

Item 13 - 19-01.1 Proposed Settlement Agreement

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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.: 19-01.1

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

) **STIPULATION, DECISION AND
ORDER**

16 Respondents.
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23 **STIPULATION**

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

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

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

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1 Commission at a regular or special meeting, except for any extension to the payment
2 deadline described in paragraph 10, which Commission staff may grant at its sole
3 discretion and which need only be in writing not requiring execution;

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

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

12
13 So agreed:

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

_____ Dated

19
20 _____
21 The Oakland Fund For Measure AA, Respondent

_____ Dated

22
23 _____
24 Libby Schaaf, Respondent

_____ Dated

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DECISION AND ORDER

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

6
7 So ordered:

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9
10 _____
11 Ryan Micik, Chair

12 City of Oakland Public Ethics Commission

13 _____
14 Dated

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PEC # 19-01.1 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

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INTRODUCTION

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

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

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

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FACTUAL SUMMARY

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

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

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

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

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

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

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

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

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

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

25 According to an email from Eugene Zahas to Mayor Schaaf, the Oakland Fund had
26 initially been set up in an earlier election at the request of a different candidate to support
27 different City of Oakland ballot measures over the years. In the run-up to the Measure AA
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1 campaign, Mayor Schaaf contacted the treasurer and principal officer of the Oakland Fund
2 (Eugene Zahas and Susan Montauk, respectively) and asked if the Oakland Fund could be
3 used to collect contributions to fund the campaign for Measure AA. The committee's
4 officers also understood that the preferred accounting firm of the Children's Initiative team
5 would handle all of the necessary behind-the-scenes paperwork, and that the Oakland Fund
6 would receive a large initial donation from the East Bay Community Foundation and Kaiser
7 Permanente to cover the campaign salary of George and others.

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

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

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

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

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

The Committee Receives Contributions From a City Contractor

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

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

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

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Campaign Forms Filed by The Oakland Fund

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

Form 410

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

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

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

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Form 460

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

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

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

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

Form 497

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

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

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

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

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

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

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

5 6 SUMMARY OF LAW & LEGAL ANALYSIS

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

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

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

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

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

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

26 ² OMC § 3.12.140.

27 ³ OMC § 3.12.240(d).

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

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

8 9 **Element 1: Committee**

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

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

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

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

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

28 ⁵ Cal. Govt. Code § 82013.

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

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

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

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

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

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

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

27 ⁸ Cal. Govt. Code § 82016.

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

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

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

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

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

22 ¹⁰ Id.

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

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

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

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

27 ¹⁵ *Lacy Advice Letter*, FPPC #1-03-076 (2003) at 2 (internal quotation marks omitted).
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1 in that role throughout the entire campaign. Initial budget and strategy meetings with SCN
2 took place at the Mayor’s initiative and with her key mayoral staff present, including Silver.
3 Silver recommended the members of the “campaign committee,” advocated for George to
4 be brought on as a key campaign manager/consultant, and continued to help with fundraising.
5 The Mayor was also responsible for raising a major portion of the campaign’s funds.

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

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

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

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

23
24
25 ¹⁶ Cal. Govt. Code § 84101.

26 ¹⁷ Cal. Govt. Code § 84215.

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

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

3

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

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

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

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

8

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

10

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

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

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

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

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

16

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

18

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

20

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

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

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

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

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

28

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

3 4 Form 410

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

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

15 16 Form 460

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

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

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

The Oakland Fund Received Contributions From a City Contractor

5
6
7
8 City contractors are prohibited from making a contribution, in any amount, to a
9 candidate-controlled committee during what is informally known as the blackout period.²⁴

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

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

Element 1: Candidate-Controlled Committee

19
20
21
22 The first required element to establish a violation of the contractor contribution ban,
23

24 ²⁴ OMC § 3.12.140(A).

25 ²⁵ OMC § 3.12.140(A).

26 ²⁶ OMC § 3.12.140(C).

27 ²⁷ OMC § 3.12.140(A).

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

4 5 **Element 2: City Contractor**

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

11
12

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

13
14
15
16
17

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

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

27
28

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

4 5 **Element 3: Blackout period**

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

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

17 18 *Liability*

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

22 _____
²⁸ OMC 3.12.140(G).

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

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

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

COUNTS:

THE OAKLAND FUND FOR MEASURE AA, LIBBY SCHAAF

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

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

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

21

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

22
23
24
25
26 ³⁰ OMC 3.12.270(C).

27 ³¹ OMC 3.12.040(J)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21
22 **SETTLEMENT ANALYSIS**

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

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

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

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

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

³² OMC § 3.12.270(C).

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

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

14 *Analysis of the Present Case*

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

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

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

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

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

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

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

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

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

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

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

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

RECOMMENDED SETTLEMENT

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

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

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