			
20	October 28, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$10,600 slate mailer opposing Rebecca Kaplan
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SUMMARY OF LAW & LEGAL ANALYSIS

1
2
3 All statutory references and discussions of law pertain to the referenced statutes and
4 laws as they existed at the time of the violations.

5 All definitions of terms are the same as those set forth in the California Political Reform
6 Act (California Government Code Sections 81000 through 91014), as amended, unless the term
7 is specifically defined in Oakland’s Campaign Reform Act (Oakland Municipal Code Chapter
8 3.12) or the contrary is stated or clearly appears from the context.⁶

9 Provisions of the California Political Reform Act relating to local elections, including
10 any subsequent amendments, are incorporated into the Oakland Campaign Reform Act
11 (OCRA), except as otherwise provided in, or inconsistent with, other provisions of local law.⁷

The Campaign Committee Was “Candidate-Controlled”

12
13
14
15 Nearly all of the alleged violations in this matter hinge on whether the campaign
16 committee was “candidate-controlled” as defined by California Government Code Section
17 82016. Being a candidate-controlled committee is not a violation in-and-of itself; but
18 candidate-controlled committees have very different disclosure requirements and restrictions
19 on the contributions they can accept. Therefore, to determine whether the campaign
20 committee violated any of the laws applicable to candidate-controlled committees, it must
21 first be established that it was indeed “candidate-controlled.”

22 Under the law, a committee is candidate-controlled if a candidate or elected official
23 has a “significant influence” on the actions or decisions of the committee.⁸ Neither the

24
25 ⁶ OMC § 3.12.040.

26 ⁷ OMC § 3.12.240(d).

27 ⁸ Cal. Govt. Code § 82016.

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1 Political Reform Act, FPPC Regulations, or the Oakland Municipal Code define the term
2 “significant influence.” The applicable standard for determining when a candidate exercises
3 “significant influence” over a campaign committee can only be found in advice letters
4 published by the FPPC. One such Advice Letter states, “The definition of ‘controlled
5 committee’ has been interpreted broadly to include any significant participation in the actions
6 of a committee by a candidate, his or her agent, or representatives of any other committee
7 he or she controls.”⁹ An elected official who has extensive involvement in a committee’s
8 fundraising activity by actively participating in its solicitations, fundraising events and
9 fundraising strategy is also exerting ‘significant influence’ over the committee and controlling
10 the committee within the meaning of Section 82016.¹⁰ Other relevant factors which determine
11 whether a candidate is controlling a committee include whether the candidate is involved with
12 decision making or developing or implementing campaign strategy for the committee.¹¹

Element 1: Committee

14
15
16 The first element to establish is whether the entity in question qualified as a
17 “committee.” A “committee” is any person or combination of persons who directly or
18 indirectly receives campaign contributions totaling two thousand dollars (\$2,000) or more in
19 a calendar year, or who makes independent expenditures totaling one thousand dollars
20 (\$1,000) or more in a calendar year.¹²

21
22
23 _____
24 ⁹ FPPC *Higdon* Advice Letter, No. I-94-189; FPPC *Kopp* Advice Letter, No. A-97-108.

25 ¹⁰ FPPC *Pirayou* Advice Letter, No. 1-10-159.

26 ¹¹ FPPC *Helms* Advice Letter, No. 1-91-390.

27 ¹² Cal. Govt. Code § 82013.

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1 Here, the campaign committee received contributions in 2020 well in excess of \$2,000
2 and made independent expenditures well in excess of \$1,000 that same year, according to its
3 sworn campaign reporting forms.

4 5 **Element 2: Candidate or Elected Official**

6
7 The second element to establish if a committee is candidate-controlled is whether the
8 person alleged to have controlled the committee was a candidate or elected official. The term
9 “candidate” includes an elected officer.¹³ “Elected officer” means any person who holds an
10 elective office.¹⁴

11 Here, Mayor Schaaf was a candidate or elected official because she was serving as
12 Mayor of Oakland at the time of her involvement with the campaign committee, having been
13 elected to that position in 2014 and re-elected in 2018. She also had an open committee at the
14 time, *Mayor Schaaf for Mayor 2018 Officeholder Committee*, for which she was registered as
15 the controlling candidate.

16 17 **Element 3: Significant Influence on the Actions or Decisions of the Committee**

18
19 Finally, to establish that a committee is candidate-controlled, there must be sufficient
20 facts to show that a candidate or elected official had “significant influence” on the actions or
21 decisions of the committee.¹⁵ Neither the Political Reform Act, FPPC Regulations, or the
22 Oakland Municipal Code define the term “significant influence.” The applicable standard for
23 determining when a candidate exercises “significant influence” over a campaign committee

24
25 ¹³ OMC § 3.12.040(B); Cal. Govt. Code § 82007.

26 ¹⁴ Cal. Govt. Code § 82020.

27 ¹⁵ Cal. Govt. Code § 82016.

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1 can only be found in advice letters published by the FPPC, one of which states, “The definition
2 of ‘controlled committee’ has been interpreted broadly to include any significant participation
3 in the actions of a committee by a candidate... [including] extensive involvement in a
4 committee's fundraising activity.”¹⁶

5 Such influence can be direct or indirect.¹⁷ Reading the FPPC Advice Letters as a whole,
6 examples of the type of behavior that might constitute significant influence include
7 communicating with a committee about its campaign strategy, messaging, or advertising, or
8 making substantial fundraising efforts for a committee.¹⁸ However, fundraising alone is not
9 sufficient to constitute “significant influence” unless a candidate has extensive involvement
10 in the committee's fundraising activities by actively participating in its solicitations,
11 fundraising events and fundraising strategy.¹⁹

12 Actions that do not constitute significant influence include things such as publicly
13 supporting a campaign, making donations from the official’s own personal funds to a
14 campaign, or appearing on a committee’s advertisements without working on the messaging
15 of those advertisements.²⁰ It also does not include providing ministerial or administrative
16 support to a campaign (e.g. bookkeeping).²¹ It does not matter whether the candidate has an
17 official title or role on the campaign: “[P]ractical operational realities, rather than job title,
18 determine whether a committee is controlled.”²²

19
20
21 ¹⁶ FPPC Lyman Advice Letter No. I-19-163

22 ¹⁷ Cal. Govt. Code § 82016

23 ¹⁸ *Travis v. Brand*, 62 Cal. App. 5th 240, 251, 261-262 (2021).

24 ¹⁹ *Barker* Advice Letter, FPPC # A-97-478 (1997); FPPC *Pirayou* Advice Letter, No. 1-10-159.

25 ²⁰ *Travis v. Brand*, 62 Cal. App. 5th 240, 261-262 (2021).

26 ²¹ *Lacy* Advice Letter, FPPC #I-03-076 (2003).

27 ²² *Lacy* Advice Letter, FPPC #I-03-076 (2003) at 2 (internal quotation marks omitted).

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1 Here, Mayor Schaaf's participation was "significant." Without Mayor Schaaf's
2 participation, particularly with fundraising, it is unlikely Bair would have used his committee
3 for an independent expenditure in the At Large City Council race. This is evidenced by all of
4 the testimony gathered by the PEC of persons who were substantially involved with the
5 committee before Mayor Schaaf's involvement.

6 At the same time that Bair's committee was getting organized, Mayor Schaaf was
7 looking to assist another potential independent expenditure effort in the At-Large Council
8 race. On her own initiative, she contacted campaign consultants about the costs of an
9 independent expenditure in those races – information that she later provided to Bair after
10 getting involved with his campaign committee. Mayor Schaaf initially contacted Bair via text
11 message and asked if he would consider using his campaign committee to support an IE for
12 Derreck Johnson. Mayor Schaaf also arranged for Bair to meet with herself, Todd David, and
13 others for purposes of planning how the At-Large effort would be structured.

14 Mayor Schaaf contacted Lyft and secured a \$100,000 contribution to the PAC, for
15 purposes of running TV ads supporting Johnson and opposing Kaplan. The original YIMBY
16 volunteers with Bair's committee were not informed about this plan until after it was already
17 in motion. Some of them even quit in protest rather than accept money from Lyft. The TV ad
18 campaign would not have been possible without this money from Lyft. The TV ads were also
19 the only campaign activity engaged in by the campaign committee, other than fundraising and
20 donating to the SMO (which also supported Johnson, among other candidates in Oakland and
21 Berkeley).

22 After Mayor Schaaf became involved with the committee, Bair met several times with
23 her, David, an OAKPAC representative, and Muir, to discuss each organization's support for
24 candidates in various council races. Subsequently, the Mayor continued to meet with Muir,
25 Bair, and David where evidence suggests that strategy, messaging and fundraising for the
26 campaign committee were discussed. These meetings occurred separately from the meetings
27

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1 that Bair was also holding with the YIMBY volunteers with whom he was working. Consultant
2 Muir also attended the weekly meetings with Mayor Schaaf. However, she did not attend the
3 separate meetings that Bair held with his fellow YIMBY volunteers, even though the latter
4 was the official committee.

5 Outside of the meetings, Mayor Schaaf was also in contact with Bair, Muir, David, and
6 others, via email and text message, concerning fundraising, strategy, and messaging. Muir
7 sent advance drafts of the campaign committee's television ads to Mayor Schaaf and others
8 for their feedback. Mayor Schaaf provided messaging sources that were directly incorporated
9 into the ads for the campaign committee. Mayor Schaaf also provided Muir with a copy of
10 polling results, with messaging that later appeared in a campaign committee TV ad for
11 Johnson. Mayor Schaaf also solicited more than 80% of the monetary contributions raised by
12 the campaign committee.

13 In sum, the evidence shows that the totality of Mayor Schaaf's participation rose to
14 the FPPC's definition of "significant influence" over the decisions and activities of the
15 campaign committee.

16 *The Campaign Committee Failed to Publicly Identify Itself as Candidate Controlled*

17
18
19 All committees must register with the appropriate filing officer²³ and file periodic
20 campaign forms itemizing their contributions and expenditures.²⁴ For committees that are
21 controlled by an Oakland elected officer, or which are primarily-formed to support or oppose
22 a candidate in an Oakland election, their filing officer is the PEC.²⁵ The forms they must file
23 (including any amendments to those forms) include:

24 _____
25 ²³ Cal. Govt. Code § 84101.

26 ²⁴ Cal. Govt. Code § 84215.

27 ²⁵ OMC §§ 3.12.240, 3.12.260, Cal. Govt. Code §§ 84101, 84215(d).

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- the committee’s initial registration and termination statements (Form 410)²⁶
- its pre-election and semi-annual campaign statements (form 460)²⁷
- its 24-hour contribution reports (Form 497)²⁸, and
- its 24-hour independent expenditure reports (Form 496).²⁹

Each of those reports, including amendments, must include the committee’s full name.³⁰ For a candidate-controlled committee, its name must include the last name of its controlling candidate³¹ (e.g. “... a controlled committee of Mayor Smith”). The Form 410 and Form 460 must also be signed by the controlling candidate, under penalty of perjury.³²

Element 1: Candidate-controlled committee

The first element to establish whether the campaign committee failed to file campaign forms identifying Mayor Schaaf as their controlling candidate, is to show that Mayor Schaaf did indeed control the committee. As demonstrated above, the campaign committee was a

²⁶ Cal. Govt. Code § 84101; Cal. Code of Regulations §18410(a)(3); OMC §§ 3.12.240, 3.12.260.

²⁷ Cal. Govt. Code §§ 82006, 84200, 84200.8; OMC §§ 3.12.240, 3.12.260.

²⁸ Cal. Govt. Code § 84203; OMC §§ 3.12.240, 3.12.260.

²⁹ Cal. Govt Code §§ 84204(c), 84215(d); OMC §§ 3.12.240, 3.12.260.

³⁰ Cal. Govt. Code §§ 84102, 84106.5 (full committee name required on Form 410); § 84211(o) (full committee name required on Form 460); § 84203(a) (full committee name required on late contribution report); 84204(b) (full name required on late independent expenditure report).

³¹ Cal. Govt. Code § 84106.5; Cal. Code of Regulations § 18402(c)(1).

³² Cal. Govt. Code §§ 84101, 84213(a); Cal. Code of Regulations §18410(a)(13).

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1 candidate-controlled committee of Mayor Schaaf, an Oakland elected official. It was therefore
2 required to file the above-listed forms with the PEC.

4 **Element 2: Failure to Disclose Candidate-Controlled Status on Forms**

5
6 The next element to establish whether the campaign committee failed to file
7 campaign forms identifying Mayor Schaaf as its controlling candidate is to demonstrate that
8 it filed forms that lacked the required disclosure particular to each form.

9 10 *Form 410*

11
12 A Form 410 must include the committee's full name. For a candidate-controlled
13 committee, its name must include the last name of its controlling candidate (e.g. "...a
14 controlled committee of Mayor Smith"). The Form 410 must also expressly disclose that it is a
15 controlled committee and identify its controlling candidate. The controlling candidate must
16 sign the form under penalty of perjury.

17 Here, the campaign committee filed a Form 410 with the PEC on the following dates in
18 2020: September 10, September 18, September 22, September 25 (twice), and September 30
19 (twice). None of those forms disclosed that the campaign committee was a controlled
20 committee, identified Mayor Schaaf as its controlling candidate, or included Mayor Schaaf's
21 last name in the committee name. Mayor Schaaf did not sign any of the forms.

22 23 *Form 460*

24
25 A Form 460 must include the committee's full name. For a candidate-controlled
26 committee, its name must include the last name of its controlling candidate (e.g. "...a
27

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1 controlled committee of Mayor Smith”). The Form 460 must also expressly disclose that it is
2 a controlled committee, and identify its controlling candidate. The controlling candidate must
3 sign the form under penalty of perjury.

4 On the following dates, the campaign committee filed a Form 460 with the PEC, in
5 which it did not disclose that it was a controlled committee, did not identify Schaaf as its
6 controlling candidate, and failed to include Schaaf’s last name in its committee name:
7 September 24, 2020 (covering January 1 – September 19, 2020); October 22, 2020 (covering
8 September 20 – October 17, 2020); and January 30, 2021 (covering October 18 – December 31,
9 2020). Mayor Schaaf did not sign any of the forms.

10 11 Form 497

12
13 A Form 497 must include the committee’s full name. For a candidate-controlled
14 committee, its name must include the last name of its controlling candidate (e.g. “...a
15 controlled committee of Mayor Smith”).

