

Item 14 - 19-18 Proposed Settlement Agreement

1 Simon Russell  
2 Enforcement Chief  
3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION  
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5 Oakland, CA 94612  
6 Telephone: (510) 238-4976

7  
8 Petitioner

9  
10 BEFORE THE CITY OF OAKLAND  
11 PUBLIC ETHICS COMMISSION

12  
13 In the Matter of

) Case No.: 19-18

14 JULIAN ORTON,

)  
) **STIPULATION, DECISION AND**  
) **ORDER**

15 Respondent.  
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22  
23 **STIPULATION**

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25 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and  
26 respondent JULIAN ORTON (“Respondent”), agree as follows:  
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## Item 14 - 19-18 Proposed Settlement Agreement

- 1 1. This Stipulation will be submitted for consideration by the City of Oakland Public  
2 Ethics Commission (Commission) at its next regularly scheduled meeting;
- 3 2. This Stipulation resolves all factual and legal issues raised in this matter and represents  
4 the final resolution to this matter without the necessity of holding an administrative  
5 hearing to determine the liability of, or penalties and/or other remedies to be imposed  
6 upon, Respondent;
- 7 3. Respondent knowingly and voluntarily waives 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. Respondent represents 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 Respondent regarding the  
19 activities described in Exhibit #1 to this Stipulation, and this Stipulation shall constitute  
20 the complete resolution of all claims by the Commission against Respondent related to  
21 such activities and any associated alleged violations;
- 22 6. If Respondent fails to comply with the terms of this Stipulation, then the Commission  
23 may reopen this matter and prosecute Respondent to the full extent permitted by law,  
24 except that the Statute of Limitations shall be waived for any alleged violations that  
25 were not discoverable by the Commission due to a non-compliance with Section 4 of  
26 this Stipulation;
- 27 7. This Stipulation is not binding on any other law enforcement or regulatory agency.  
28 However, upon approval of this Stipulation and full performance of the terms outlined

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

4 8. Respondent admits no violation of, nor any liability under, the provision(s) of the  
5 Oakland Municipal Code specified in Exhibit #1 to this Stipulation, nor any other  
6 provision(s) of the Oakland Municipal Code. Respondent nevertheless seeks to resolve  
7 this matter in a responsible manner that acknowledges the Commission's role in  
8 ensuring the entire regulated community understands the importance of due diligence  
9 when making campaign contributions;

10 9. The Commission will impose upon Respondent the remedies specified in Exhibit #1;

11 10. Respondent will pay the amount specified in Exhibit #1 to this Stipulation to the City of  
12 Oakland general fund upon execution of this Stipulation;

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

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

22 13. This Stipulation may not be amended orally. Any amendment or modification to this  
23 Stipulation must be in writing duly executed by all parties and approved by the  
24 Commission at a regular or special meeting;

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

28 and

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1 15. The parties hereto may sign different copies of this Stipulation, which will be deemed to  
2 have the same effect as though all parties had signed the same document. Verified  
3 electronic signatures shall have the same effect as wet signatures.  
4

5 So agreed:

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8 \_\_\_\_\_  
9 Simon Russell, Chief of Enforcement  
10 City of Oakland Public Ethics Commission, Petitioner

\_\_\_\_\_ Dated

11  
12 \_\_\_\_\_  
13 Julian Orton, Respondent

\_\_\_\_\_ Dated

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## DECISION AND ORDER

1  
2 The foregoing Stipulation of the parties to “In the Matter of JULIAN ORTON,” PEC  
3 Case No. 19-18, including all attached Exhibits, is hereby accepted as the final Decision and  
4 Order of the City of Oakland Public Ethics Commission, effective upon execution below by the  
5 Chair.

6  
7 So ordered:

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10 \_\_\_\_\_  
11 Ryan Micik, Chair  
12 City of Oakland Public Ethics Commission

10 \_\_\_\_\_  
11 Dated

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## EXHIBIT # 1

In the Matter of Julian Orton

PEC # 19-18 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

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### INTRODUCTION & FACTUAL SUMMARY

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16 This case concerns campaign contributions made by Julian “Eddie” Orton

17 (“Respondent”), the principal of a company called Orton Development, Inc. (“ODI”).

18 Respondent made contributions before the 2018 election totaling \$100,000 to a ballot

19 measure committee called “The Oakland Fund For Measure AA” which was supporting a tax

20 measure to increase funding for education-related programs in Oakland. The Oakland Fund

21 ultimately raised a total of about \$1.8 million during the course of the campaign.

22 Respondent’s contributions were made at the time that ODI was negotiating to lease

23 and redevelop the City-owned Henry J. Kaiser Convention Center. The Council voted to

24 approve the proposed deal. City contractors are prohibited from making campaign

25 contributions to candidate-controlled committees at certain times, as set forth in more detail

26 below.

