

Item 11 - 20-41.1 Proposed Settlement Agreement

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3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
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7
8 Petitioner

9
10 BEFORE THE CITY OF OAKLAND
11 PUBLIC ETHICS COMMISSION

12
13 In the Matter of

) Case No.: 20-41.1, 22-17

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

) **STIPULATION, DECISION AND
ORDER**

18 Respondents.
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; BARBARA LESLIE; and OAKLAND POLICE
25 OFFICERS 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, as they pertain to each of the named Respondents;

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

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

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

25 13. This Stipulation may not be amended orally. Any amendment or modification to this
26 Stipulation must be in writing duly executed by all parties and approved by the
27 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:

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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

25
26 _____
27 Libby Schaaf, Respondent

_____ Dated

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Jonathan Bair, Respondent

Dated

Barbara Leslie, Respondent

Dated

Oakland Police Officers Association, Respondent

Dated

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DECISION AND ORDER

The foregoing Stipulation of the parties to “In the Matter of COMMITTEE FOR AN AFFORDABLE EAST BAY; ERNEST BROWN; LIBBY SCHAAF; JONATHAN BAIR; BARBARA LESLIE,” PEC Case No. 20-41.1, and “In the Matter of OAKLAND POLICE OFFICERS ASSOCIATION,” PEC Case No. 22-17, 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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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
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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
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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

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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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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.

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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

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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

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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*

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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*

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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
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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:

17

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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	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	
October 2, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$2,000 in contributions received
October 14, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$10,000 in contributions received
October 15, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$15,000 in contributions received
October 19, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$15,000 in contributions received
October 21, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$7,500 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.”	\$15,000 in contributions received
October 29, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$3,000 in contributions 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	
15 16 17 18 19 20 21 22 23 24 25 26 27 28	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
21			
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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. 1-94-189; 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”).
26
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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

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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
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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.

23
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

18
19
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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14
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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	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	
October 2, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$2,000 in contributions received
October 14, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$10,000 in contributions received
October 15, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$15,000 in contributions received
October 19, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$15,000 in contributions received
October 21, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$7,500 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.”	\$15,000 in contributions received
October 29, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$3,000 in contributions received

As the controlling candidate, Schaaf’s last name was required to be included as part of 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	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
15 16 17 18 19 20 21 22 23 24 25 26 27 28	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).

9 VIOLATIONS:

10 OAKLAND POLICE OFFICERS ASSOCIATION

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

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 **BARBARA LESLIE; MAYOR SCHAAF**

6
7 Respondents, Mayor Schaaf (controlling candidate) and Barbara Leslie (who caused
8 the violation), violated the following Oakland 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, Respondents violated OMC sections 3.12.050 and 3.12.240, incorporating
23 Cal. Govt. Code sections 84203, 84211, 84215.

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

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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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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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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 Barbara Leslie was also generally aware of Mayor Schaaf’s role with the campaign
24 committee when she provided the OPOA polling results to her, and had enough prior polling
25 experience to know that there might be legal issues with receiving and passing on non-public
26 polling data. In mitigation, Leslie informed the PEC that she believed that the poll was public,
27

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1 given that she received it from a candidate's campaign, and did not intend to be making a
2 contribution to the campaign committee when she gave the poll results to Mayor Schaaf.

3 As for the OPOA, it is also an experienced political player and therefore should have
4 known that it could not provide private polling results to a candidate without exceeding the
5 contribution limit and incurring reporting obligations. The OPOA is a significant actor in City
6 operations, making full reporting of its campaign activity and compliance with the
7 contribution limit a matter of significant public interest.

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

14 In further aggravation, the Mayor's actions could be considered as part of a pattern.
15 This is evidenced by PEC cases #19-01 and #22-09, concerning similar activity in the 2018
16 election, and which are also being brought to the PEC at the same time as this case. However,
17 the Mayor contends she was acting under the same mistaken advice provided to her by Mr.
18 Linney in these matters. The Mayor has also been involved in a prior PEC case (though not as
19 a respondent) involving contributions from a City contractor to one of her committees (PEC
20 #18-19).

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

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

5 As an additional mitigating factor, PEC staff notes that it has reviewed the personal
6 finances of Mayor Schaaf, Bair, Brown, and Leslie, and found that the penalties contemplated
7 in this settlement agreement are sufficiently large to act as a deterrent to future violations,
8 without being so large as to cause an undue financial burden for them. PEC staff has also
9 reviewed the finances of the OPOA and determined that the penalty contemplated here is
10 sufficiently large to act as a deterrent to future violations, without being so large as to cause
11 an undue financial burden for the OPOA in light of recent changes to its overall revenue and
12 expenses that would make a higher penalty unreasonably burdensome.

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

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

20 21 **RECOMMENDED PENALTIES**

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

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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 Legal Limit (Monetary Contributions)	Committee For An Affordable East Bay	\$171,899	\$87,450
3	Contractor Contribution Prohibition	Committee For An Affordable East Bay	\$100,000	\$50,000
4	Contractor Contribution Prohibition	Committee For An Affordable East Bay	\$7,500	\$5,000
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
6	Making a Contribution Over The Legal Limit (Poll Results)	Oakland Police Officers Association	\$37,860	\$18,930
7	Failure to File a Major Donor Statement	Oakland Police Officers Association	\$38,760	\$5,000
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
9	Making a Contribution in an Amount Over The Legal Limit (TV ad) &	Committee For An Affordable East Bay	\$40,000	\$45,000

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	Failure to Report Making a Contribution			
10	Receiving a Contribution in an Amount Over The Legal Limit (Poll Results) & Failure to Report Receiving a Contribution	Barbara Leslie; Mayor Schaaf	(Same as Count 8 above)	\$7,000 no contest/without admitting liability