16 On the following dates in 2020, the campaign committee filed a Form 497 with the PEC,
17 in which it failed to include Schaaf’s last name in its committee name: September 22,
18 September 30, October 1, October 2, October 14, October 15, October 19, October 21, October
19 22, and October 29.

20 21 Form 496

22
23 A Form 496 must include the committee’s full name. For a candidate-controlled
24 committee, its name must include the last name of its controlling candidate (e.g. “...a
25 controlled committee of Mayor Smith”).

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1 On the following dates in 2020, the campaign committee filed a Form 496 with the
2 PEC, in which it failed to include Mayor Schaaf's last name in its committee name: September
3 23 (twice), October 1 (twice), October 9, October 13 (twice), October 20, October 22, and
4 October 28.

The Campaign Committee Received Contributions Over the Legal Limit

5
6
7
8 In the 2020 election, candidate-controlled committees in Oakland were prohibited
9 from receiving contributions in excess of nine hundred dollars (\$900.00) from any person
10 other than broad-based committees such as labor union campaign committees, for which
11 the contribution limit was one-thousand eight hundred dollars (\$1,800.00).³³ The campaign
12 committee was a candidate-controlled committee that received contributions in excess of
13 this amount, as demonstrated immediately below.

Element 1: Candidate-controlled committee

14
15
16
17 The first element to establish whether a violation of the contribution limit took place,
18 is to show that the committee in question was candidate-controlled. As demonstrated above,
19 the campaign committee (Committee For An Affordable East Bay) was a candidate-controlled
20 committee of Mayor Schaaf.

21 When it comes to determining whether the committee in question received
22 contributions over the legal limit, it also becomes relevant to determine not just whether, but
23 when the committees became candidate-controlled. In other words, it must be determined
24 when Mayor Schaaf's influence over the committee became significant. This matters because

25
26
27 ³³ OMC §§ 3.12.050(B), 3.12.060(B).

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1 any contributions over \$900 received before Mayor Schaaf became the controlling candidate,
2 would not violate the contribution limit.

3 Based on the evidence, Mayor Schaaf's influence over the campaign committee
4 became significant at least as early as August 24, and as late as August 29, 2020. By that point,
5 the campaign committee had received only one contribution by late August 2020 (\$1,251.61
6 from Victoria Fierce for Alameda County Democratic Central Committee, on August 24, 2020).
7 It can be assumed that the decision to make this contribution was made at least one day
8 earlier than the date it was received (August 24); therefore it will be excluded from further
9 consideration of the contribution limit violation. All other contributions received by the
10 campaign committee were received in September 2020 and onward. For the sake of simplicity,
11 we shall place the date of the campaign committee's status as a candidate-controlled
12 committee as September 2, 2020 (when it first received total contributions in the amount of
13 \$2,000 or more, specifically through the in-kind contribution of polling data on September 2,
14 thereby qualifying as a committee).

15 16 **Element 2: Receiving contributions over the legal limit**

17
18 The next element to establish whether a violation of the contribution limit took place,
19 is to show that the committee received contributions in excess of \$900 during the period in
20 which it was candidate-controlled.

21 As demonstrated above, the campaign committee became a candidate-controlled
22 committee on or around September 1, 2020, when it first received contributions totaling
23 \$2,000 or more. The following table shows all contributions received by the campaign
24 committee in excess of \$900 on or after September 1, 2020:

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All Contributions in Excess of \$900 Received by the Campaign Committee as of 9/1/2020			
Donor	Date Received	Total Amount of Contribution	Amount of Contribution In Excess of \$900
Derreck Johnson For Oakland City Council 2020	09/02/2020	\$38,760 (in-kind of polling data)	\$37,860
Bay Area Housing Advocacy Coalition	09/21/2020	\$1,000	\$100
Cestra Butner	09/21/2020	\$5,000	\$4,100
Californians for Independent Work, Sponsored by Lyft, Inc.	09/21/2020	\$100,000	\$99,100
Edward Gerber	09/21/2020	\$1,000	\$100
Alvin Attles	09/22/2020	\$1,000	\$100
Erik Moore	09/22/2020	\$1,000	\$100
Charles Freiberg	09/29/2020	\$2,500	\$1,600
David Roe	09/29/2020	\$2,000	\$1,100
Martha Siegel	09/29/2020	\$10,000	\$9,100
Robert Spears	09/29/2020	\$2,500	\$1,600
Reuben, Junius & Rose LLP	09/30/2020	\$9,999	\$9,099
Alexander Riaz Taplin	10/13/2020	\$10,000	\$9,100
Adelin Cai	10/14/2020	\$8,000	\$7,100
Michael Yang	10/15/2020	\$7,000	\$6,100
Jennifer Pahlka	10/17/2020	\$2,500	\$1,600
William Witte	10/21/2020	\$7,500	\$6,600
Ron Conway ³⁴	10/22/2020	\$15,000	\$14,100

³⁴ This contributor also made a \$15,000 contribution to this committee on 10/16/2020, and the committee returned that contribution on 10/21/2020. We are choosing not to include the contribution of 10/16/2020 here, even though it technically qualifies as a contribution over the limit, because the contributor appears to have only intended to make a single contribution of \$15,000, and the committee ultimately only kept that amount.

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1	East Bay Rental Housing Association PAC	10/29/2020	\$3,000	\$2,100
2	Total = \$227,759			
3				
4	Total Over The Contribution Limit = \$210,659			
5				

6 In conclusion, the campaign committee was a candidate-controlled committee that
7 received contributions in excess of \$900. The campaign committee received a total of
8 \$210,659 over the legal limit.

9 *The Campaign Committee Received Contributions From City Contractors*

10
11
12 City contractors are prohibited from making a contribution, in any amount, to a
13 candidate-controlled committee during what is informally known as the blackout period.³⁵

14 A “city contractor” is defined as an individual or entity who contracts or proposes to
15 contract with or who amends or proposes to amend such a contract with the City for (among
16 other things) the rendition of services, for the furnishing of any material, supplies,
17 commodities or equipment to the City, or for purchasing or leasing any land or building from
18 the City, whenever the value of such transaction would require approval by the City Council.³⁶
19 “Services” means and includes labor, professional services, consulting services, or a
20 combination of services and materials, supplies, commodities and equipment which shall
21 include public works projects.³⁷

22 If the alleged contractor is a business entity, the restriction applies to all of the entity’s
23 principals, including, but not limited to, the entity’s board chair, president, chief executive

24
25 ³⁵ OMC § 3.12.140(A).

26 ³⁶ OMC § 3.12.140(A).

27 ³⁷ OMC § 3.12.140(D).

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1 officer (CEO), and any individual who serves in the functional equivalent of one or more of
2 those positions.³⁸

3 The blackout period is any time between commencement of negotiations and one
4 hundred eighty (180) days after the completion or the termination of negotiations for such
5 contract.³⁹

6 7 **Element 1: Candidate-Controlled Committee**

8
9 The first required element to establish a violation of the contractor contribution ban,
10 is to show that the receiving committee (here, the campaign committee) was candidate-
11 controlled. It has already been established above that the PAC was a candidate-controlled
12 committee of Mayor Schaaf.

13 14 **Element 2: City Contractor**

15
16 The second required element to establish a violation of the contractor contribution
17 ban, is to show that the donors in question qualified as “contractors.”

18 The first donor in question is Lyft, Inc., which made a \$100,000 contribution to the
19 campaign committee on September 21, 2020, via its sponsored committee “Californians For
20 Independent Work.” At the time it made its donation, Lyft had submitted proposed terms for
21 the renegotiation of its bike-sharing contract with the City. That contract specifically
22 concerned Lyft’s administration of the bike-share program, as well as the equipment it would
23 provide in conjunction with that program. The City Council voted on the matter at its meeting
24 of November 10, 2020 (the Council rejected Lyft’s proposed terms). As such, Lyft was

25
26 ³⁸ OMC § 3.12.140(C).

27 ³⁹ OMC § 3.12.140(A).

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1 proposing to amend a contract with the City for the rendition of services and the furnishing
2 of material and equipment to the City, in an amount that required approval by the City Council.
3 It therefore qualified as a contractor and was prohibited from donating to the campaign
4 committee in this case during the blackout period.

5 The second donor in question is William Witte, who gave \$7,500 to the campaign
6 committee on October 21, 2020. At the time he made his donation, Witte was the part-owner
7 of a subsidiary company (95th & International Housing Partners, L.P.) that was seeking to
8 lease City-owned land in East Oakland for purposes of an affordable housing and commercial
9 retail development. (The City Council approved the proposed lease on September 15, 2020).
10 As such, Witte was the principal (Chairman and CEO) of an entity that was proposing to lease
11 City-owned land, in an amount that required approval by the City Council. He therefore
12 qualified as a contractor and was prohibited from donating to the PAC in this case during the
13 blackout period.

14 15 **Element 3: Blackout period**

16
17 The third and final required element to establish a violation of the contractor
18 contribution ban, is to show that the donations in question were made during the blackout
19 period, which is anytime after the commencement and negotiations up until six months after
20 the contract has been executed.

21 The first donor in question, Lyft, Inc., made its contribution on September 21, 2020, via
22 its sponsored committee “Californians For Independent Work.” At the time it made its
23 donation, Lyft had submitted proposed terms for the renegotiation of its bike-sharing
24 contract with the City. The City Council voted on the matter at its meeting of November 10,
25 2020 (the Council rejected Lyft’s proposed terms). As such, Lyft was engaged in contract
26
27
28

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1 negotiations with the City at the time it made its contribution to the controlled campaign
2 committee. Its contribution therefore fell within the blackout period.

3 The second donor in question, William Witte, made his contribution on October 21,
4 2020. At the time he made his donation, his company (95th & International Housing Partners,
5 L.P.) had just received City Council approval to negotiate a lease agreement with the City on
6 September 15, 2020. As such, Witte's company was engaged in contract negotiations with the
7 City at the time he made his contribution to the controlled campaign committee. His
8 contribution therefore fell within the blackout period.

9 In sum, both contributions at issue here – the \$100,000 contribution from Lyft, and the
10 \$7,500 contribution from Witte – violated the contractor contribution ban because they were
11 made to a candidate-controlled committee.

The PAC Coordinated an Expenditure with the Johnson Campaign

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15 An independent expenditure is an expenditure made by a committee in connection
16 with a communication (e.g. a television ad) which expressly advocates the election or defeat
17 of a clearly identified candidate, but which is not made to or at the behest of the affected
18 candidate or their campaign committee.⁴⁰

19 A committee wishing to make independent expenditures to support or oppose a
20 candidate (e.g., by running a TV ad or sending out a mailer) may not do so in coordination with
21 the candidate it is supporting. Any such expenditures made in coordination with the affected
22 candidate or their campaign committee must be reported as a contribution to that candidate,
23 and are subject to the contribution limit.⁴¹ This includes the cost of any coordinated
24 expenditures attacking that candidate's opponent.

25
26 ⁴⁰ Cal. Govt. Code § 82031.

27 ⁴¹ See 2 Cal. Code of Regulations § 18225.7(g) (coordinated expenditures shall be treated as contributions).

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1 State law defines coordination as any expenditure (e.g. payment for an ad) made “at
2 the behest of the affected candidate or committee.”⁴² “At the behest” is further defined as
3 being “made at the request, suggestion, or direction of, or in cooperation, arrangement,
4 consultation, concert or coordination with, the candidate or committee on whose behalf, or
5 for whose benefit the expenditure is made.”⁴³ It is also defined as an expenditure funding a
6 communication (e.g. an ad) that is created, produced or disseminated after the candidate or
7 their committee has made or participated in making any decision regarding (among other
8 things) the content of the communication.⁴⁴

9 There is a rebuttable presumption that an expenditure has been coordinated or made
10 at the behest of the affected candidate if the expenditure is based on information about the
11 candidate's or committee's campaign needs or plans that the candidate or committee
12 provided to the expending committee directly or indirectly, such as information concerning
13 campaign messaging or polling data.⁴⁵

14 Here, the campaign committee coordinated an expenditure with the Derreck Johnson
15 campaign, as demonstrated immediately below.

16 17 **Element 1: Expenditure for a communication expressly advocating the election or** 18 **defeat of a clearly identified candidate**

19
20 The expenditure in question was a television ad that unambiguously advocated the
21 election of Derreck Johnson and the defeat of Rebecca Kaplan. The total cost of the ad was
22 \$40,000, according to the PAC’s campaign finance reports.

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24 ⁴² Cal. Govt. Code § 82031.

25 ⁴³ 2 Cal. Code of Regulations § 18225.7(c)(1).

26 ⁴⁴ 2 Cal. Code of Regulations § 18225.7(c)(2)(A).

27 ⁴⁵ 2 Cal. Code of Regulations § 18225.7(d)(1)-(2).

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Element 2: Expenditure made at the behest of the affected candidate

Regarding the campaign committee’s television ad, the language and messaging of the ad re was substantially similar to the language of polling results and analysis that had been provided to the campaign committee by Michelle Hailey, Johnson’s campaign manager. There is a rebuttable presumption that an expenditure is made at the behest of the affected candidate when it is based on polling data provided by a candidate to the expending committee, which is the case here.

As such, the expenditure in question was coordinated with the Johnson campaign, and was therefore a contribution to Johnson.

*Failure to Report an In-Kind Contribution or Expenditure Relating to the Police Union Poll;
Exceeding the Contribution Limit*

All campaign committees must publicly and accurately report their contributions (i.e., the money they raised) and expenditures (i.e., how they spent their money). Contributions and expenditures of \$100 or more must be specifically itemized on the committee’s campaign finance reporting forms.⁴⁶ In addition, contributions of \$1,000 or more made to a candidate-controlled committee within 90 days of the election must be reported by the sender and the recipient within 24 hours on a Form 497.⁴⁷ This includes contributions by a “major donor” (a person/entity who makes contributions or expenditures totaling \$10,000 or more in a calendar

⁴⁶ Cal. Govt. Code § 82011.

⁴⁷ Cal. Govt. Code § 84203.

