

5. If the Commission refuses to approve the proposed stipulation, it shall become null and void, and Commission staff will return all payments tendered by the Respondents in this matter within ten days of the Commission's rejection of the stipulation.
6. If the Commission rejects the proposed stipulation and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission or its staff shall be disqualified because of prior consideration of the stipulation.
7. Respondents understand and knowingly and voluntarily waive all procedural rights under the law, Oakland City Charter, Oakland Municipal Code, and Public Ethics Commission Complaint Procedures which include but are not limited to receiving a finding of probable cause, having the Commission or independent hearing examiner hear the matter, personally appearing at an administrative hearing, confronting and cross-examining witnesses, and subpoenaing witnesses to testify at a hearing.
8. Respondents understand and acknowledge that this stipulation and decision is not binding on any other law enforcement agency and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other government agency with regard to the matter, or any other matter related to it.

DATED: _____

 WHITNEY BARAZOTO, Petitioner

DATED: _____

 JOE TUMAN, Respondent

DATED: _____

 JOE TUMAN FOR MAYOR 2014, Respondent

By: _____

Title: _____

1 DECISION AND ORDER

2 The Public Ethics Commission considered the above STIPULATION at its meeting on
3 _____ . The Commission hereby approves the STIPULATION and
4 orders that, in accordance with the STIPULATION, Respondent pay a fine in the amount of
5 \$500.

6
7 DATED: _____ BENJAMIN KIMBERLEY, Chairman
8 CITY OF OAKLAND
9 PUBLIC ETHICS COMMISSION

EXHIBIT

I. SUMMARY OF COMPLAINT

On February 3, 2014, Public Ethics Commission staff learned that the *Joe Tuman for Mayor 2014* campaign failed to file an Oakland Campaign Reform Act (OCRA) Form 301, voluntarily accepting expenditure ceilings for his campaign committee, *Joe Tuman for Mayor 2014*. The Form 301 is required to be signed before a candidate may accept contributions at the higher limit allowable under OCRA. Commission staff notified the *Joe Tuman for Mayor 2014* campaign of the missing documentation on February 4, 2014. Campaign treasurer Scott Law responded that same day, stated that he was unaware of the required Form 301, and submitted the Form 301, signed by the candidate, the next day, February 5, 2014. Meanwhile, the *Joe Tuman for Mayor 2014* campaign accepted contributions at the higher limit with the intent to accept the voluntary expenditure ceiling, but without having filed the required Form 301.

II. FACTUAL SUMMARY

On February 3, 2014, the Public Ethics Commission received an inquiry regarding the timely filing of the Form 301 by mayoral candidates. Commission staff then learned that the *Joe Tuman for Mayor 2014* campaign had not filed an OCRA Form 301 as of February 3, 2014.

On February 4, 2014, Commission staff contacted the *Joe Tuman for Mayor 2014* campaign notifying them of the required Form 301. Staff spoke with Noah Finneyburg, who contacted Scott Law, campaign consultant. Mr. Law responded the same day and said he was unaware of the Form 301 and the requirement that it be filed with the City Clerk before accepting contributions at the higher limit. Mr. Law obtained a copy of the form on February 4 and submitted the Form 301, signed by candidate Joe Tuman, on February 5, 2014.

The *Joe Tuman for Mayor 2014* campaign timely filed the California Form 460, the semi-annual campaign statement for the July 1, 2013 through December 31, 2013 reporting period required by the Fair Political Practices Commission pursuant to the state Political Reform Act. In the campaign statement that was filed on January 29, 2014, *Joe Tuman for Mayor 2014* reported contributions at varying amounts in excess of \$100, which is the limit applicable to candidates for City office who have not accepted the voluntary expenditure ceilings pursuant to the Oakland Campaign Reform Act. The total amount of contributions in excess of the lower contribution limits was \$99,350.00 for the July-December 2013 filing period.

III. LEGAL SUMMARY

The Oakland Campaign Reform Act (OCRA) imposes contribution limits of \$100 from an individual and \$400 from a broad-based political committee for persons who do not agree to limit campaign spending. OCRA further provides that, for candidates who accept a “voluntary expenditure ceiling” of a specified amount – in this case \$405,000 for the Mayoral election – the candidate may receive contributions of up to \$700 from an individual or \$1,400 from a broad-based political committee (O.M.C. 3.12.050, 3.12.060). In order to receive a contribution at the

higher limit, a candidate must first file a statement with the City Clerk (OCRA Form 301) indicating acceptance of the expenditure ceiling, which will be made public (O.M.C. 3.12.190).

O.M.C. 3.12.190 reads as follows:

Expenditure Ceilings.