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1 The City of Oakland Public Ethics Commission (“PEC”) contends that The Oakland Fund  
2 was actually a “candidate-controlled” committee of then-Mayor Libby Schaaf and that  
3 therefore, City contractors were prohibited from contributing to the Oakland Fund.  
4 Respondent is not taking a position regarding the PEC’s allegation that the PAC was  
5 candidate-controlled. The parties to this Stipulation, however, acknowledge and agree that  
6 The Oakland Fund was not registered as candidate-controlled at the time Respondent made  
7 his contributions or at any time thereafter, and that The Oakland Fund provided no indication  
8 to Respondent or the public that it was candidate-controlled. The parties also acknowledge  
9 and agree that Respondent was not privy to information that should reasonably have caused  
10 him to inquire further into The Oakland Fund’s candidate-controlled status beyond that  
11 publicly available on its campaign finance registration forms (Form 410). While Respondent  
12 was aware that Mayor Schaaf supported the ballot measure in question, he later told PEC staff  
13 that he did not make any contribution based on any solicitation by Mayor Schaaf Respondent  
14 was personally involved with the ballot measure from its initial drafting through post-election  
15 litigation, because he and his family have focused their personal political and philanthropic  
16 efforts on childhood education. All of Respondent’s contributions were made based on this  
17 independent personal support of the ballot measure and its goals, and not based on any  
18 solicitations.<sup>1</sup>

19 PEC staff and Respondent have agreed to settle this matter without an administrative  
20 hearing. They are now presenting their stipulated agreement, summary of the facts, and legal  
21 analysis to the PEC for its approval. Together, PEC staff and Respondent recommend approval  
22 of their agreement, including a settlement payment totaling \$5,000 (Five Thousand Dollars)  
23 and certain other terms, as described in more detail below.

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24  
25 <sup>1</sup> Respondent contributed another \$25,000 to the Oakland Fund for Measure AA after the 2018 election; but  
26 that is not at issue in this case, because by that point Mayor Schaaf no longer controlled the Oakland Fund for  
27 Measure AA and therefore the contractor ban did not apply.  
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### SUMMARY OF LAW & LEGAL ANALYSIS

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

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

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

#### *Oakland’s Ban on Contributions by City Contractors at Certain Times*

City contractors are prohibited from making a contribution, in any amount, to a candidate-controlled committee during what is informally known as the blackout period.<sup>4</sup>

Relevant here, OCRA’s “city contractor” prohibition applies to an individual or entity who contracts or proposes to contract with or who amends or proposes to amend such a contract with the City for (among other things not relevant here) purchasing or leasing any land or building from the City, whenever the value of such transaction would require approval by the City Council.<sup>5</sup>

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<sup>2</sup> OMC § 3.12.040.

<sup>3</sup> OMC § 3.12.240(d).

<sup>4</sup> OMC § 3.12.140(A).

<sup>5</sup> OMC § 3.12.140(A).



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1 If the alleged contractor is a business entity, the restriction applies to all of the entity's  
2 principals, including, but not limited to, the entity's board chair, president, chief executive  
3 officer (CEO), and any individual who serves in the functional equivalent of one or more of  
4 those positions.<sup>6</sup>

5 The blackout period is any time between commencement of negotiations and one  
6 hundred eighty (180) days after the completion or the termination of negotiations for a  
7 covered contract.<sup>7</sup>

#### 8 9 **Element 1: Candidate-Controlled Committee**

10  
11 The first required element of the contractor contribution ban is to show that the  
12 receiving committee was candidate-controlled.

13 Here, the PEC asserts that the Oakland Fund was a candidate-controlled committee.  
14 For purposes of this settlement agreement, Respondent can neither confirm nor deny that  
15 the Oakland Fund was a candidate-controlled committee. The Oakland Fund was not  
16 registered as candidate-controlled at the time Respondent made his contributions or at any  
17 time thereafter. Furthermore, The Oakland Fund provided no notice to Respondent or the  
18 public that it might be candidate controlled, and Respondent therefore was not privy to  
19 information that should reasonably have caused him to inquire further into The Oakland  
20 Fund's candidate-controlled status. PEC contends that The Oakland Fund was candidate-  
21 controlled and is also pursuing a case against Mayor Schaaf and the Oakland Fund to show  
22 that it was in fact candidate-controlled.<sup>8</sup> As Respondent is not contesting this element, the  
23 PEC's contention holds for purposes of this settlement.

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26 <sup>6</sup> OMC § 3.12.140(C).

27 <sup>7</sup> OMC § 3.12.140(A).

28 <sup>8</sup> PEC case # 19-01.1.