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1 year), who must also file a Form 461 in addition to the Form 497 (which must be filed within
2 24 hours).⁴⁸

3 In addition to reporting its monetary contributions and expenditures, a committee
4 must also report any non-monetary (in-kind) contributions it makes or receives.⁴⁹ In-kind
5 contributions include things such as the receipt of non-public polling data.⁵⁰ All contributions
6 (including in-kind contributions) received by a person acting as an agent of a committee shall
7 be reported promptly to the committee's treasurer or any of the treasurer's designated
8 agents. "Promptly" as used here means not later than the closing date of any campaign
9 statement the committee or candidate for whom the contribution is intended is required to
10 file.⁵¹

11 Here, the OPOA never reported contributing the polling results and analysis to the
12 Johnson campaign, despite the value of that contribution being well in excess of the \$10,000
13 threshold requiring the OPOA to file as a major donor. The contribution also occurred within
14 the 90 days before the relevant election, thereby triggering the 24-hour reporting
15 requirement; but the OPOA did not file a Form 497 as required. This contribution (\$38,760)
16 was well in excess of the \$900 limit for contributions from the OPOA to a candidate-controlled
17 committee.⁵²

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20 ⁴⁸ See Cal. Govt. Code sections 82013; 82036; 82046; 84200(b); 84203; 84215(d).

21 ⁴⁹ Cal. Govt. Code § 82015.

22 ⁵⁰ Cal. Govt. Code § 82015; FPPC Winkler advice letter, No. A-86-035.

23 ⁵¹ Cal. Govt. Code § 84306.

24 ⁵² While the OPOA's associated campaign committee qualified as a broad-based committee and therefore had a
25 higher contribution limit (\$1,800), this contribution came from the OPOA itself (not its campaign committee).
26 The OPOA did not qualify as a broad-based committee and therefore was subject to the \$900 limit. See OMC
27 section 3.12.140(A) for the definition of a "broad-based committee."

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1 For its part, the campaign committee never reported receiving the contribution of
2 polling results and analysis. This was despite the knowledge of key campaign committee
3 personnel about this contribution. And while it did report making the television ad opposing
4 Rebecca Kaplan, it reported it as an independent expenditure rather than as an in-kind
5 contribution to the Johnson campaign (as coordinated expenditures are required to be
6 reported). The contribution also occurred within the 90 days before the relevant election,
7 thereby triggering the 24-hour reporting requirement; but the campaign committee did not
8 file a Form 497 as required (it instead filed a Form 496, as is required for “independent
9 expenditures”). This contribution (\$40,000) was well in excess of the \$900 limit.

Liability

12 Any person who violates any provision of the Oakland Campaign Reform Act, who
13 causes any other person to violate any provision of this Act, or who aids and abets any other
14 person in the violation of the Act, may be found liable for an administrative violation by the
15 PEC. If two or more persons are responsible for any violation, they shall be jointly and severally
16 liable.⁵³

17 "Person" means an individual, proprietorship, firm, partnership, joint venture,
18 syndicate, business, trust, company, corporation, association, committee, and any other
19 organization or group of persons acting in concert.⁵⁴

20 The principal officer of a committee is any individual primarily responsible for
21 approving the political activity of the committee including, but not limited to authorizing the
22 content of the communications made by the committee, the committee's contributions or
23

25
26 ⁵³ OMC 3.12.270(C)

27 ⁵⁴ OMC 3.12.040(J)

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1 expenditures, or the committee’s campaign strategy. If more than one individual shares in the
2 primary responsibility for those activities, each such individual is a principal officer.⁵⁵

3 In addition to a committee itself, persons who qualify as principal officers of the
4 committee are jointly and severally liable for violations by the committee. For committees
5 controlled by a candidate, the candidate and the committee's treasurers are deemed to be
6 principal officers.⁵⁶ In addition, an agent acting on behalf of a person is jointly and severally
7 liable for a violation that arises out of the agent's actions. There is a rebuttable presumption
8 that “agents” of a committee include any current or former officer of the committee; any
9 person who has received compensation or reimbursement from the committee; and any
10 person who holds or has held a position within the committee organization that reasonably
11 appears to be able to authorize expenditures for committee activities.⁵⁷

12 “Aiding and abetting” is not itself a violation but rather a legal rule that allows the
13 Enforcement Unit to charge anyone who participated in the underlying violation, even if they
14 were not the direct perpetrator. The test of whether a person aided or abetted in the
15 commission of a violation is whether that person in any way, directly or indirectly, aided the
16 perpetrator(s) by acts or encouraged the perpetrator(s) by words or gestures, instigated or
17 advised the commission of the violation, or was present for the purpose of assisting in its
18 commission.⁵⁸ An aider and abettor must have knowledge of the illegal purpose of the
19 perpetrator(s) and have intentionally assisted them in the violation. The aider and abettor is
20 not only liable for the particular violation that to their knowledge their confederates were

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23 ⁵⁵ 2 Cal. Code of Regulations § 18402.1.

24 ⁵⁶ OMC 3.12.230(A)

25 ⁵⁷ OMC 3.12.230(B)

26 ⁵⁸ *People v. Villa*, 156 Cal. App. 2d 128, 133, 134 (1957) (applying California Penal Code section 31, which contains a
27 similar “aiding and abetting” provision to that found under OMC 3.12.270(C)).

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1 contemplating committing, but they are also liable for the natural and reasonable or probable
2 consequences of any act that they knowingly aided or encouraged.⁵⁹

VIOLATIONS:

COMMITTEE FOR AN AFFORDABLE EAST BAY; ERNEST BROWN; MAYOR SCHAAF;

JONATHAN BAIR

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8 Respondents, Committee For An Affordable East Bay; its treasurer (Ernest Brown);
9 Mayor Schaaf (its controlling candidate), and Jonathan Bair (its principal officer, who also
10 caused, aided and/or abetted the violations), violated the following Oakland Municipal
11 Code(s):

Count 1: Failure to Disclose Controlling Candidate Relationship on Campaign Forms

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15 Respondents collectively organized a campaign committee, “Committee For An
16 Affordable East Bay,” at a time when Mayor Schaaf’s participation amounted to “significant
17 influence” over the committee.

18 On the following dates, Respondent committee filed a Statement of Organization
19 (“Form 410”) with the PEC, in which it did not disclose that it was a controlled committee, did
20 not identify Schaaf as its controlling candidate, and failed to include Schaaf’s last name in its
21 committee name. Schaaf did not sign any of the forms.

22

Form 410s Filed by the PAC While Mayor Schaaf Was Controlling Candidate	
Date Filed	Committee Name Given on Form
September 10, 2020	“Oaklanders for more housing, supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”

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27 ⁵⁹ Id. at 134.

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1 2	September 18, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”
3 4	September 22, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”
5 6	September 25, 2020 (1)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”
7 8	September 25, 2020 (2)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”
9 10	September 30, 2020 (1)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020, Sponsored by Lyft, Inc.”
11 12	September 30, 2020 (2)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”

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As the controlling candidate, Schaaf’s last name was required to be included as part of the committee’s name for all purposes. Also, Schaaf was required to be identified as the controlling candidate on the committee’s Form 410, and she was required to sign the committee’s Form 410.

On the following dates, Respondent committee filed a Recipient Committee Campaign Statement (“Form 460”) with the PEC, in which it gave its name as “Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.” It failed to include Schaaf’s last name in its committee name, did not disclose that it was a controlled committee, and did not identify Schaaf as its controlling candidate. Schaaf did not sign any of the forms as its controlling candidate:

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Form 460s Filed by the Campaign Committee While Mayor Schaaf Was Controlling Candidate		
Date Filed	Dates Covered	Committee Name Given on Form
September 24, 2020	January 1 – September 19, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”
October 22, 2020	September 20 – October 17, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”
January 30, 2021	October 18 – December 31, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”

As the controlling candidate, Schaaf’s last name was required to be included as part of the committee’s name for all purposes. Also, Schaaf was required to be identified as the controlling candidate on the committee’s Form 460, and she was required to sign the committee’s Form 460.

On the following dates, Respondent committee filed a Contribution Report (“Form 497”) with the PEC, in which it failed to include Schaaf’s last name in its committee name:

Form 497s Filed by the Campaign Committee While Mayor Schaaf Was Controlling Candidate		
Date Filed	Committee Name Given on Form	Activity Reported
September 22, 2020	“Oaklanders for more housing, supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$109,000 in contributions received
September 30, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$17,000 in contributions received
October 1, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and	\$9,999 in contributions received

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1		opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	
2		“Committee for an Affordable East Bay	\$2,000 in contributions
3	October 2,	supporting Derreck Johnson and	received
4	2020	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	
5		“Committee for an Affordable East Bay	\$10,000 in contributions
6	October 14,	supporting Derreck Johnson and	received
7	2020	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	
8		“Committee for an Affordable East Bay	\$15,000 in contributions
9	October 15,	supporting Derreck Johnson and	received
10	2020	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	
11		“Committee for an Affordable East Bay	\$15,000 in contributions
12	October 19,	supporting Derreck Johnson and	received
13	2020	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	
14		“Committee for an Affordable East Bay	\$7,500 in contributions
15	October 21,	supporting Derreck Johnson and	received
16	2020	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	
17		“Committee for an Affordable East Bay	\$15,000 in contributions
18	October 22,	supporting Derreck Johnson and	received
19	2020	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	
20		“Committee for an Affordable East Bay	\$3,000 in contributions
21	October 29,	supporting Derreck Johnson and	received
22	2020	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	

23
24 As the controlling candidate, Schaaf’s last name was required to be included as part of
25 the committee’s name for all purposes.
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1 On the following dates, Respondent committee filed an Independent Expenditure
2 Report (“Form 496”) with the PEC, in which it failed to include Schaaf’s last name in its
3 committee name:

Form 496s Filed by the Campaign Committee While Mayor Schaaf Was Controlling Candidate		
Date Filed	Committee Name Given on Form	Activity Reported
September 23, 2020 (1)	“Oaklanders for more housing, supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$16,000 of TV ads opposing Rebecca Kaplan \$109,251.61 in contributions received
September 23, 2020 (2)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$64,000 of TV ads supporting Derreck Johnson
October 1, 2020 (1)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$4,000 of digital ads opposing Rebecca Kaplan
October 1, 2020 (2)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$16,000 of digital ads supporting Derreck Johnson \$26,999 in contributions received
October 9, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	(amendment to above) \$25,000 of digital ads and production supporting Derreck Johnson \$26,999 in contributions received
October 13, 2020 (1)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$8,000 of digital ads supporting Derreck Johnson

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	October 13, 2020 (2)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$2,000 of digital ads opposing Rebecca Kaplan
	October 20, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$7,100 slate mailer supporting Derreck Johnson \$42,500 in contributions received
	October 22, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$29,000 slate mailer supporting Derreck Johnson \$22,500 in contributions received \$15,000 in contributions returned
	October 28, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$10,600 slate mailer opposing Rebecca Kaplan

Once it became a candidate-controlled committee, Schaaf’s last name was required to be included as part of the committee’s name for all purposes.

In this way, Respondents violated Oakland Municipal Code (OMC) section 3.12.240, incorporating Cal. Govt. Code sections 84102(f), 84106.5, 84203, 84211(o)-(p), 84213(a), and 2 California Code of Regulations sections 18402(c)(1) and 18410(a)(13).

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VIOLATIONS:

COMMITTEE FOR AN AFFORDABLE EAST BAY

Count 2: Receiving Contributions in an Amount Over the Legal Limit (Monetary Contributions)

Respondent committee was a candidate-controlled committee subject to the local contribution limit. On the following dates, Respondent committee received monetary contributions in excess of \$900, which was the contribution limit for candidate-controlled committees in 2020, and in excess of \$1,800, which was the contribution limit for broad-based political committees:

All Monetary Contributions in Excess of \$900 received by The Committee For An Affordable East Bay While it Was a Controlled Committee			
Donor	Date Received	Total Amount of Contribution	Amount of Contribution In Excess of \$900
Bay Area Housing Advocacy Coalition	09/21/2020	\$1,000	\$100
Cestra Butner	09/21/2020	\$5,000	\$4,100
Californians for Independent Work, Sponsored by Lyft, Inc.	09/21/2020	\$100,000	\$99,100
Edward Gerber	09/21/2020	\$1,000	\$100
Alvin Attles	09/22/2020	\$1,000	\$100
Erik Moore	09/22/2020	\$1,000	\$100
Charles Freiberg	09/29/2020	\$2,500	\$1,600
David Roe	09/29/2020	\$2,000	\$1,100
Martha Siegel	09/29/2020	\$10,000	\$9,100
Robert Spears	09/29/2020	\$2,500	\$1,600
Reuben, Junius & Rose LLP	09/30/2020	\$9,999	\$9,099
Alexander Riaz Taplin	10/13/2020	\$10,000	\$9,100
Adelin Cai	10/14/2020	\$8,000	\$7,100
Michael Yang	10/15/2020	\$7,000	\$6,100
Jennifer Pahlka	10/17/2020	\$2,500	\$1,600

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1	William Witte	10/21/2020	\$7,500	\$6,600
2	Ron Conway ⁶⁰	10/22/2020	\$15,000	\$14,100
3	East Bay Rental Housing Association PAC	10/29/2020	\$3,000	\$1,200
4	Total Amount of Contributions Received = \$188,999			
5	Total Over The Contribution Limit = \$171,899			

6
7 As a controlled committee, Respondent committee was prohibited from receiving
8 contributions from a single source in excess of \$900 during the 2020 election, except for
9 broad-based political committees for which the contribution limit was \$1,800.

10 In this way, Respondent violated OMC sections 3.12.050 and 3.12.060.

11 12 **Count 3: Contribution From a City Contractor to a Candidate-Controlled Committee**

13
14 In late August and early September, 2020, Respondent committee solicited and
15 facilitated a contribution from a sponsored committee of a City contractor (Californians for
16 Independent Work, Sponsored by Lyft, Inc.) to a candidate-controlled committee (Committee
17 For An Affordable East Bay Supporting Derreck Johnson and Opposing Rebecca Kaplan for
18 Oakland City Council At-Large 2020) in the amount of \$100,000.

19 In this way, Respondent committee caused and/or aided and abetted a violation of
20 OMC section 3.12.140(A).

21
22
23 _____
24 ⁶⁰ This contributor also made a \$15,000 contribution to this committee on 10/16/2020, and the committee
25 returned that contribution on 10/21/2020. We are choosing not to include the contribution of 10/16/2020 here,
26 even though it technically qualifies as a contribution over the limit, because the contributor appears to have
27 only intended to make a single contribution of \$15,000, and the committee ultimately only kept that amount.

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Count 4: Contribution From a City Contractor to a Candidate-Controlled Committee

In October 2020, Respondent committee solicited a contribution from William Witte to a candidate-controlled committee (Committee For An Affordable East Bay Supporting Derreck Johnson and Opposing Rebecca Kaplan for Oakland City Council At-Large 2020) in the amount of \$7,500. The contribution was made on October 21, 2020.

