

Item 4 - PEC Case 22-09.01 Settlement Agreement

1 Simon Russell
2 Enforcement Chief
3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
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5 Oakland, CA 94612
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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.: 22-09.01

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

) **STIPULATION, DECISION AND
ORDER**

17 Respondents.
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23 **STIPULATION**

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

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

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

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

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15 So agreed:

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

_____ Dated

21
22 _____
23 Oaklanders For Responsible Leadership, Respondent

_____ Dated

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25 _____
26 Libby Schaaf, Respondent

_____ Dated

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Doug Linney, Respondent

Dated

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DECISION AND ORDER

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

So ordered:

Ryan Micik, Chair
City of Oakland Public Ethics Commission

Dated

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INTRODUCTION

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

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

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

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

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

FACTUAL SUMMARY

Organization of Oaklanders For Responsible Leadership (ORL)

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

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

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

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

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

25 After receiving Linney's proposal, Mayor Schaaf met with Barbara Leslie and Zachary
26 Wasserman of the Oakland Metropolitan Chamber of Commerce and its campaign committee,
27 called OAKPAC, who Schaaf knew were also contemplating campaign activities. Mayor Schaaf
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1 provided them with Linney’s campaign plan, as well as feedback on the plan that she had
2 received from Smith. She invited Leslie, Wasserman and others to join a series of weekly
3 phone conferences with Linney “to discuss strategy and stay in touch on the campaign”
4 (Schaaf’s words in an email to Leslie and Wasserman at that time).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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23 Throughout the campaign, ORL filed numerous campaign forms with the PEC in
24
25

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

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

3 4 Form 410

5
6 The first type of form that ORL filed with the PEC is called a Form 410 (“Statement of
7 Organization”). These are forms that a committee must file when it first registers, and
8 whenever it changes its name, purpose, or main personnel. It must also disclose on this form
9 whether it is a controlled committee of a candidate or officeholder. A Form 410 must be signed
10 by the controlling candidate, under penalty of perjury. Finally, it is the form on which a
11 committee declares what its name will be. As explained in more detail later in this Exhibit,
12 candidate-controlled committees are required to put the last name of their controlling
13 candidate in the committee’s name (e.g. “Committee X, a Controlled Committee of Oakland
14 Mayor Smith”). The purpose of the form is to inform voters of who is running a particular
15 campaign committee.

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

20 Form 410s Filed By ORL	
21 Date Filed	21 Committee Name Given on Form
22 August 24, 2018	22 “Oaklanders For Responsible Leadership, Opposing Desley Brooks 23 For Oakland City Council 2018”
24 August 31, 2018	24 “Oaklanders For Responsible Leadership, Opposing Desley Brooks 25 For Oakland City Council 2018”
26 September 20, 26 2018	26 “Oaklanders For Responsible Leadership, Opposing Desley Brooks 27 For Oakland City Council 2018”
27 June 15, 2020	27 “Oaklanders For Responsible Leadership, Opposing Desley Brooks 28 For Oakland City Council 2018”

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Form 460

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

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

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

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1 2 3 4 5 6 7 8 9 10	January 31, 2019	October 21 – December 31, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
11 12 13 14 15 16 17 18 19 20	July 30, 2019	January 1, 2019 – June 30, 2019	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
21 22 23 24 25	January 29, 2020	July 1, 2019 – December 31, 2019	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
26 27 28	June 10, 2020	January 1, 2020 – June 10, 2020	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”

Form 497

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

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

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

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

Form 496

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

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

Form 496s Filed By ORL While Libby Schaaf Was Controlling Candidate

Date Filed	Committee Name Given on Form	Activity Reported
October 2, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$5,470.73 of canvassing opposing Desley Brooks

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

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

ORL Publishes Ads that Fail to Disclose It is Candidate Controlled

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

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

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

ORL Receives Contributions In Excess Of The Legal Limit

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUMMARY OF LAW & LEGAL ANALYSIS

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

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

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

ORL Was a Candidate-Controlled Committee

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

⁶ OMC § 3.12.140.

⁷ OMC § 3.12.240(d).

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

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

12 13 **Element 1: Committee**

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

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25 ⁸ Cal. Govt. Code § 82016.

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

27 ¹⁰ Cal. Govt. Code § 82013.