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1           PEC and Respondent here, however, agree that Respondent was not privy to facts that  
2 should have reasonably led him to inquire further into The Oakland Fund’s candidate-  
3 controlled status.

#### 4 5           **Element 2: City Contractor**

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7           The second required element of the contractor contribution ban is to show that the  
8 donor in question qualified as a “contractor.”

9           Here, Respondent made contributions totaling \$100,000 on August 2; October 12; and  
10 November 16, 2018. At the time Respondent made his contributions, ODI (a company of which  
11 Respondent was President) was then negotiating to lease and redevelop the City-owned  
12 Henry J. Kaiser Convention Center. The proposed deal required City Council approval. As such,  
13 Respondent qualified as a contractor subject to the City’s contractor contribution ban.

#### 14 15           **Element 3: Blackout period**

16  
17           The third and final required element of the contractor contribution ban is to show that  
18 the contributions in question were made during the blackout period, which is in effect at any  
19 time between the commencement of negotiations and one hundred eighty (180) days after  
20 the completion or the termination of negotiations for a covered contract.

21           As stated above, Respondent made his contributions on or about August – November  
22 2018. The proposed contract with ODI was not executed until 2019. As such, ODI was engaged  
23 in contract negotiations with the City at the time Respondent made his contributions to The  
24 Oakland Fund. Respondent’s contributions therefore fell within the blackout period.

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### VIOLATIONS:

#### JULIAN ORTON

Respondent, Julian Orton, violated the following Oakland Municipal Code(s):

#### **Count 1: Contribution from a City Contractor to a Candidate-Controlled Committee**

**(No contest)**

From August to November, 2018, Respondent Julian “Eddie” Orton made contributions totaling \$100,000 to The Oakland Fund, a candidate-controlled committee of Mayor Schaaf, while President of Orton Development, Inc., which was a City contractor. Respondent’s contributions fell within the prohibited “blackout” period for contributions from a City contractor to a candidate-controlled committee.

As the principal of a City contractor, Julian Orton was prohibited from making contributions to a candidate-controlled committee. In this way, Respondent violated OMC § 3.12.140(A).

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

### PENALTIES

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

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Violation	Counts	Base-Level Per Violation	Statutory Limit Per Violation
Contractor Contribution Prohibition	1	\$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.<sup>9</sup>

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

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

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<sup>9</sup> OMC § 3.12.270(C).

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

#### 9 *Similar Cases in the Past*

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11 When agreeing to a settlement in a given case, the PEC endeavors to be consistent  
12 with its precedent.

13 The following past cases are similar in some respects to the one here, but none of these  
14 cases are perfectly analogous to the case at hand:

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16 *In the Matter of Californians For Independent Work, Sponsored by Lyft, Inc., et al. (PEC #*  
17 *20-41.2)*

18  
19 In this case, Respondent was a City contractor that gave a \$100,000 contribution to an  
20 “independent” committee that was in fact candidate-controlled. The money was personally  
21 solicited by the controlling candidate and represented the bulk of total funds raised by the  
22 committee. The Respondent claimed to have lacked actual knowledge that the committee  
23 was candidate-controlled, instead relying upon the committee’s Form 410s and other written  
24 materials provided by the committee which stated that it was not candidate-controlled.

25 Respondent did not admit liability but did settle with the PEC for \$50,000 (half the  
26 amount of the contribution). The PEC imposed a penalty below the baseline in light of the  
27 Respondent’s reasonable reliance upon the committee’s Form 410s, though the PEC  
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1 maintained that Respondent knew of other facts that should have triggered a deeper inquiry  
2 before making the contribution. Other mitigating factors included the possibility of future  
3 penalties against other parties involved, as well as the Respondent's full cooperation with the  
4 PEC's investigation.

#### *In the Matter of Cypress Security, LLC (PEC # 14-26).*

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8 In this case, Respondent was a security company that had a contentious contract  
9 coming before the City Council worth \$2 million annually. Respondent gave \$1,000 to a ballot  
10 measure committee controlled by a Councilmember (who was also running for Mayor at the  
11 time). Before making the contribution, the respondent informed the committee that they  
12 were a City contractor but the committee's officer assured Respondent "with 100% certainty"  
13 (the officer's words) that contribution was legal because he had personally registered the  
14 committee as a county rather than a city committee.

15 The PEC imposed a lesser penalty of \$600, reasoning that the respondent had lacked  
16 any intent to deceive in light of the faulty assurance they had sought and received from the  
17 committee. The respondent had also fully cooperated with the PEC's investigation.