In this way, Respondent committee caused and/or aided and abetted a violation of OMC § 3.12.140(A).

VIOLATIONS:

ERNEST BROWN, MAYOR SCHAAF, JONATHAN BAIR

Respondents Ernest Brown (treasurer), Mayor Schaaf (controlling candidate), and Jonathan Bair (principal officer, who also caused and/or aided-and-abetted the violations) violated the following Oakland Municipal Code(s):

Count 5: Receiving Contributions in an Amount Over the Legal Limit (Monetary Contributions) and Contribution From a City Contractor to a Candidate-Controlled Committee

Respondents created and/or operated a candidate-controlled committee subject to the local contribution limit. On the following dates, Respondents' committee received monetary contributions in excess of \$900, which was the contribution limit for candidate-controlled committees in 2020, and in excess of \$1,800, which was the contribution limit for broad-based political committees:

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All Monetary Contributions in Excess of \$900 received by The Committee For An Affordable East Bay While it Was a Controlled Committee			
Donor	Date Received	Total Amount of Contribution	Amount of Contribution In Excess of \$900
Bay Area Housing Advocacy Coalition	09/21/2020	\$1,000	\$100
Cestra Butner	09/21/2020	\$5,000	\$4,100
Californians for Independent Work, Sponsored by Lyft, Inc.	09/21/2020	\$100,000	\$99,100
Edward Gerber	09/21/2020	\$1,000	\$100
Alvin Attles	09/22/2020	\$1,000	\$100
Erik Moore	09/22/2020	\$1,000	\$100
Charles Freiberg	09/29/2020	\$2,500	\$1,600
David Roe	09/29/2020	\$2,000	\$1,100
Martha Siegel	09/29/2020	\$10,000	\$9,100
Robert Spears	09/29/2020	\$2,500	\$1,600
Reuben, Junius & Rose LLP	09/30/2020	\$9,999	\$9,099
Alexander Riaz Taplin	10/13/2020	\$10,000	\$9,100
Adelin Cai	10/14/2020	\$8,000	\$7,100
Michael Yang	10/15/2020	\$7,000	\$6,100
Jennifer Pahlka	10/17/2020	\$2,500	\$1,600
William Witte	10/21/2020	\$7,500	\$6,600
Ron Conway ⁶¹	10/22/2020	\$15,000	\$14,100
East Bay Rental Housing Association PAC	10/29/2020	\$3,000	\$1,200
Total Amount of Contributions Received = \$188,999			
Total Over The Contribution Limit = \$171,899			

⁶¹ This contributor also made a \$15,000 contribution to this committee on 10/16/2020, and the committee returned that contribution on 10/21/2020. We are choosing not to include the contribution of 10/16/2020 here, even though it technically qualifies as a contribution over the limit, because the contributor appears to have only intended to make a single contribution of \$15,000, and the committee ultimately only kept that amount.

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1 Respondents also created and/or operated a candidate-controlled committee subject
2 to the local ban on contributions by City contractors to candidate-controlled committees.
3 Respondents' committee received the following contributions from City contractors:
4 \$100,000 from Californians for Independent Work, Sponsored by Lyft, Inc. (a sponsored
5 committee of a City contractor) on September 21, and \$7,500 from William Witte (principal of
6 a City contractor) on October 21, 2020.

7 In this way, Respondents violated OMC sections 3.12.050, 3.12.060, and 3.12.140(A).

8
9 **VIOLATIONS:**

10 **OAKLAND POLICE OFFICERS ASSOCIATION**

11
12 Respondent Oakland Police Officers Association violated the following Oakland
13 Municipal Code(s):

14
15 **Count 6: Making a Contribution Over the Legal Limit**

16
17 On or around September 1, 2020, the OPOA made an in-kind contribution of polling
18 results and analysis totaling \$38,760.00 to the campaign committee "Derreck Johnson For
19 City Council 2020," which was a candidate-controlled committee.

20 Respondent was prohibited from making contributions in excess of \$900 to a
21 candidate-controlled committee during the 2020 election. This contribution described above
22 exceeded the contribution limit by \$37,860.00

23 In this way, Respondent violated OMC section 3.12.050.

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Count 7: Failure to File a Major Donor Statement & Late Contribution Report

On or around September 1, 2020, the OPOA made an in-kind contribution of polling results and analysis totaling \$38,760.00 to the campaign committee “Derreck Johnson For City Council 2020.” OPOA was required to report this contribution on a Form 497 within 24 hours, as well as on a Form 461; but did not do so.

In this way, Respondent violated OMC section 3.12.240, incorporating Cal. Govt. Code sections 82013; 82036; 82046; 84200(b); 84203; 84215(d).

VIOLATIONS:

COMMITTEE FOR AN AFFORDABLE EAST BAY

Respondent, Committee For An Affordable East Bay, violated the following Oakland Municipal Code(s):

Count 8: Receiving a Contribution in an Amount Over the Legal Limit (Police Union Poll) & Failure to Report Receiving a Contribution (Police Union Poll)

On or around September 2, 2020, Respondent committee received an in-kind contribution of \$38,760.00, in the form of polling results and analysis, which was in excess of the \$900 contribution limit for candidate-controlled committees in 2020, in the amount of \$37,860, from the committee “Derreck Johnson For City Council 2020.”

In addition, Respondent did not file a late contribution report (Form 497) regarding this contribution. As a primarily-formed and candidate-controlled committee, Respondent was required to report this contribution within 24 hours by filing a Form 497.

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1 Respondent was also required to report this contribution on their Form 460 covering
2 July 1, 2020 – September 19, 2020, but did not.

3 In this way, Respondent violated OMC sections 3.12.050 and 3.12.240, incorporating
4 Cal. Govt. Code sections 84203, 84211, 84215.

5
6 **Count 9: Making a Contribution Over the Legal Limit (TV Ad Supporting Johnson and**
7 **Opposing Kaplan) & Failure to Report Making a Contribution (TV Ad Supporting**
8 **Johnson and Opposing Kaplan)**

9
10 On or around September 23, 2020, Respondent committee published a television
11 advertisement supporting Derreck Johnson and opposing Rebecca Kaplan. The total cost of
12 the ad was \$40,000.

13 Respondent committee was prohibited from making contributions in excess of \$900
14 to a candidate-controlled committee during the 2020 election. This contribution described
15 above exceeded the contribution limit by \$39,100.

16 Respondent committee was required to report the cost of the ad as an in-kind
17 contribution to the Johnson campaign, on a Contribution Report (Form 497). Instead,
18 Respondent committee filed a pair of Independent Expenditure Reports (Form 496) reporting
19 the ad as an IE supporting Johnson (in the amount of \$24,000, excluding the cost of a second
20 television ad supporting Johnson which it was reporting on the same form) and opposing
21 Kaplan (in the amount of \$16,000).

22 Respondent committee was also required to report this contribution on its Form 460
23 covering September 20, 2020 – October 17, 2020. On October 22, 2020, Respondent
24 committee filed a Form 460 covering September 20, 2020 – October 17, 2020. That report did
25 not include the contribution described above. Instead, it reported the ad as an independent
26 expenditure.

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1 In this way, Respondent committee violated OMC sections 3.12.050 and 3.12.240,
2 incorporating Cal. Govt. Code sections 84203, 84211, 84215.

3
4 **VIOLATIONS:**

5 **MAYOR SCHAAF**

6
7 Respondent, Mayor Schaaf (controlling candidate), violated the following Oakland
8 Municipal Code(s):

9
10 **Count 10: Receiving a Contribution in an Amount Over the Legal Limit (Police Union**
11 **Poll) & Failure to Report Receiving a Contribution (Police Union Poll) (No Contest)**

12
13 On or around September 2, 2020, the campaign committee received an in-kind
14 contribution of \$38,760.00, in the form of polling results and analysis, which was in excess of
15 the \$900 contribution limit for candidate-controlled committees in 2020, in the amount of
16 \$37,860, via the committee “Derreck Johnson For City Council 2020.”

17 In addition, the campaign committee did not file a late contribution report (Form 497)
18 regarding this contribution. As a primarily-formed and candidate-controlled committee, the
19 campaign committee was required to report this contribution within 24 hours by filing a Form
20 497. The campaign committee was also required to report this contribution on their Form 460
21 covering July 1, 2020 – September 19, 2020, but did not.

22 In this way, Respondent violated OMC sections 3.12.050 and 3.12.240, incorporating
23 Cal. Govt. Code sections 84203, 84211, 84215.

24 Respondent is not admitting liability to this count but is agreeing to settle (no
25 contest).

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In the Matter of Committee For An Affordable East Bay, et al.

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PENALTY ANALYSIS

Oakland's Campaign Reform Act authorizes the Commission to impose the following base-level and maximum penalties for the following types of violations:

Violation	Counts	Base-Level Per Violation	Statutory Limit Per Violation
Failure to File and/or Disclose Controlling Candidate Relationship on Campaign Forms	1	\$1,000	\$5,000
Making or Receiving Contributions Over The Legal Limit	2, 5-6, 8-10	\$1,000, plus the unlawful amount	\$5,000 or three times the amount of the unlawful contribution, whichever is greater.
Failure to Report Making or Receiving a Contribution	7-10	\$1,000, plus 1% of the all financial activity not timely reported	\$5,000 or three times the amount not properly reported, whichever is greater
Contractor Contribution Prohibition	3-4	\$1,000, plus the unlawful amount	\$5,000 or three times the amount of the unlawful contribution, whichever is greater.

In addition to monetary penalties, the Commission may issue warnings or require other remedial measures.⁶²

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following

⁶² OMC § 3.12.270(C).

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In the Matter of Committee For An Affordable East Bay, *et al.*

PEC 20-41.01, 22-17

1 factors:

- 2
- 3 1. The seriousness of the violation, including, but not limited to, the extent of the public
- 4 impact or harm;
- 5 2. The presence or absence of any intention to conceal, deceive, or mislead;
- 6 3. Whether the violation was deliberate, negligent, or inadvertent;
- 7 4. Whether the violation was isolated or part of a pattern;
- 8 5. Whether the respondent has a prior record of violations and/or demonstrated
- 9 knowledge of the rule or requirement at issue;
- 10 6. The extent to which the respondent voluntarily and quickly took the steps necessary
- 11 to cure the violation (either independently or after contact from the PEC);
- 12 7. The degree to which the respondent cooperated with the PEC's enforcement activity
- 13 in a timely manner;
- 14 8. The relative experience of the respondent;
- 15 9. The respondent's ability to pay the contemplated penalty without suffering undue
- 16 financial hardship. This factor shall not apply to the portion of a penalty that
- 17 constitutes a repayment or disgorgement of the unlawful amount, except in cases of
- 18 extreme financial hardship.
- 19

20 The PEC has broad discretion in evaluating a violation and determining the appropriate
21 penalty based on the totality of circumstances. This list of factors to consider is not an
22 exhaustive list, but rather a sampling of factors that could be considered. There is no
23 requirement or intention that each factor – or any specific number of factors - be present in
24 an enforcement action when determining a penalty. As such, the ability or inability to prove
25 or disprove any factor or group of factors shall in no way restrict the PEC's power to bring an
26 enforcement action or impose a penalty.

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In the Matter of Committee For An Affordable East Bay, et al.

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1 The circumstances of the Respondents' conduct establish the following aggravating
2 and mitigating factors that should be taken into account when determining an appropriate
3 penalty in this case.

Analysis of the Present Case

4
5
6
7 The Respondents' violations in this case are serious. The strict rules applying to
8 candidate-controlled committees go directly to the very purpose of campaign finance law.
9 Candidates for office, and particularly high-ranking officeholders such as the Mayor, have a
10 disproportionate ability to bring in campaign money. This includes donations from sources
11 whose business interests could benefit from being in a candidate or official's good favor, even
12 if that relationship never rises to a formal quid pro quo. Here, there is no evidence of any quid
13 pro quo. However, the contribution restrictions serve to reduce the actuality or appearance
14 of corruption, and (in the case of officeholders) to reduce the unfair fundraising benefits that
15 can come with political power.

16 In this case, Mayor Schaaf used the fundraising power that came with her office. This
17 is evidenced by her stating to Jonathan Bair that she could raise enough money to make such
18 a campaign viable. She was also able to personally contact the president of Lyft and
19 successfully solicit a \$100,000 contribution.

20 In an interview with PEC staff, Mayor Schaaf conveyed that she believed at the time
21 that she had an understanding of the rules concerning what makes a committee "candidate-
22 controlled." Specifically, she said the rules would have required her to only have a "supporting
23 role" and "limited involvement" on the committee, and "being more responsive or reactive
24 to requests that people make for your help." Mayor Schaaf informed the PEC that she did
25 receive advice from a consultant in an earlier campaign (Doug Linney) regarding what he
26 believed his attorneys had told him regarding permissible activities that would not constitute
27

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In the Matter of Committee For An Affordable East Bay, *et al.*

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1 “significant activity.” However, the advice as conveyed by Mr. Linney was not accurate and
2 articulated a greater level of permissible activity than that permitted under FPPC Advice
3 Letters. Mayor Schaaf guided her behavior based on this erroneous information.

4 To be clear, candidates and officeholders are allowed to fundraise for existing
5 committees, including independent expenditure committees. What they cannot do is create
6 or repurpose an existing committee, and then exercise significant influence over the
7 committee. Here, Mayor Schaaf was negligent in determining her obligations to avoid
8 “significantly influencing” the campaign committee, resulting in the listed violations related
9 to this influence.

10 In further mitigation, Mayor Schaaf publicly reported soliciting both the Lyft and the
11 Witte contractor contributions during the time of the events in question. The public therefore
12 at least knew that Mayor Schaaf was affiliated with the campaign committee in some way,
13 even if they were unaware of the full extent of her role. This indicates that Mayor Schaaf was
14 not trying to obscure her connection to the campaign committee, though it did not satisfy all
15 of her legal obligations with regard to disclosing the extent of her involvement.

16 As for the other individual respondents, while it is understandable that relatively
17 inexperienced activists such as Bair and Brown might defer to more experienced players such
18 as Mayor Schaaf, they were still aware of the Mayor’s outsized role with the campaign
19 committee and took no steps to mitigate it or raise concerns. Even after several original
20 YIMBY members of the group quit after learning of the Lyft contribution, neither Bair nor
21 Brown took the opportunity to reassess the situation or ask questions about how this new
22 situation might affect their legal obligations.