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Element 2: Candidate or Elected Official

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

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

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

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

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

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

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

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

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

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

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

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

22 ¹⁵ Id.

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

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

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

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

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

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

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

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

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

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19
- the committee’s initial registration and termination statements (Form 410)²⁴
 - its pre-election and semi-annual campaign statements (form 460)²⁵
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23 ²¹ Cal. Govt. Code § 84101.

24 ²² Cal. Govt. Code § 84215.

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

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

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

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

Each of those reports, including amendments, must include the committee's full name.²⁸ For a candidate-controlled committee, its name must include the last name of its controlling candidate²⁹ (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.³⁰

Element 1: Candidate-controlled committee

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

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

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

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

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

²⁸ 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).

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

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

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

3 4 *Form 410*

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

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

15 16 *Form 460*

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

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

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

4 5 *Form 497*

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

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

15 16 *Form 496*

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

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

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

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

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

12 13 **Element 1: Mass mailing**

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

19 20 **Element 2: Independent expenditure**

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

25
26

³¹ OMC § 3.12.230(A).

27 ³² Cal Govt Code § 82041.5.

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

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

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

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

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

25
26
27 ³³ Cal. Govt. Code § 82031.

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

3 *ORL Received Contributions Over The Legal Limit*

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

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

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

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

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Element 2: Receiving contributions over the legal limit

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

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

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

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

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

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

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

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

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

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

OAKPAC Made Earmarked Contributions to ORL

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

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

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

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Liability

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

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

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

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

³⁸ OMC 3.12.270(C)

³⁹ OMC 3.12.040(J)

⁴⁰ 2 Cal. Code of Regulations § 18402.1.

⁴¹ OMC 3.12.230(A)

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

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

VIOLATIONS:

OAKLANDERS FOR RESPONSIBLE LEADERSHIP; MAYOR SCHAAF; DOUG LINNEY

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

24 ⁴² OMC 3.12.230(B)

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

27 ⁴⁴ *Id.* at 134.

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Count 1: Failure to Disclose Controlling Candidate on Campaign Forms

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

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

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

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

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

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

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

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

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

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

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1 2	October 16, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,990 in contributions received
3 4	October 18, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$10,000 in contributions received
5 6 7	October 26, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$14,000 in contributions received
8 9	November 2, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$5,000 in contributions received
10 11 12	November 3, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$12,500 in contributions received

13
14
15 As the controlling candidate, Mayor Schaaf’s last name was required to be included as part of the committee’s name for all purposes.

16
17
18 On the following dates, Oaklanders For Responsible Leadership filed an Independent Expenditure Report (“Form 496”) with the PEC, in which it failed to include Mayor Schaaf’s last name in its committee name:

Form 496s Filed By ORL While Libby Schaaf Was Controlling Candidate			
Date Filed	Committee Name Given on Form	Activity Reported	
19 20 21 22	October 2, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$5,470.73 of canvassing opposing Desley Brooks \$12,500 in contributions received
23 24 25 26 27	October 2, 2018 (amendment)	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,774.82 of canvassing opposing Desley Brooks \$7,490 in contributions received \$2,500 in contributions returned

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

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

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

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

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

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

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

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

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

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

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

11 In this way, Respondents violated OMC § 3.12.230.

VIOLATIONS:

OAKLANDERS FOR RESPONSIBLE LEADERSHIP; MAYOR SCHAAF

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

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

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

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

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

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

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VIOLATIONS:

OAKLANDERS FOR RESPONSIBLE LEADERSHIP

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

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

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

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

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

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

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

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

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

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

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

In this way, Respondent violated OMC § 3.12.050.

VIOLATIONS:

LIBBY SCHAAF; DOUG LINNEY

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

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

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

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

In this way, Respondents violated OMC § 3.12.050.

PENALTY ANALYSIS

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

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

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

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

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

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

⁴⁷ OMC § 3.12.270(C).

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

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

Analysis of the Present Case

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

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

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

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

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

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

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

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

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

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

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

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

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RECOMMENDED PENALTIES

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

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

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

7
8 Petitioner

9
10 BEFORE THE CITY OF OAKLAND
11 PUBLIC ETHICS COMMISSION

12
13 In the Matter of

) Case No.: 22-09.01

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

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

17 Respondents.
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21

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

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