#### *In the Matter of Lane Partners and Andrew Haydel (PEC # 19-24).*

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21 In this case, Respondent was a real estate developer seeking a contract to acquire land  
22 owned by the City. The contract was large enough that it required a City Council vote. The  
23 respondent contributed \$1,000 to a Councilmember's legal defense fund following the Council  
24 vote on the contract. Before making the contribution, the contractor consulted their attorney  
25 and was erroneously informed that the contractor ban did not apply to legal defense funds.  
26 When a news report came out about the contribution, the contractor self-reported the  
27 violation to the PEC.

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1 The PEC imposed the maximum fine of \$5,000 despite the fact that the respondent  
2 had relied upon incorrect legal advice when committing the violation. The PEC reasoned that  
3 the respondent was a sophisticated party, and the fact that the contribution was made about  
4 two or three months after the relevant Council vote was a serious aggravating factor.

#### *In the Matter of PSAI Realty Partners CAC, et al. (PEC # 14-25)*

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8 In this case, respondents were four business entities all controlled by the same person.  
9 Each entity gave \$700 each (the contribution limit at the time) to a candidate's committee.  
10 Because the companies were all controlled by one person, they needed to be aggregated as  
11 one single contribution of \$2,800, which was \$2,100 over the legal limit. When making the  
12 contributions, the respondent erroneously told the committee that the four companies were  
13 not controlled by the same person. Respondent was not a City contractor, so the violation  
14 here was the over-the-limit amount (\$2,100), and the committee was charged along with the  
15 contributor.

16 The PEC imposed a fine of \$2,100 on the committee and \$1,800 on the contributor. The  
17 PEC reasoned that the committee should have to forfeit the over-the-limit amount, but should  
18 not face any additional penalty in light of the erroneous information it had been provided by  
19 the contributor. As for the contributor, the PEC imposed a lesser penalty in light of the  
20 respondent's cooperation and the fact that they were unaware of the aggregation rule at the  
21 time they made the contributions.

#### **ANALYSIS AND RECOMMENDATION**

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25 The circumstances of the Respondent's conduct establish mitigating factors that  
26 should be considered.  
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1 Respondent's contribution was not made with the intention to conceal, deceive, or  
2 mislead. When making his contribution, Respondent relied upon the Oakland Fund's publicly-  
3 available Statement of Organization (Form 410) indicating that the Oakland Fund was not  
4 candidate-controlled. Respondent and the PEC agree that there were not other facts  
5 reasonably known to Respondent sufficient to trigger further inquiry into whether The  
6 Oakland Fund was in fact controlled by Mayor Schaaf.

7 Respondent recognizes the City of Oakland's interest in enforcing its ban on  
8 contributions from City contractors. Respondent has cooperated fully with the PEC's  
9 investigation.

10 For its part, PEC staff believes that a settlement payment in the amount of \$5,000 is  
11 appropriate in light of the facts of this case and the purposes of the law. PEC staff believes it  
12 would be unfair to demand a higher settlement payment from Respondent in light of the fact  
13 that they could not reasonably have known that The Oakland Fund was candidate-controlled  
14 and relied upon information reported and provided by The Oakland Fund to that effect. PEC  
15 retains its ability under this settlement to pursue its claims against Mayor Schaaf and others  
16 associated with the Oakland Fund, whom the PEC believes are the main responsible parties  
17 for any violation(s) that may have occurred.

18 The situation here is distinguishable from the facts in PEC # 20-41.2, which involved a  
19 City contractor making a contribution to a candidate-controlled committee without actual  
20 knowledge that it was controlled by a candidate. In that case, PEC staff believed that the  
21 respondent was aware of facts sufficient to justify further inquiry into whether the committee  
22 receiving funds was candidate-controlled, including the fact that the contribution was  
23 personally solicited by the controlling candidate and represented the bulk of the funds raised  
24 in that campaign. In the present case, PEC staff and Respondent agree that there was not  
25 sufficient indicia that The Oakland Fund was candidate-controlled to reasonably compel  
26 Respondent to inquire further into whether Mayor Schaaf controlled it. Mayor Schaaf did not  
27 personally solicit Respondent's contributions, and while Respondent give a significant  
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1 contribution (\$100,000), this was not the bulk of the \$1.8 million raised in total by The Oakland  
2 Fund.

3 This case is also distinguishable from PEC # 19-24 because in that case, the contractor  
4 had all of the information necessary to follow the law but relied upon faulty legal advice;  
5 whereas here, the contractor relied upon faulty information provided by The Oakland Fund.  
6 And, as in case # 14-25, the PEC is still able to pursue enforcement against other respondents  
7 who operated The Oakland Fund.

### RECOMMENDATION

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11 Based on the foregoing, PEC staff and Respondent recommend that the Commission  
12 approve their stipulated agreement and the following settlement:

13 As to respondent JULIAN ORTON, (Count 1), a payment in the amount of **\$5,000.**  
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