23
24 As for the OPOA, it is also an experienced political player and therefore should have
25 known that it could not provide private polling results to a candidate without exceeding the
26 contribution limit and incurring reporting obligations. The OPOA is a significant actor in City
27

Item 4 - PEC Case 20-41.01 Settlement Agreement

EXHIBIT

In the Matter of Committee For An Affordable East Bay, *et al.*

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1 operations, making full reporting of its campaign activity and compliance with the
2 contribution limit a matter of significant public interest.

3 As a result of respondents' actions, the Johnson campaign benefited from an
4 expensive ad campaign (funded in part by City contractors). Voters were also not informed
5 that this campaign was significantly influenced by their City's mayor and supported in part by
6 the police union. Instead, the campaign committee was presented to the public and most
7 donors as an effort run solely by YIMBY pro-housing activists, which was misleading to the
8 public.

9 In further aggravation, the Mayor's actions could be considered as part of a pattern.
10 This is evidenced by PEC cases #19-01 and #22-09, concerning similar activity in the 2018
11 election, and which are also being brought to the PEC at the same time as this case. However,
12 the Mayor contends she was acting under the same mistaken advice provided to her by Mr.
13 Linney in these matters. The Mayor has also been involved in a prior PEC case (though not as
14 a respondent) involving contributions from a City contractor to one of her committees (PEC
15 #18-19).

16 In mitigation, the Mayor and other respondents were forthcoming when providing
17 documents to PEC investigators. This included documents that evidenced the violations in this
18 case. The Mayor and other witnesses also voluntarily provided interviews to PEC staff without
19 a subpoena. Schaaf's actions appear to have been motivated by a misunderstanding of the
20 law.

21 None of the respondents in this case have prior PEC or FPPC violations in which they
22 were named individually. Finally, respondents are now admitting liability to most of the
23 violations in this agreement and/or agreeing to settle, thereby taking responsibility for what
24 occurred and working with the PEC to redress any harm caused.

25 As an additional mitigating factor, PEC staff notes that it has reviewed the personal
26 finances of Mayor Schaaf, Bair, and Brown, and found that the penalties contemplated in this
27

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In the Matter of Committee For An Affordable East Bay, *et al.*

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1 settlement agreement are sufficiently large to act as a deterrent to future violations, without
2 being so large as to cause an undue financial burden for them. PEC staff has also reviewed the
3 finances of the OPOA and determined that the penalty contemplated here is sufficiently large
4 to act as a deterrent to future violations, without being so large as to cause an undue financial
5 burden for the OPOA in light of recent changes to its overall revenue and expenses that would
6 make a higher penalty unreasonably burdensome.

7 It should also be noted that other parties to the violations in this case have already
8 paid or are seeking to pay separate penalties. Lyft paid \$50,000 (see PEC case # 20-41.2) and
9 William Witte is proposing to pay \$2,500 (see PEC case # 20-41.3). These amounts should be
10 taken into account when determining if the penalties proposed in this agreement are
11 satisfactory to the Commission.

12 Based on the foregoing, PEC staff and Respondents recommends that the Commission
13 approve their stipulated agreement and impose the following financial penalties:

RECOMMENDED PENALTIES

14
15
16
17 In light of the above factors, PEC staff and respondents have mutually agreed upon
18 the following penalties and recommend that the Commission vote to approve them:

Count	Violation	Respondent(s)	Amount at Issue	Recommended Penalty
1	Failure to Disclose Controlling Candidate Relationship on Campaign Forms	Committee For An Affordable East Bay; Ernest Brown; Mayor Schaaf; Jonathan Bair	-	\$5,000
2	Receiving Contributions in an Amount Over The	Committee For An Affordable East Bay	\$171,899	\$87,450

Item 4 - PEC Case 20-41.01 Settlement Agreement

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In the Matter of Committee For An Affordable East Bay, et al.

PEC 20-41.01, 22-17

1		Legal Limit (Monetary Contributions)			
2	3	Contractor Contribution Prohibition	Committee For An Affordable East Bay	\$100,000	\$50,000
3					
4	4	Contractor Contribution Prohibition	Committee For An Affordable East Bay	\$7,500	\$5,000
5					
6	5	Receiving Contributions in an Amount Over The Legal Limit (Monetary Contributions) & Contractor Contribution Prohibition	Ernest Brown, Mayor Schaaf, Jonathan Bair	(Same as Counts 2-4 above)	\$5,000
7					
8					
9					
10	6	Making a Contribution Over The Legal Limit (Poll Results)	Oakland Police Officers Association	\$37,860	\$18,930
11					
12	7	Failure to File a Major Donor Statement	Oakland Police Officers Association	\$38,760	\$5,000
13					
14					
15	8	Receiving a Contribution in an Amount Over The Legal Limit (Poll Results) & Failure to Report Receiving a Contribution	Committee For An Affordable East Bay	\$38,760 (\$37,860 over limit)	\$38,760
16					
17					
18					
19	9	Making a Contribution in an Amount Over The Legal Limit (TV ad) & Failure to Report Making a Contribution	Committee For An Affordable East Bay	\$40,000	\$45,000
20					
21					
22					
23	10	Receiving a Contribution in an Amount Over The Legal Limit (Poll Results) & Failure to Report	Mayor Schaaf	(Same as Count 8 above)	\$3,500 no contest/without admitting liability
24					
25					
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Item 4 - PEC Case 20-41.01 Settlement Agreement

EXHIBIT

In the Matter of Committee For An Affordable East Bay, *et al.*

PEC 20-41.01, 22-17

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	Receiving a Contribution			
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Item 4 - PEC Case 20-41.01 Settlement Agreement

1 Simon Russell
2 Enforcement Chief
3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
4 1 Frank Ogawa Plaza, Rm. 104
5 Oakland, CA 94612
6 Telephone: (510) 238-3593

7
8 Petitioner

9
10 BEFORE THE CITY OF OAKLAND
11 PUBLIC ETHICS COMMISSION

12
13 In the Matter of

) Case No.: 20-41.01

14)
15) COMMITTEE FOR AN AFFORDABLE
16) EAST BAY; ERNEST BROWN; LIBBY
17) SCHAAF; JONATHAN BAIR; OAKLAND
18) POLICE OFFICERS ASSOCIATION;

) **AGREEMENT REGARDING
MINIMUM ALLOCATION OF
JOINT PENALTIES**

19)
20) Respondents.
21)
22)
23)
24)
25)
26)
27)
28)

23 **AGREEMENT REGARDING MINIMUM ALLOCATION OF JOINT PENALTIES**

24
25 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and
26 respondents COMMITTEE FOR AN AFFORDABLE EAST BAY; ERNEST BROWN;
27 LIBBY SCHAAF; JONATHAN BAIR; and OAKLAND POLICE OFFICERS
28 ASSOCIATION, agree as follows:

Item 4 - PEC Case 20-41.01 Settlement Agreement

1 1. Respondents commit to individually paying the following aggregate amounts towards
2 any penalties or other settlement amounts for which they are individually and/or joint
3 liable in PEC cases ## 19-01.01, 20-41.01 and/or 22-09.01:

- 4 a. Libby Schaaf: \$21,000
- 5 b. Doug Linney: \$5,000
- 6 c. Jonathan Bair: \$3,300
- 7 d. Ernest Brown: \$3,300
- 8 e. Oaklanders For Responsible Leadership: \$94,768
- 9 f. Oakland Police Officers Association: \$23,930
- 10 g. Committee for an Affordable East Bay: \$230,860

11 2. The amounts specified in Item 1 above are the minimum amounts to which the
12 respondents have committed to paying with respect to their individual and/or joint
13 liabilities. Nothing in this Exhibit #2 shall be interpreted as reducing the overall amount
14 to which each respondent has agreed to be individually or jointly liable as specified in
15 Exhibit #1 to PEC cases ## 19-01.01, 20-41.01 and/or 22-09.01. Respondents remain
16 liable for any uncollected joint or individual penalties even if the collection of such
17 penalties would cause them to pay an amount exceeding those listed above.

Item 4 - PEC Case 19-01.01 Settlement Agreement

1 Simon Russell
2 Enforcement Chief
3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
4 1 Frank Ogawa Plaza, Rm. 104
5 Oakland, CA 94612
6 Telephone: (510) 238-4976

7
8 Petitioner

9
10 BEFORE THE CITY OF OAKLAND
11 PUBLIC ETHICS COMMISSION

12
13 In the Matter of

) Case No.: 19-01.01

14 THE OAKLAND FUND FOR MEASURE
15 AA; LIBBY SCHAAF,

) **STIPULATION, DECISION AND
ORDER**

16 Respondents.
17
18
19
20
21

22
23 **STIPULATION**

24
25 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and
26 respondents THE OAKLAND FUND FOR MEASURE AA; and LIBBY SCHAAF agree as
27 follows:
28

Item 4 - PEC Case 19-01.01 Settlement Agreement

- 1 1. This Stipulation will be submitted for consideration by the City of Oakland Public
2 Ethics Commission (Commission) at its next regularly scheduled meeting;
- 3 2. This Stipulation resolves all factual and legal issues raised in this matter and represents
4 the final resolution to this matter without the necessity of holding an administrative
5 hearing to determine the liability of, or penalties and/or other remedies to be imposed
6 upon, Respondents;
- 7 3. Respondents knowingly and voluntarily waive all procedural rights under the Oakland
8 City Charter, Oakland Municipal Code, the Public Ethics Commission Complaint
9 Procedures, and all other sources of procedural rights applicable to this PEC
10 enforcement action. These procedural rights include, but are not limited to, the right to
11 personally appear at an administrative hearing held in this matter, to be represented by
12 an attorney at their own expense, to confront all witnesses testifying at the hearing, to
13 subpoena witnesses to testify at the hearing, and to have the matter judicially reviewed;
- 14 4. Respondents represent that they have accurately furnished to the Commission all
15 discoverable information and documents that are relevant to the Commission's
16 determination of a fair and comprehensive resolution to this matter;
- 17 5. Upon approval of this Stipulation and full performance of the terms outlined in this
18 Stipulation, the Commission will take no future action against Respondents, including
19 any officer, director, employee, or agent of Respondents, regarding the activities
20 described in Exhibit #1 to this Stipulation, and this Stipulation shall constitute the
21 complete resolution of all claims by the Commission against Respondents, including
22 any officer, director, employee, or agent of Respondents, related to such activities and
23 any associated alleged violations;
- 24 6. If Respondents fail to comply with the terms of this Stipulation, then the Commission
25 may reopen this matter and prosecute Respondents to the full extent permitted by law,
26 except that the Statute of Limitations shall be waived for any violations that were not
27 discoverable or actionable by the Commission due to non-compliance with any
28 provision of this Stipulation;

Item 4 - PEC Case 19-01.01 Settlement Agreement

- 1 7. This Stipulation is not binding on any other law enforcement or regulatory agency, and
2 does not preclude the Commission or its staff from cooperating with, or assisting any
3 other government agency with regard to this matter, or any other matter related to it;
4 except that neither the Commission nor its staff shall refer this matter, or any other
5 matter related to it, as pertains to any alleged violation by Respondents, to any other
6 government agency;
- 7 8. Respondents admit no violation of, nor any liability under, the provision(s) of the
8 Oakland Municipal Code specified in Exhibit #1 to this Stipulation, nor any other
9 provision(s) of the Oakland Municipal Code. Respondents nevertheless agree to settle
10 this matter without admitting liability, according to the terms as described in Exhibit #1
11 and Exhibit #2 to this Stipulation;
- 12 9. The Commission will impose upon Respondents the penalties and/or other remedies
13 specified in Exhibit #1 and Exhibit #2, as they pertain to each of the named
14 Respondents;
- 15 10. Respondents will pay the amount specified in Exhibit #1 and Exhibit #2 to this
16 Stipulation to the City of Oakland general fund within sixty (60) calendar days of the
17 date on which the Commission votes to accept this Stipulation. Commission staff may
18 extend the payment deadline at its discretion;
- 19 11. In the event the Commission refuses to accept this Stipulation, it shall become null and
20 void, and within fifteen business days after the Commission meeting at which the
21 Stipulation is rejected, any payments already tendered by Respondents in connection
22 with this Stipulation will be reimbursed to them;
- 23 12. In the event the Commission rejects this Stipulation and a full evidentiary hearing
24 becomes necessary, this Stipulation and all references to it are inadmissible as evidence,
25 and neither any member of the Commission, nor the Executive Director or any member
26 of PEC staff, shall be disqualified from that hearing because of prior consideration of
27 this Stipulation;
- 28

Item 4 - PEC Case 19-01.01 Settlement Agreement

1 13. This Stipulation may not be amended orally. Any amendment or modification to this
2 Stipulation must be in writing duly executed by all parties and approved by the
3 Commission at a regular or special meeting, except for any extension to the payment
4 deadline described in paragraph 10, which Commission staff may grant at its sole
5 discretion and which need only be in writing not requiring execution;

6 14. This Stipulation shall be construed under, and interpreted in accordance with, the laws
7 of the State of California and the City of Oakland. If any provision of the Stipulation is
8 found to be unenforceable, the remaining provisions shall remain valid and enforceable;
9 and

10 15. The parties hereto may sign different copies of this Stipulation, which will be deemed to
11 have the same effect as though all parties had signed the same document. Verified
12 electronic signatures shall have the same effect as wet signatures. The parties need not
13 sign this agreement until after the Commission has voted to accept it.

14
15 So agreed:

16
17
18 _____
19 Simon Russell, Chief of Enforcement
20 City of Oakland Public Ethics Commission, Petitioner

_____ Dated

21
22 _____
23 The Oakland Fund For Measure AA, Respondent

_____ Dated

24
25 _____
26 Libby Schaaf, Respondent

_____ Dated

Item 4 - PEC Case 19-01.01 Settlement Agreement

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Item 4 - PEC Case 19-01.01 Settlement Agreement

DECISION AND ORDER

1
2 The foregoing Stipulation of the parties to “In the Matter of THE OAKLAND FUND
3 FOR MEASURE AA; LIBBY SCHAAF” PEC Case No. 19-01.1, including all attached
4 Exhibits, is hereby accepted as the final Decision and Order of the City of Oakland Public
5 Ethics Commission, effective upon execution below by the Chair.

6
7 So ordered:

8
9
10 _____
11 Ryan Micik, Chair
12 City of Oakland Public Ethics Commission

_____ Dated

Item 4 - PEC Case 19-01.01 Settlement Agreement

EXHIBIT # 1

In the Matter of The Oakland Fund For Measure AA, et al.