All candidates for city office who adopt campaign expenditure ceilings as defined below are permitted the higher contribution limit as defined in Sections 3.12.050C and 3.12.060C of this Act. Before accepting any contributions at the higher limit, candidates who adopt voluntary expenditure ceilings must first file a statement with the City Clerk on a form approved for such purposes indicating acceptance of the expenditure ceiling. Said statement shall be filed no later than the time for filing for candidacy with the City Clerk. This statement will be made public.

The Public Ethics Commission is the sole body for civil enforcement of OCRA (O.M.C. 3.12.260). Any person who intentionally or negligently violates the provisions of OCRA is subject to enforcement proceedings before the Public Ethics Commission pursuant to the Commission's Complaint Procedures. If the Commission determines a violation has occurred, the Commission is authorized to administer appropriate penalties and fines not to exceed three times the amount of the unlawful contribution (O.M.C. 3.12.280(E)).

IV. ANALYSIS

The *Joe Tuman for Mayor 2014* campaign did not complete and submit an OCRA Form 301 before receiving contributions at the higher limit allowed only for those who signed the Form. The OCRA violation in this case is the candidate's failure to file the OCRA Form 301. Because of this violation, 261 contributions were received in amounts over the applicable contribution limit before the Form 301 had been signed and submitted on February 5, 2014. The total amount of money raised over the allowable limit at the time was \$99,350.00.

The Form 301 is in place to provide a mechanism by which the candidate can opt into the City's voluntary expenditure ceiling program that allows the candidate to accept larger contributions from individual donors. This arrangement was designed to meet the goals of OCRA to, among other things, limit campaign spending, reduce the pressure on candidates to raise large campaign war chests for defensive purposes, and reduce the influence of large contributors. By signing the Form 301, the candidate opts into the spending limit and alerts the City and the public that the candidate plans to limit their overall campaign spending.

In this case, the *Joe Tuman for Mayor 2014* campaign treasurer stated that the campaign was operating under the assumption that it had accepted the voluntary expenditure ceiling despite not submitting the Form 301. The *Joe Tuman for Mayor* campaign filed a Candidate Intention Statement (FPPC Form 501) and a Statement of Organization, Recipient Committee (FPPC Form 410) on July 24, 2013, and reported incoming contributions at the higher limit beginning on that date. On the campaign's first required campaign statement filed in January, 2014, the campaign

reported a total of \$145,350.00 in total contributions received for the July 1, 2013 through December 31, 2013 reporting period. At no time did the campaign exceed the voluntary expenditure ceiling of \$405,000 for the Mayoral election.

In assessing the public harm of the violation, it is important to note that by not filing the Form 301 in July 2013, before the campaign began accepting contributions, other candidates and the general public were not aware that the campaign would limit its spending. For a period of seven months, other candidates and the public could see that Joe Tuman was running for mayor but that he had not voluntarily accepted the expenditure ceiling. It would not be until the following January 31, 2014, when the campaign statement (Form 460) for the July – December time period was due, on which contributions and expenditures were reported and one could see that the candidate is accepting higher individual contributions. It is possible that opposing candidates may rely on the lack of Form 301 in assessing their opposition in the early days of the campaign, and the failure to file the Form 301 could mislead others who are watching the campaign's activity in the months leading up to the January 31 filing deadline. Also noteworthy is the timing of the violation, which was relatively early on in the campaign process.

There is no evidence to suggest that the *Joe Tuman for Mayor 2014* campaign's failure to file the Form 301 was intentional. In addition, the campaign's activities conform with an intention to accept the voluntary expenditure ceilings, as shown by the receipt of contributions at the higher limit and the total campaign spending staying well-below the expenditure ceiling. The campaign filed the Form 301 within 24 hours of being notified by Commission staff. However, given that there is the possibility that failure to timely file the Form 301 could mislead opponents and the public, a penalty is appropriate.

In determining the appropriate fine, Commission staff considers past Commission fines for comparable violations, as well as the history of compliance of the candidate himself. The Commission has no records of previously issuing a fine for failure to sign and submit a Form 301; however, for comparison, an administrative fine for failure to file a campaign statement for a six-month reporting period generally amounts to a settlement of \$500 for first-time violators.

Here, the campaign timely reported contributions and expenditures but failed to submit the required paperwork that triggers the ability to receive contributions at the higher limit. The candidate has no prior history of non-compliance with PEC-administered laws, and the campaign responded immediately by filing the Form 301 upon Commission staff inquiry. However, the campaign received a large number of contributions resulting in almost \$100,000 over the limit applicable at the time.

V. RECOMMENDATION

In light of Commission fines for comparable violations, the public harm imposed by failing to timely file the Form 301, the timing of the violation, the candidate's history with the PEC, and the campaign's immediate filing of the Form upon PEC staff inquiries, Commission staff recommends a settlement of \$500 via stipulated agreement to resolve this matter.

