

## Newcomb, Melanie,

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**Subject:** Status of Libby Schaaf settlement agreements

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**From:** Marleen Sacks <[REDACTED]>  
**Sent:** Wednesday, September 18, 2024 9:34 AM  
**To:** Russell, Simon <[SRussell@oaklandca.gov](mailto:SRussell@oaklandca.gov)>; Micik, Ryan <[RMicik@oaklandca.gov](mailto:RMicik@oaklandca.gov)>  
**Subject:** Status of Libby Schaaf settlement agreements

Please forward this message to the other commission members, as I do not have their emails:

In light of what occurred on Monday evening, I wanted to communicate several additional points that I was not able to make due to the late hour. They are outlined below.

1. Claims of Ethics Commission "Precedent": Libby Schaaf's attorney repeatedly claimed that having a settlement break down who pays what is breaking from "precedent" of this and all other ethics commissions in California. I have no idea if this is true, but if it is, who cares? It is not binding precedent. Just because things have been done a certain way in the past does not mean they should be done that way in the future. Having a settlement spell out who is paying what is far more transparent and makes clear that the settlements are indeed imposing an appropriate penalty on the wrongdoer.

Notably, when Mr. Winuk was asked point blank what his objection was to spelling out the actual amounts in the settlement agreements, he had no compelling answer. In fact, he had no answer at all, other than to claim "precedent." You have to ask yourself - what was his real objection? Obviously, his real objection was that spelling out the details would reveal that Libby Schaaf was getting a slap on the wrist. It would reveal that Zack Wasserman would have to pay nothing at all. It would reveal a lot of facts that the respondents don't want made public. And that shows, in turn, that the settlement probably wasn't fair or just to begin with.

2. Relying on Ability to Pay: I believe it was pointed out that "ability to pay" is not an appropriate standard for penalties. Even if it were, I take issue with many of the statements made by Mr. Russell on this point. First, he claimed that none of the respondents are "millionaires." This is patently untrue. Zack Wasserman, for example, has been a partner at major law firms for his entire career, likely making between \$500,000-\$1,000,000 at the latter point of his career. He is actually still working as a lawyer. His home Zillows at well over \$2 million. On what basis can you claim that he is not a "millionaire?" Libby Schaaf made very good money as a mayor; her house is worth approximately \$1.3 million. She is married to somebody with a high ranking position at a technology firm. Of course they are millionaires.

Toward the end of the evening, Mr. Winuk admitted that the proposed deal with Schaaf would only have required her to pay \$21,000. Mr. Russell claimed that he did not want to "bankrupt" the respondents. \$21,000 would hardly bankrupt anybody. Even \$50,000 would barely make a dent for people of this level of wealth and power.

3. Negotiating Power: Mr. Russell seemed far too desperate to settle these cases. I understand that he has put a lot of work into investigating these matters and negotiating the settlements, and I appreciate that work. I also understand that it would take a lot of work to prosecute these cases if any were to go to hearing. But you need to keep in mind that the respondents really don't want these cases to go to hearing either. I do administrative hearings for a living. I know how much they cost to put on (and I charge government lawyer rates.) Hiring an attorney to take a case like this to hearing would cost well over \$50,000. Probably closer to \$100,000. It probably cost Libby Schaaf \$5,000 alone to have her lawyer appear at the hearing on Monday night. So the respondents should be even more desperate to settle than the PEC.

4. Missing facts in the proposed stipulations: The factual background outlined in the stipulations was missing so many relevant facts that some could read them as a whitewash. I understand that Commission members don't have all the

relevant facts. Neither do I - but I do have some facts that were clearly missing and should have been included. And I wonder - what was the motivation for omitting those facts? For example - Jonathan Bair worked directly for Libby Schaaf inside City Hall during the time he was organizing his committee. Why was this fact omitted? Libby Schaaf had previously been fined by the Ethics Commission. <https://www.ktvu.com/news/mayor-schaaf-took-illegal-campaign-contributions-public-ethics-commission-finds> Why was this fact omitted? Libby Schaaf just lost a major lawsuit, filed by me and the Alameda County Taxpayers' Association, for hiding documents related to Measure AA. Why was this fact omitted? Schaaf and her staff did in fact use City resources to promote Measure AA. I cited to proof of this in my lawsuit. Why was this fact omitted?

All of these additional facts can and should be used to persuade the respondents to settle. Omitting relevant facts like this cause me and others to not trust the process or the information being given to the Commission and the public.

5. Failure to investigate claims of quid pro quo on Halloween, 2018: I provided a signed declaration, under penalty of perjury, with supporting phone bills, showing that Schaaf tried to use her position as mayor to bribe/bully the lead opponent of Measure AA to take television ads off the air. This information was provided to the Ethics Commission staff years ago, and was never investigated. This information can and should be used in any potential charges, and/or to persuade Schaaf to enter into a settlement agreement.

6. The penalties are far too low: Given that the potential penalties at issue for Schaaf are well over \$1,000,000 on the Measure AA issue alone, imposing a fine of \$21,000 for all of the violations is inconceivably low and does not achieve the desired goals. Such a low fine is truly water off a duck's back to somebody in Schaaf's position. I urge you to consider a much more significant penalty.

7. City Attorney's clear conflict of interest: The City Attorney's office is representing Libby Schaaf, in her personal and official capacity, in the pending litigation regarding her failure to turn over Measure AA documents. The lawsuit is mostly over, but not completely resolved. I was shocked to see that the City Attorney's office is also representing the Public Ethics Commission, where the PEC is actively prosecuting Schaaf for related facts. This is a clear conflict of interest and prohibited by the California State Bar Rules of Professional Conduct.

8. Public nature of any settlement agreement: If respondents do eventually agree to a settlement agreement that spells out who is paying what amount, those settlement agreements would clearly be public records. There is ample law supporting the fact that settlement agreements. Register Div. of Freedom Newspapers, Inc. v. County of Orange, 158 Cal.App.3d 893, 901 (1984); Copley Press, Inc. v. Superior Court, 63 Cal. App. 4th 367, 376 (1998) (settlement reached between school district and student required to be unsealed from trial court record under analogous trial court rules); Sanchez v. County of San Bernardino, 176 Cal. App. 4th 516, 526 (2009) (confidentiality provision in settlement agreement with county would have violated Public Records Act).

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