PEC # 19-01.01 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

CONTENTS

1		
2		
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7	COUNTS: THE OAKLAND FUND FOR MEASURE AA, LIBBY SCHAAF.....	20
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9		
10	RECOMMENDED SETTLEMENT	27
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INTRODUCTION

14 This case concerns a ballot measure campaign committee active in the November 2018
15 election in Oakland. that was called “The Oakland Fund For Measure AA,” It supported a ballot
16 measure meant to levy a parcel tax for purposes of funding pre-school and college access
17 programs.

18 Any campaign committee over which an elected official exercises “significant
19 influence” must be registered as a candidate-controlled committee. In this case, the
20 committee’s campaign filings did not state that it was a “candidate controlled” committee
21 due to the significant participation by a candidate, Oakland Mayor Schaaf, as required by law.

22 PEC staff and Respondents have agreed to settle this matter without an administrative
23 hearing. They are now presenting their stipulated agreement, summary of the facts, and legal
24 analysis to the City of Oakland Public Ethics Commission for its approval. Together, PEC staff
25 and Respondents recommend approval of their agreement and proposed settlement totaling
26 \$9,500, as described in more detail below.

Item 4 - PEC Case 19-01.01 Settlement Agreement

EXHIBIT # 1

In the Matter of The Oakland Fund For Measure AA, et al.

PEC # 19-01.01 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

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FACTUAL SUMMARY

Mayor Schaaf's Office Designs a Ballot Measure Campaign for Approval by the City and Selects its Key Personnel

Over the course of 2017, Mayor Schaaf and her mayoral office staff planned a ballot measure campaign that they referred to as “The Children’s Initiative.” Its purpose was to levy a tax in order to raise funds for pre-school and college access programs. The Children’s initiative was intended to be placed on the Oakland ballot by the City of Oakland in November 2018. Ultimately, however, the City did not decide to place the measure on the ballot itself and a campaign was undertaken to place the measure on the ballot via citizen signature qualification.

The Mayor and her staff divided the work into two parts, policy planning and campaign development. The policy planning involved drafting the actual legislation that would appear on the ballot. The campaign development involved preparations for convincing voters to support the legislation in the 2018 election. Both functions were kept separate and there is no evidence that any public funds were used for campaign activity, nor is that issue the subject of this stipulation.

The campaign work began with the selection of a consulting firm to advise on the strategy and logistics. Mayor Schaaf had suggested using SCN Consulting, a firm owned by Ace Smith (who had worked on her first mayoral campaign in 2014) to advise on drafting the legislation and a provisional campaign plan; the firm was subsequently selected to also run the campaign. Mayor Schaaf’s staff took the lead in coordinating with SCN and acting as project managers for laying the legislative and campaign groundwork, in consultation with the Mayor. These staffers included David Silver (the Mayor’s Director of Education) and Kyra Mungia (a policy fellow and program manager in the Mayor’s office, who worked under

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1 Silver). Also involved was Michael George who had participated in a 7-week summer policy
2 fellowship sponsored by the Mayor's office, but was later retained by a foundation to help
3 develop the measure's policy and legislation, and eventually hired to assist with the campaign.

4 The Mayor and her staff were careful to follow City laws requiring the separation of
5 policy planning from the campaign development work. Meetings to work on the campaign
6 development were held outside City Hall and outside of paid City time. A separate funding
7 stream was also used to cover the costs associated with the campaign-related planning. In
8 this way, the Mayor's staff carefully avoided the prohibition on using City resources (including
9 paid staff time) for campaign-related work.

10 However, the Mayor and her staff still significantly participated in the selection of
11 campaign personnel and implementation of campaign strategy. The same consulting firm
12 with whom the Mayor's office worked to prepare the ballot measure legislation (SCN
13 Strategies) was also selected to be the consultant on the ballot measure campaign. And the
14 budget that was shared with the Mayor and her staff became the actual budget for the
15 campaign in 2018. Moreover, as described below, the Mayor and her staff continued to
16 perform an advisory role on the public campaign in 2018.

17 18 *Setting Up a Committee: "The Oakland Fund For Measure AA"*

19
20 The Children's Initiative eventually qualified to be placed on the November 2018
21 Oakland ballot. It was given the official designation of "Measure AA" on the ballot.

22 When it came time to create an official ballot measure committee to run the
23 campaign, Mayor Schaaf accepted a suggestion to use an already-existing committee called
24 The Oakland Fund to be the official committee of the campaign.

25 According to an email from Eugene Zahas to Mayor Schaaf, the Oakland Fund had
26 initially been set up in an earlier election at the request of a different candidate to support
27 different City of Oakland ballot measures over the years. In the run-up to the Measure AA
28

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1 campaign, Mayor Schaaf contacted the treasurer and principal officer of the Oakland Fund
2 (Eugene Zahas and Susan Montauk, respectively) and asked if the Oakland Fund could be
3 used to collect contributions to fund the campaign for Measure AA. The committee's
4 officers also understood that the preferred accounting firm of the Children's Initiative team
5 would handle all of the necessary behind-the-scenes paperwork, and that the Oakland Fund
6 would receive a large initial donation from the East Bay Community Foundation and Kaiser
7 Permanente to cover the campaign salary of George and others.

8 Despite some initial reluctance from Montauk, the three board members of the
9 Oakland Fund then met and agreed to let their committee be used for the new ballot
10 measure, and changed the committee's name to "The Oakland Fund For Measure AA." The
11 name did not mention Mayor Schaaf's involvement, nor did any of the committee's
12 campaign forms. Zahas volunteered to serve as the campaign's Treasurer.

13 Meanwhile, the same consulting firm (SCN Strategies) that had advised the Mayor
14 and her staff when developing the Children's Initiative and its associated campaign
15 prepwork, became the actual managers of the Measure AA campaign now being handled
16 under the auspices of The Oakland Fund. Mayor Schaaf's staff also encouraged SCN to hire
17 Michael George to help run the Measure AA campaign. Silver and Mungia, both former
18 educators without any campaign or political experience, also remained in contact with the
19 Measure AA campaign and were active volunteers during non-city hours.

20 A "campaign committee" was also set up for the Measure AA campaign, consisting
21 of five volunteers. These volunteers were mostly teachers and other education
22 professionals, with little to no prior campaign experience. Many of them were
23 recommended for this role by Silver. When interviewed by the PEC, some of these
24 volunteers recalled being confused about their role, which they felt was largely ministerial.

25 In a separate interview with the PEC, Silver stated that a separate "advisory" group
26 (his word) would meet regularly to discuss developing the Children's Initiative in a way most
27 likely "to win" (in his words) Silver said this group included himself, Mayor Schaaf, then-

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1 Assemblymember Rob Bonta, Susan True, George, Mungia, representatives from SCN
2 Strategies and EMC Research. Also according to Silver, after the measure qualified for the
3 ballot, this group met largely to talk about fundraising for the measure and endorsements.

The Committee Receives Contributions From a City Contractor

4
5
6
7 Orton Development, Inc., was a company that had been in negotiations with the City
8 of Oakland since 2014 to lease and redevelop the City-owned Henry J. Kaiser Convention
9 Center on the bank of Lake Merritt. Following Orton Development’s submission of a formal
10 proposal in 2014, the City Council initially voted to enter an Exclusive Negotiating Agreement
11 with the company in 2015. In 2018, the company was continuing to negotiate the terms of a
12 Lease Disposition and Development Agreement.

13 While those negotiations were ongoing, the Oakland Fund For Measure AA received
14 contributions from Julian “Eddie” Orton, the president of Orton Development. On its
15 campaign finance forms, The Oakland Fund reported each contribution as coming directly
16 from Julian Orton, and identified his place of employment and occupation as “President,
17 Orton Development, Inc.”:

All contributions received by The Oakland Fund from Orton Development	
Date	Amount
8/2/2018	\$25,000.00
10/12/2018	\$50,000.00
11/16/2018	\$25,000.00
Total = \$100,000	

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Campaign Forms Filed by The Oakland Fund

Throughout the campaign, The Oakland Fund filed numerous campaign forms with the PEC. No form stated that it was candidate controlled nor included Schaaf in its name.

Form 410

The first type of form that The Oakland Fund filed with the PEC is called a Form 410 (“Statement of Organization”). These are forms that a committee must file when it first registers as a campaign committee, and whenever it changes its name, purpose, or main personnel. It must also disclose on these forms whether it is a controlled committee of a candidate or officeholder. The forms must be signed by the controlling candidate, under penalty of perjury. Finally, it is the form on which a committee declares what its name will be. As explained in more detail later in this Exhibit, candidate-controlled committees are required to put the last name of their controlling candidate in the committee’s name (e.g. “Committee X, a Controlled Committee of Oakland Mayor Smith”). The purpose of the form is to inform the public of who is running a particular campaign committee.

The table below shows all of the dates that The Oakland Fund filed a Form 410 in 2018 (i.e., the time period when Schaaf was involved with the committee). It did not disclose that it was a controlled committee, did not identify Schaaf as a controlling candidate, and did not include Schaaf’s last name in its committee name on any of these forms. Schaaf did not sign any of the forms.

Form 410s Filed by The Oakland Fund, March – August 2018	
Date Filed	Committee Name Given on Form
March 23, 2018	“The Oakland Fund”
August 22, 2018	“The Oakland Fund For Measure AA”

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Form 460

The Oakland Fund also filed multiple forms known as a Form 460 (“Recipient Committee Campaign Statement”). These are periodic reports that a committee must file in order to report all of the money that it has raised and spent throughout the campaign. It must use its full committee name on the form, and report whether it is a controlled committee of a candidate or officeholder. The forms must be signed by the controlling candidate, under penalty of perjury. The purpose of the form is to inform the public where committees are getting their money from, and what they are spending it on. The purpose of declaring whether the committee is controlled by an elected official is so that the public can be informed of which donors might be indirectly benefiting from their donations to that official’s committee, as well as allowing the public to check whether any of those donors are City contractors.

The table below shows all of the dates that The Oakland Fund filed a Form 460 with the PEC, reporting the money it had raised and spent from January through December 2018 (i.e. the time period when Schaaf was involved with the committee). On each of these forms, it gave its name as either “The Oakland Fund” or “The Oakland Fund for Measure AA.” It failed to include Schaaf’s last name in its committee name, did not disclose that it was a controlled committee, and did not identify Schaaf as its controlling candidate on any of these forms. Schaaf did not sign any of the forms as its controlling candidate:

Form 460s Filed by The Oakland Fund Covering January 1 – December 31, 2018		
Date Filed	Dates Covered	Committee Name Given on Form
April 25, 2018	January 1 – March 31, 2018	“The Oakland Fund”
July 24, 2018	April 1 – June 30, 2018	“The Oakland Fund”
August 10, 2018	April 1 – June 30, 2018 (amendment)	“The Oakland Fund”

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September 27, 2018	July 1 – September 22, 2018	“The Oakland Fund for Measure AA”
October 23, 2018	September 23 – October 20, 2018	“The Oakland Fund for Measure AA”
January 14, 2019	October 21 – December 31, 2018	“The Oakland Fund for Measure AA”
June 11, 2019	October 21 – December 31, 2018 (amendment)	“The Oakland Fund”

Form 497

The Oakland Fund also filed what are known as Form 497s (“Contribution Reports”, sometimes informally referred to as “24-hour contribution reports”). These forms must be submitted within 24 hours, whenever a primarily-formed committee (such as The Oakland Fund) receives \$1,000 or more from a single donor in the 90 days before the election concerning the measure that the committee is supporting. The purpose of the form is to the inform the public -- before the election -- of which donors are making large contributions benefitting certain committees, particularly if they are controlled by a candidate or officeholder.

The table below shows all of the dates that The Oakland Fund filed a Form 497 with the PEC, reporting the contributions over \$1,000 it had raised from August 2018 until the election that same year (when Mayor Schaaf was its controlling candidate). On each of these forms, it gave its name as either “The Oakland Fund” or “The Oakland Fund For Measure AA.” It did not include Schaaf’s last name in its committee name:

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Form 497s Filed by the Oakland Fund While Mayor Schaaf Was Controlling Candidate

Date Filed	Committee Name Given on Form	Activity Reported
August 14, 2018	"The Oakland Fund"	\$77,500 in contributions received
August 29, 2018	"The Oakland Fund For Measure AA"	\$12,000 in contributions received
September 20, 2018	"The Oakland Fund For Measure AA"	\$25,000 in contributions received
September 21, 2018	"The Oakland Fund For Measure AA"	\$1,000 in contributions received
September 25, 2018	"The Oakland Fund For Measure AA"	\$75,000 in contributions received
October 2, 2018	"The Oakland Fund For Measure AA"	\$20,625 in contributions received
October 12, 2018	"The Oakland Fund For Measure AA"	\$63,000 in contributions received
October 15, 2018	"The Oakland Fund For Measure AA"	\$40,000 in contributions received
October 19, 2018	"The Oakland Fund For Measure AA"	\$102,500 in contributions received
October 23, 2018	"The Oakland Fund For Measure AA"	\$10,000 in contributions received
October 24, 2018	"The Oakland Fund For Measure AA"	\$44,800 in contributions received
October 25, 2018	"The Oakland Fund For Measure AA"	\$75,000 in contributions received
October 30, 2018	"The Oakland Fund For Measure AA"	\$15,000 in contributions received
November 1, 2018	"The Oakland Fund For Measure AA"	\$35,000 in contributions received
November 5, 2018	"The Oakland Fund For Measure AA"	\$20,000 in contributions received

Throughout the events of this case, The Oakland Fund's treasurer was Eugene Zahas

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1 and its principal officer was listed as Susan Montauk. Zahas and Montauk also discussed
2 Mayor Schaaf's involvement with the committee at the time its filings were made.¹

3 Ultimately, Measure AA received 62% of the vote and was declared as passed
4 following a protracted legal battle.

5 6 SUMMARY OF LAW & LEGAL ANALYSIS

7
8 All statutory references and discussions of law pertain to the referenced statutes and
9 laws as they existed at the time of the violations.

