



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: \_\_\_\_\_

\_\_\_\_\_

MICHAEL JOHNSON, Respondent

DATED: \_\_\_\_\_

\_\_\_\_\_

*COMMITTEE TO ELECT MICHAEL V. JOHNSON  
CITY COUNCIL 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, Respondents pay a fine in the amount of  
5 \$50.

6  
7 DATED: \_\_\_\_\_

8 \_\_\_\_\_  
9 BENJAMIN KIMBERLEY, Chairman  
10 CITY OF OAKLAND  
11 PUBLIC ETHICS COMMISSION  
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## EXHIBIT

### I. SUMMARY OF COMPLAINT

On February 11, 2014, Public Ethics Commission staff learned that the *Committee to Elect Michael V. Johnson City Council 2014* campaign failed to file an Oakland Campaign Reform Act (OCRA) Form 301, voluntarily accepting expenditure ceilings for his campaign committee, *Committee to Elect Michael V. Johnson City Council 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 *Committee to Elect Michael V. Johnson City Council 2014* campaign of the missing documentation on April 3, 2014. Michael Johnson responded that same day, stated that he was unaware of the OCRA Form 301 requirement, and submitted his signed Form 301 that day. Meanwhile, the *Committee to Elect Michael V. Johnson City Council 2014* campaign accepted contributions at the higher limit, but without having filed the required Form 301.

### II. FACTUAL SUMMARY

On February 11, 2014, the Public Ethics Commission reviewed all campaign filings for candidates who were on file with the City Clerk's office for the November 4, 2014 election to verify Form 301 submission. Commission staff learned that the *Committee to Elect Michael V. Johnson City Council 2014* campaign had not filed an OCRA Form 301 as of February 11, 2014; however, the campaign had received contributions at the higher limit during the reporting period of July 1 through December 31, 2013.

On the California Form 460, the semi-annual campaign statement for the July 1, 2013 through December 31, 2013 reporting period required by the state Political Reform Act, the *Committee to Elect Michael V. Johnson City Council 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 Form 301. The total amount of contributions in excess of the lower contribution limits was \$525 for the July-December 2013 filing period.

On April 3, 2014, Commission staff contacted the *Committee to Elect Michael V. Johnson City Council 2014* campaign notifying them of the required Form 301. Staff spoke with candidate Michael Johnson about the OCRA Form 301 requirement. Mr. Johnson submitted his signed OCRA Form 301 that same day, on April 3, 2014.

### 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 \$121,000 for the City Council District 6 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 Public Ethics 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 *Committee to Elect Michael V. Johnson City Council 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 Form 301. Because of this violation, 6 (six) contributions were received in amounts over the applicable limit before the Form 301 was signed and submitted on April 3, 2014. The total amount of money raised over the limit allowable at the time was \$525.00 for the July through December 2013 reporting period.

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.

The *Committee to Elect Michael V. Johnson City Council 2014* 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 July 25, 2013. The campaign reported a total of \$5130.00 in total contributions received from July 1, 2013 through December 31, 2013. At no time did the campaign exceed the voluntary expenditure ceiling of \$121,000 for the City Council District 6 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 Michael Johnson was running for City Council 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 *Committee to Elect Michael V. Johnson City Council 2014* campaign's failure to file the Form 301 was intentional. In addition, the campaign's activities confirm 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. Mr. Johnson filed the Form 301 the same day that Commission staff notified him of the omission. 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 reported contributions and expenditures (albeit late by 6 days and thereby assessed a late fee by the City Clerk's office) but failed to submit the required paperwork that triggers the ability to receive contributions at the higher limit. With the exception of the late fee by the City Clerk's office, 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.

#### **IV. RECOMMENDATION**

Considering Commission fines for comparable violations, the public harm imposed by failing to timely file the Form 301, the campaign's filing of the form immediately upon PEC staff inquiries, the timing of the violation, the candidate's history with the PEC, and the amount of money raised during the July through December filing period, Commission staff recommends a settlement of \$50 to resolve this matter.