10 All definitions of terms are the same as those set forth in the California Political Reform
11 Act (California Government Code Sections 81000 through 91014), as amended, unless the term
12 is specifically defined in Oakland's Campaign Reform Act (Oakland Municipal Code Chapter
13 3.12) or the contrary is stated or clearly appears from the context.²

14 Provisions of the California Political Reform Act relating to local elections, including
15 any subsequent amendments, are incorporated into the Oakland Campaign Reform Act
16 (OCRA), except as otherwise provided in, or inconsistent with, or other provisions of local
17 law.³

18 19 *The Oakland Fund Was A Candidate-Controlled Committee*

20
21 All of the alleged violations in this matter hinge on whether The Oakland Fund was
22 "candidate-controlled" during the events in question. Being a candidate-controlled
23

24 ¹ After the events of this case, Zahas passed away and was replaced as treasurer of The Oakland Fund by John
25 Bliss. Susan Montauk settled separately with the PEC; see case # 19-01.2.

26 ² OMC § 3.12.140.

27 ³ OMC § 3.12.240(d).

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1 committee is not a violation in-and-of itself; but candidate-controlled committees have
2 different disclosure requirements, and restrictions on the contributions they can accept.
3 Therefore, to determine whether The Oakland Fund violated any of the laws applicable to
4 candidate-controlled committees, it must first be established that it was indeed “candidate-
5 controlled.”

6 A committee is candidate-controlled if a candidate or elected official has a significant
7 influence on the actions or decisions of the committee.⁴

8 9 **Element 1: Committee**

10
11 The first element to establish is whether The Oakland Fund For Measure AA qualified
12 as a “committee.” A “committee” is any person or combination of persons who directly or
13 indirectly receives campaign contributions totaling two thousand dollars (\$2,000) or more in
14 a calendar year, or who makes independent expenditures totaling one thousand dollars
15 (\$1,000) or more in a calendar year.⁵

16 Here, The Oakland Fund For Measure AA received contributions in 2018 well in excess
17 of \$2,000, according to its sworn campaign reporting forms. It was also registered as a
18 campaign committee during all of the events in this case.

19 20 **Element 2: Candidate or Elected Official**

21
22 The second element to establish if a committee is candidate-controlled is whether the
23 person alleged to have controlled the committee was a candidate or elected official. The term
24

25
26 _____
27 ⁴ OMC § 3.12.040; Cal. Govt. Code § 82016.

28 ⁵ Cal. Govt. Code § 82013.

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1 “candidate” includes an elected officer.⁶ “Elected officer” means any person who holds an
2 elective office.⁷

3 Here, Mayor Schaaf was a candidate or elected official because she was serving as
4 Mayor of Oakland at the time of her involvement with The Oakland Fund For Measure AA,
5 having been elected to that position in 2014 and re-elected in 2018. She was also a candidate
6 for re-election to the office of Mayor that year. Additionally, she had two other open
7 committees at the time, *Libby Schaaf for Mayor 2018* and *Mayor Libby Schaaf 2014 Officeholder*
8 *Committee*, for which she was registered as the controlling candidate.

9 10 **Element 3: Significant Influence on the Actions or Decisions of the Committee**

11
12 Finally, to establish that a committee is candidate-controlled, there must be sufficient
13 facts to show that a candidate or elected official had “significant influence” on the actions or
14 decisions of the committee.⁸

15 Neither the Political Reform Act, FPPC Regulations, or the Oakland Municipal Code
16 define the term “significant influence.” The applicable standard for determining when a
17 candidate exercises “significant influence” over a campaign committee can only be found in
18 advice letters published by the FPPC, one of which states, “The definition of “controlled
19 committee” has been interpreted broadly to include any significant participation in the
20 actions of a committee by a candidate... [including] extensive involvement in a committee's
21 fundraising activity.”⁹

22
23
24 _____
25 ⁶ OMC § 3.12.040(B); Cal. Govt. Code § 82007.

26 ⁷ OMC § 3.12.040; Cal. Govt. Code § 82020.

27 ⁸ Cal. Govt. Code § 82016.

28 ⁹ FPPC Lyman Advice Letter No. I-19-163

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1 Such influence can be direct or indirect.¹⁰ Reading the FPPC Advice Letters and legal
2 precedent as a whole, examples of the type of behavior that might constitute significant
3 influence include communicating with a committee about its campaign strategy, messaging,
4 or advertising or making substantial fundraising efforts for a committee.¹¹ However,
5 fundraising alone is not sufficient to constitute “significant influence unless a candidate has
6 extensive involvement in the committee's fundraising activities by actively participating in its
7 solicitations, fundraising events and fundraising strategy.”¹²

8 Actions that do not constitute significant influence include things such as publicly
9 supporting a campaign, making donations from the official's own personal funds to a
10 campaign, or appearing on a committee's advertisements without working on the messaging
11 of those advertisements.¹³ It also does not include providing ministerial or administrative
12 support to a campaign (e.g. bookkeeping).¹⁴ It does not matter whether the candidate has an
13 official title or role on the campaign: “[P]ractical operational realities, rather than job title,
14 determine whether a committee is controlled.”¹⁵

15 Here, The Oakland Fund would not have been involved at all with the Measure AA
16 campaign were it not for Mayor Schaaf's participation. Mayor Schaaf contacted the Oakland
17 Fund and asked them to become the vehicle for the Measure AA campaign.

18 Mayor Schaaf was also fundamental in selecting the key personnel and consultants
19 that worked on The Oakland Fund's Measure AA campaign and raising its funds. Mayor Schaaf
20 recommended SCN Strategies to develop and advise on the campaign plan, and SCN remained
21

22 ¹⁰ Id.

23 ¹¹ *Travis v. Brand*, 62 Cal. App. 5th 240, 251, 261-262 (2021).

24 ¹² *Barker Advice Letter*, FPPC # A-97-478 (1997); *FPPC Pirayou Advice Letter*, No. 1-10-159.

25 ¹³ *Travis v. Brand*, 62 Cal. App. 5th 240, 261-262 (2021).

26 ¹⁴ *Lacy Advice Letter*, FPPC #1-03-076 (2003).

27 ¹⁵ *Lacy Advice Letter*, FPPC #1-03-076 (2003) at 2 (internal quotation marks omitted).
28

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1 in that role throughout the entire campaign. Initial budget and strategy meetings with SCN
2 took place at the Mayor’s initiative and with her key mayoral staff present, including Silver.
3 Silver recommended the members of the “campaign committee,” advocated for George to
4 be brought on as a key campaign manager/consultant, and continued to help with fundraising.
5 The Mayor was also responsible for raising a major portion of the campaign’s funds.

6 Once the official Measure AA campaign began, Mayor Schaaf attended meetings to
7 discuss the campaign. She helped to raise a substantial amount of the campaign funds. That
8 included five- and six-figure contributions that she secured through her personal solicitation,
9 and which would not likely have been forthcoming had the Mayor not been attached to the
10 campaign. Those large donations were crucial to the existence of the Measure AA campaign,
11 having been budgeted by the Mayor and her staff long before the campaign itself even began.

12 In sum, the totality of Mayor Schaaf’s participation rose to the FPPC’s standard for
13 “significant influence” over the decisions and activities of Measure AA, making it a candidate
14 controlled committee.

The Oakland Fund Failed to Publicly Identify Schaaf as Its Controlling Candidate

15
16
17
18 All committees must register with the appropriate filing officer¹⁶ and file periodic
19 campaign forms itemizing their contributions and expenditures.¹⁷ For committees that are
20 controlled by an Oakland elected officer, or which are primarily-formed to support or oppose
21 a candidate in an Oakland election, their filing officer is the PEC.¹⁸ The forms they must file
22 (including any amendments to those forms) include:

23
24
25 _____
¹⁶ Cal. Govt. Code § 84101.

26 ¹⁷ Cal. Govt. Code § 84215.

27 ¹⁸ OMC §§ 3.12.240, 3.12.260, Cal. Govt. Code §§ 84101, 84215(d).
28

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- 1 • the committee’s initial registration and termination statements (Form 410); and¹⁹
- 2 • its pre-election and semi-annual campaign statements (form 460).²⁰

3

4 Each of those reports, including amendments, must include the committee’s full

5 name.²¹ For a candidate-controlled committee, its name must include the last name of its

6 controlling candidate²² (e.g. “... a controlled committee of Mayor Smith”). The Form 410 and

7 Form 460 must also be signed by the controlling candidate, under penalty of perjury.²³

8

9 **Element 1: Candidate-controlled committee**

10

11 The first element to establish whether The Oakland Fund failed to file campaign forms

12 identifying Mayor Schaaf as its controlling candidate, is to show that Mayor Schaaf did indeed

13 control that committee. As demonstrated above, The Oakland Fund was a candidate-

14 controlled committee of Mayor Schaaf, an Oakland elected official. It was therefore required

15 to file the above-listed forms with the PEC.

16

17 **Element 2: Failure to Disclose Candidate-Controlled Status on Forms**

18

19 The next element to establish whether The Oakland Fund failed to file campaign forms

20

21 ¹⁹ Cal. Govt. Code § 84101; Cal. Code of Regulations §18410(a)(3); OMC §§ 3.12.240, 3.12.260.

22 ²⁰ Cal. Govt. Code §§ 82006, 84200, 84200.8; OMC §§ 3.12.240, 3.12.260.

23 ²¹ Cal. Govt. Code §§ 84102, 84106.5 (full committee name required on Form 410); § 84211(o) (full committee name required on Form 460); § 84203(a) (full committee name required on late contribution report); 84204(b) (full name required on late independent expenditure report).

26 ²² Cal. Govt. Code § 84106.5; Cal. Code of Regulations § 18402(c)(1).

27 ²³ Cal. Govt. Code §§ 84101, 84213(a); Cal. Code of Regulations §18410(a)(13).

28

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1 identifying Mayor Schaaf as its controlling candidate, is to demonstrate the committee filed
2 forms that lacked the required disclosure particular to each form.

3 4 Form 410

5
6 A Form 410 must include the committee's full name. For a candidate-controlled
7 committee, its name must include the last name of its controlling candidate (e.g. "...a
8 controlled committee of Mayor Smith"). The Form 410 must also expressly disclose that it is a
9 controlled committee, and identify its controlling candidate. The controlling candidate must
10 sign the form under penalty of perjury.

11 Here, The Oakland Fund For Measure AA filed a Form 410 with the PEC on March 23
12 and August 22, 2018. Neither of those forms stated that it was a controlled committee,
13 identified Mayor Schaaf as its controlling candidate, or included Mayor Schaaf's last name in
14 the committee name. Mayor Schaaf did not sign any of the forms.

15 16 Form 460

17
18 A Form 460 must include the committee's full name. For a candidate-controlled
19 committee, its name must include the last name of its controlling candidate (e.g. "...a
20 controlled committee of Mayor Smith"). The Form 460 must also expressly disclose that it is
21 a controlled committee, and identify its controlling candidate. The controlling candidate must
22 sign the form under penalty of perjury.

23 On the following dates, The Oakland Fund filed a Form 460 with the PEC, in which it
24 did not state that it was a controlled committee, did not identify Mayor Schaaf as its
25 controlling candidate, and did not include Mayor Schaaf's last name in its committee name:
26 April 25, 2018 (covering January 1 – March 31, 2018); July 24, 2018 (covering April 1 – June 30,
27 2018); August 10, 2018 (covering April 1 – June 30, 2018 (amendment)), September 27, 2018
28

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1 (covering July 1 – September 22, 2018); October 23, 2018 (covering September 23 – October
2 20, 2018); January 14, 2019 (covering October 21 – December 31, 2018); and June 11, 2019
3 (covering October 21 – December 31, 2018 (amendment)). Mayor Schaaf did not sign any of
4 the forms.

The Oakland Fund Received Contributions From a City Contractor

8 City contractors are prohibited from making a contribution, in any amount, to a
9 candidate-controlled committee during what is informally known as the blackout period.²⁴

10 A “city contractor” is defined as an individual or entity who contracts or proposes to contract
11 with or who amends or proposes to amend such a contract with the City for (among other
12 things) the purchasing or leasing any land or building from the City, whenever the value of
13 such transaction would require approval by the City Council.²⁵ If the alleged contractor is a
14 business entity, the restriction applies to all of the entity's principals, including, but not limited
15 to, the entity's president.²⁶

16 The blackout period is any time between commencement of negotiations and one
17 hundred eighty (180) days after the completion or the termination of negotiations for such
18 contract.²⁷

Element 1: Candidate-Controlled Committee

22 The first required element to establish a violation of the contractor contribution ban,

24 OMC § 3.12.140(A).

25 OMC § 3.12.140(A).

26 OMC § 3.12.140(C).

27 OMC § 3.12.140(A).

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1 is to show that the receiving committee (here, The Oakland Fund) was candidate-controlled.
2 It has already been established above that The Oakland Fund was a candidate-controlled
3 committee of Mayor Schaaf.

4 5 **Element 2: City Contractor**

6
7 The second required element to establish a violation of the contractor contribution
8 ban, is to show that the donor in question qualified as a “contractor.” The donor in question
9 is Julian “Eddie” Orton, who made the following contributions in his own name to the Oakland
10 Fund in 2018:

11
12

All contributions made by Julian Orton to the Oakland Fund in 2018	
Date	Amount
8/2/2018	\$25,000.00
10/12/2018	\$50,000.00
11/16/2018	\$25,000.00
Total = \$100,000	

13
14
15
16
17

18 The Oakland Fund identified Orton as “President, Orton Development, Inc.” on its
19 campaign finance reporting forms (Form 460).

20 At the time these contributions were made, Orton Development had recently been
21 awarded an Exclusive Negotiating Agreement (ENA) by the City Council for purposes of
22 negotiating the lease and redevelopment of the City-owned Henry J. Kaiser Convention
23 Center. Orton had originally submitted a response to a formal RFP for this project in 2015, and
24 had been in negotiations with the City ever since. The City Council voted on the lease and
25 associated tax credits and community benefits in July 2019, after Orton’s president had
26 contributed to the Oakland Fund in 2018.

27
28

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1 Orton Development therefore qualified as a City contractor and was prohibited from
2 donating to candidate-controlled committees during the blackout period. The ban also
3 applied to the company's principals, including its President Julian Orton.

4 5 **Element 3: Blackout period**

6
7 The third and final required element to establish a violation of the contractor
8 contribution ban, is to show that the donations in question were made during the blackout
9 period, which is anytime after the commencement of negotiations up until six months after
10 the contract has been executed. "Commencement of negotiations" occurs when a contractor
11 formally submits a proposal, or when a City Official formally proposes submission of proposals
12 from contractors.²⁸

13 Here, Orton Development submitted a proposal to the City in response to an RFP in
14 2015, and was in continuous negotiations with the City through 2019. Meanwhile, it made the
15 contributions in question in 2018. As such, Orton Development's contributions fell within the
16 blackout period.²⁹

17 18 *Liability*

19
20 Any person who violates any provision of the Oakland Campaign Reform Act, who
21 causes any other person to violate any provision of this Act, or who aids and abets any other

22 _____
²⁸ OMC 3.12.140(G).

23 ²⁹ Although ballot measure committees that are controlled by an elected official are required to comply with
24 the prohibition on contributions from City contractors, they are not subject to the City's general contribution
25 limit. This is in contrast to candidate-controlled committees that primarily support or oppose other candidates
26 rather than ballot measures, which are subject to the general contribution limit in addition to the prohibition
27 on contractor contributions. (see PEC cases ## 20-41 and 22-09).

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1 person in the violation of the Act, may be found liable for an administrative violation by the
2 PEC. If two or more persons are responsible for any violation, they shall be jointly and severally
3 liable.³⁰

4 "Person" means an individual, proprietorship, firm, partnership, joint venture,
5 syndicate, business, trust, company, corporation, association, committee, and any other
6 organization or group of persons acting in concert.³¹

COUNTS:

THE OAKLAND FUND FOR MEASURE AA, LIBBY SCHAAF

7
8
9
10
11 Respondents, The Oakland Fund For Measure AA; and Libby Schaaf (its controlling
12 candidate, who also caused the violation), violated the following Oakland Municipal Code(s):

13
14 **Count 1: Failure to Disclose Controlling Candidate Relationship on Campaign Forms**
15 **(No Contest)**

16
17 On the following dates, Respondent committee filed a Statement of Organization
18 (“Form 410”) with the PEC, in which it did not disclose that it was a controlled committee,
19 did not identify Mayor Schaaf as its controlling candidate, and did not include Mayor
20 Schaaf’s last name in its committee name. Mayor Schaaf did not sign any of the forms.

21

Form 410s Filed by The Oakland Fund, March – August 2018	
Date Filed	Committee Name Given on Form
March 23, 2018	“The Oakland Fund”
August 22, 2018	“The Oakland Fund For Measure AA”

22
23
24
25
26 ³⁰ OMC 3.12.270(C).

27 ³¹ OMC 3.12.040(J)

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As the controlling candidate, Mayor Schaaf's last name was required to be included as part of the committee's name for all purposes. Also, Mayor Schaaf was required to be identified as the controlling candidate on the committee's Form 410, and she was required to sign the committee's Form 410.

On the following dates, Respondent committee filed a Recipient Committee Campaign Statement ("Form 460") with the PEC, in which it failed to include Mayor Schaaf's last name in its committee name, did not disclose that it was a controlled committee, and did not identify Mayor Schaaf as its controlling candidate. Mayor Schaaf did not sign any of the forms as its controlling candidate:

Form 460s Filed by The Oakland Fund Covering January 1 – December 31, 2018		
Date Filed	Dates Covered	Committee Name Given on Form
April 25, 2018	January 1 – March 31, 2018	"The Oakland Fund"
July 24, 2018	April 1 – June 30, 2018	"The Oakland Fund"
August 10, 2018	April 1 – June 30, 2018 (amendment)	"The Oakland Fund"
September 27, 2018	July 1 – September 22, 2018	"The Oakland Fund for Measure AA"
October 23, 2018	September 23 – October 20, 2018	"The Oakland Fund for Measure AA"
January 14, 2019	October 21 – December 31, 2018	"The Oakland Fund for Measure AA"
June 11, 2019	October 21 – December 31, 2018 (amendment)	"The Oakland Fund"

As the controlling candidate, Mayor Schaaf's last name was required to be included as part of the committee's name for all purposes. Also, Mayor Schaaf was required to be

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1 identified as the controlling candidate on the committee's Form 460, and she was required to
2 sign the committee's Form 460.

3 On the following dates, Respondent committee filed a Contribution Report ("Form
4 497") with the PEC, in which it failed to include Schaaf's last name in its committee name:

Form 497s Filed by the Oakland Fund While Mayor Schaaf Was Controlling Candidate		
Date Filed	Committee Name Given on Form	Activity Reported
August 14, 2018	"The Oakland Fund"	\$77,500 in contributions received
August 29, 2018	"The Oakland Fund For Measure AA"	\$12,000 in contributions received
September 20, 2018	"The Oakland Fund For Measure AA"	\$25,000 in contributions received
September 21, 2018	"The Oakland Fund For Measure AA"	\$1,000 in contributions received
September 25, 2018	"The Oakland Fund For Measure AA"	\$75,000 in contributions received
October 2, 2018	"The Oakland Fund For Measure AA"	\$20,625 in contributions received
October 12, 2018	"The Oakland Fund For Measure AA"	\$63,000 in contributions received
October 15, 2018	"The Oakland Fund For Measure AA"	\$40,000 in contributions received
October 19, 2018	"The Oakland Fund For Measure AA"	\$102,500 in contributions received
October 23, 2018	"The Oakland Fund For Measure AA"	\$10,000 in contributions received
October 24, 2018	"The Oakland Fund For Measure AA"	\$44,800 in contributions received
October 25, 2018	"The Oakland Fund For Measure AA"	\$75,000 in contributions received
October 30, 2018	"The Oakland Fund For Measure AA"	\$15,000 in contributions received
November 1, 2018	"The Oakland Fund For Measure AA"	\$35,000 in contributions received
November 5, 2018	"The Oakland Fund For Measure AA"	\$20,000 in contributions received

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1
2 As the controlling candidate, Mayor Schaaf's last name was required to be included as
3 part of the committee's name for all purposes.

4 In this way, Respondents violated OMC § 3.12.240, incorporating Cal. Govt. Code §§
5 84102(f), 84106.5, 84203, 84211(o)-(p), 84213(a), and Regulation 18402(c)(1) and 18410(a)(13).
6 Mayor Schaaf is not admitting liability to this count but is agreeing to settle (no contest).

7 Respondents are not admitting liability to this count but are willing to enter this
8 settlement agreement (no contest).

9
10 **Count 2: Contribution from a City Contractor to a Candidate-Controlled Committee**
11 **(No Contest)**

12
13 From August to November, 2018, Respondents facilitated and received contributions
14 totaling \$100,000 from Julian Orton, the President of Orton Development, Inc., which was a
15 City contractor.

16 As a City contractor, Orton Development was prohibited from making contributions to
17 a candidate-controlled committee. In this way, Respondents caused and/or aided-and-abetted
18 a violation of OMC § 3.12.140(A).

19 Respondents are not admitting liability to this count but are willing to enter this
20 settlement agreement (no contest).

21
22 **SETTLEMENT ANALYSIS**

23
24 Oakland's Campaign Reform Act authorizes the Commission to impose the following
25 base-level and maximum penalties for the following types of violations:
26
27
28

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Violation	Counts	Base-Level Per Violation	Statutory Limit Per Violation
Failure to File and/or Disclose Controlling Candidate Relationship on Campaign Forms	1	\$1,000	\$5,000
Contractor Contribution Prohibition	2	\$1,000, plus the unlawful amount	\$5,000 or three times the amount of the unlawful contribution, whichever is greater.

In addition to monetary penalties, the Commission may issue warnings or require other remedial measures.³²

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;

³² OMC § 3.12.270(C).

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- 1 8. The relative experience of the respondent;
- 2 9. The respondent's ability to pay the contemplated penalty without suffering undue
- 3 financial hardship. This factor shall not apply to the portion of a penalty that
- 4 constitutes a repayment or disgorgement of the unlawful amount, except in cases of
- 5 extreme financial hardship.
- 6

7 The PEC has broad discretion in evaluating a violation and determining the appropriate
8 penalty based on the totality of circumstances. This list of factors to consider is not an
9 exhaustive list, but rather a sampling of factors that could be considered. There is no
10 requirement or intention that each factor – or any specific number of factors - be present in
11 an enforcement action when determining a penalty. As such, the ability or inability to prove
12 or disprove any factor or group of factors shall in no way restrict the PEC's power to bring an
13 enforcement action or impose a penalty.

14 *Analysis of the Present Case*

15
16
17 The circumstances of the Respondents' conduct establish the following aggravating
18 and mitigating factors that should be taken into account when determining an appropriate
19 penalty in this case.

20 The Respondents' violations in this case are serious. The strict rules applying to
21 candidate-controlled committees go directly to the very purpose of campaign finance law.
22 Candidates for office, and particularly high-ranking officeholders such as the Mayor, have a
23 disproportionate ability to bring in campaign money. This includes donations from sources
24 whose business interests could benefit from being in a candidate or official's good favor, even
25 if that relationship never rises to a formal quid pro quo. Here, there is no evidence of any quid
26 pro quo. However, the contribution restrictions serve to reduce the actuality or appearance
27
28

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1 of corruption, and (in the case of officeholders) to reduce the unfair fundraising benefits that
2 can come with political power.

3 In this case, Mayor Schaaf used the fundraising power that came with her office. She
4 personally solicited many of The Oakland Fund's contributions, and even made herself
5 available for one-on-one meetings with high-value potential donors.

6 To be clear, candidates and officeholders are allowed to fundraise for existing
7 committees, including independent expenditure committees. What they cannot do is create
8 or repurpose an existing committee, and then exercise significant influence over the
9 committee. Here, Mayor Schaaf was negligent in determining her obligations to avoid
10 "significant participation in" the campaign committee, resulting in the listed violations related
11 to this influence.

12 As a result, the Measure AA campaign benefited from an extra \$100,000 to which it
13 would not have had access had the committee abided by the rules for candidate-controlled
14 committees. They also received the benefit of these campaigning without publicly
15 acknowledging the Mayor's control over the campaign, though this benefit was diminished
16 by Mayor Schaaf and the campaign itself publicly acknowledging her strong support for
17 Measure AA in its ads and other public messaging.

18 In further aggravation, the Mayor's actions could be considered as part of a pattern.
19 This is evidenced by PEC cases #20-41 and #22-09, concerning similar activity in the 2018
20 election, and which are also being brought to the PEC at the same time as this case. However,
21 the Mayor contends she was acting under the same mistaken advice provided to her by Mr.
22 Doug Linney, a campaign consultant, in these other matters. The Mayor has also been
23 involved in a prior PEC case (though not as a respondent) involving contributions from a City
24 contractor to one of her committees (PEC #18-19).

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1 In further mitigation, the Mayor and other respondents were forthcoming when
2 providing documents to PEC investigators. This included documents that evidenced the
3 violations in this case. The Mayor and other witnesses also voluntarily provided interviews to
4 PEC staff without a subpoena. Schaaf's actions appear to have been motivated by a
5 misunderstanding of the law, as well as her understanding from Zahas that The Oakland Fund
6 had previously entered a similar arrangement with another candidate in a prior election
7 without needing to register as candidate controlled

8 None of the respondents in this case have prior PEC or FPPC violations in which they
9 were named individually. Finally, respondents are now agreeing to settle, thereby taking
10 responsibility for what occurred and working with the PEC to redress any harm caused.

11 As an additional mitigating factor, PEC staff notes that it has reviewed the personal
12 finances of Mayor Schaaf and found that the penalties contemplated in this settlement
13 agreement are sufficiently large to act as a deterrent to future violations, without being so
14 large as to cause an undue financial burden.

15 It should also be noted that other parties to the violations in this case have already
16 paid or are seeking to pay separate penalties. Susan Montauk paid \$500 (see PEC case # 19-
17 01.2) and Julian Orton is proposing to pay \$5,000 (see PEC case # 19-01.3, a no contest
18 settlement without admission of liability). These amounts should be taken into account when
19 determining if the penalties proposed in this agreement are satisfactory to the Commission.

20 Based on the foregoing, PEC staff and Respondents recommends that the Commission
21 approve their stipulated agreement and impose the following financial penalties:

RECOMMENDED SETTLEMENT

22
23
24
25 In light of the above factors, PEC staff and respondents have mutually agreed upon
26 the following penalties and recommend that the Commission vote to approve them:
27
28

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Count	Violation	Respondent(s)	Amount at Issue	Recommended Penalty
1	Failure to Disclose Controlling Candidate Relationship on Campaign Forms	The Oakland Fund; Libby Schaaf	-	\$4,500/no contest, without admitting liability
2	Contractor Contribution Prohibition	The Oakland Fund; Libby Schaaf	\$100,000	\$5,000/no contest, without admitting liability

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1 Simon Russell
2 Enforcement Chief
3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
4 1 Frank Ogawa Plaza, Rm. 104
5 Oakland, CA 94612
6 Telephone: (510) 238-3593

7
8 Petitioner

9
10 BEFORE THE CITY OF OAKLAND
11 PUBLIC ETHICS COMMISSION

12
13 In the Matter of

) Case No.: 19-01.01

14 THE OAKLAND FUND FOR MEASURE
15 AA; LIBBY SCHAAF,

) **AGREEMENT REGARDING
) MINIMUM ALLOCATION OF
) JOINT PENALTIES**

16 Respondents.
17
18
19
20
21

22
23 **AGREEMENT REGARDING MINIMUM ALLOCATION OF JOINT PENALTIES**

24
25 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and
26 respondents THE OAKLAND FUND FOR MEASURE AA and LIBBY SCHAAF, agree
27 as follows:
28

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1 1. Respondents commit to individually paying the following aggregate amounts towards
2 any penalties or other settlement amounts for which they are individually and/or joint
3 liable in PEC cases ## 19-01.01, 20-41.01 and/or 22-09.01:

- 4 a. Libby Schaaf: \$21,000
- 5 b. Doug Linney: \$5,000
- 6 c. Jonathan Bair: \$3,300
- 7 d. Ernest Brown: \$3,300
- 8 e. Oaklanders For Responsible Leadership: \$94,768
- 9 f. Oakland Police Officers Association: \$23,930
- 10 g. Committee for an Affordable East Bay: \$230,860

11 2. The amounts specified in Item 1 above are the minimum amounts to which the
12 respondents have committed to paying with respect to their individual and/or joint
13 liabilities. Nothing in this Exhibit #2 shall be interpreted as reducing the overall amount
14 to which each respondent has agreed to be individually or jointly liable as specified in
15 Exhibit #1 to PEC cases ## 19-01.01, 20-41.01 and/or 22-09.01. Respondents remain
16 liable for any uncollected joint or individual penalties even if the collection of such
17 penalties would cause them to pay an amount exceeding those listed above.