

1 MILAD DALJU
Enforcement Chief
2 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
1 Frank Ogawa Plaza, Rm. 104
3 Oakland, CA 94612
Telephone: (510) 238-4976
4

5 Petitioner

6 BEFORE THE CITY OF OAKLAND

7 PUBLIC ETHICS COMMISSION
8

9 In the Matter of

) Case No.: 15-02b

10 BAY AREA CITIZENS POLITICAL
11 ACTION COMMITTEE, and
12 THE MILO GROUP OF CALIFORNIA,
INC.,

) **STIPULATION, DECISION AND**
) **ORDER**
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13 Respondents.
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15 **STIPULATION**

16 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and
17 respondents Bay Area Citizens Political Action Committee and The Milo Group of California,
18 Inc., (collectively referred to as Respondents) agree as follows:

- 19 1. This Stipulation will be submitted for consideration by the City of Oakland Public
20 Ethics Commission (Commission) at its next regularly scheduled meeting;
- 21 2. This Stipulation resolves all factual and legal issues raised in this matter and represents
22 the final resolution to this matter without the necessity of holding an administrative
23 hearing to determine the liability of Respondents;
- 24 3. Respondents knowingly and voluntarily waive all procedural rights under the Oakland
25 City Charter, Oakland Municipal Code, and Public Ethics Commission Complaint
26 Procedures, including, but not limited to, the right to personally appear at an
27 administrative hearing held in this matter, to be represented by an attorney at their own
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1 expense, to confront all witnesses testifying at the hearing, to subpoena witnesses to
2 testify at the hearing, and to have the matter judicially reviewed;

3 4. This Stipulation is not binding on any other law enforcement agency, and does not
4 preclude the Commission or its staff from referring the matter to, cooperating with, or
5 assisting any other government agency with regard to this matter, or any other matter
6 related to it;

7 5. Respondents violated the Oakland Campaign Reform Act by contributing \$700 more
8 than the contribution limit of \$700 to Dan Kalb for City Council 2012, in violation of
9 the Oakland Municipal Code section 3.12.050. (Count 1.)

10 6. Respondents violated the Oakland Campaign Reform Act by contributing \$1,400 more
11 than the contribution limit of \$700 to Re-Elect Mayor Quan 2014, in violation of the
12 Oakland Municipal Code section 3.12.050. (Count 2.)

13 7. The attached exhibit (Exhibit) is a true and accurate summary of the facts in this matter
14 and is incorporated by reference into this Stipulation;

15 8. The Commission will impose upon Respondents a total administrative penalty in the
16 amount of \$2,100;

17 9. A cashier's check from Respondents, in said amount, made payable to the "City of
18 Oakland," is submitted with this Stipulation as full payment of the administrative
19 penalty, to be held by the Commission until the Commission issues its decision and
20 order regarding this matter;

21 10. In the event the Commission refuses to accept this Stipulation, it shall become null and
22 void, and within fifteen business days after the Commission meeting at which the
23 Stipulation is rejected, all payments tendered by Respondents in connection with this
24 Stipulation will be reimbursed to them; and

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11. In the event the Commission rejects the Stipulation and a full evidentiary hearing before the Commission becomes necessary, neither any member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

Dated: _____

Milad Dalju, Enforcement Chief of the City of Oakland
Public Ethics Commission, Petitioner

Dated: _____

Michael Colbruno, on behalf of
Bay Area Citizens Political Action Committee, and
The Milo Group of California, Inc., Respondents

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Bay Area Citizens Political Action Committee and The Milo Group of California, Inc.,” PEC Case No. 15-02b, 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.

Dated: _____
_____ Sonya Smith, Chair
City of Oakland Public Ethics Commission

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INTRODUCTION

On January 5, 2015, the Public Ethics Commission (Commission) received a complaint alleging that Bay Area Citizens Political Action Committee (Bay Area Citizens PAC) and The Milo Group of California, Inc. (Milo Group), violated the Oakland Campaign Reform Act (OCRA) by making contributions to Re-Elect Mayor Quan 2014 in excess of the contribution limit.¹

The ensuing investigation by the Commission's Enforcement Unit (Enforcement Unit) revealed that the Bay Area Citizens PAC and the Milo Group shared, at all relevant times, two officers and made contributions in excess of the contribution limit to Re-Elect Mayor Quan 2014 and to Dan Kalb for City Council 2012, in violation of OCRA section 3.12.050.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the OCRA's provisions as they existed at the time of the violations.

Duty to Comply with Campaign Contribution Limits

OCRA limits the amount of contributions a person may make to a candidate for city office and any of his or her controlled committees. For the November 6, 2012, and the November 4, 2014, elections, a person was prohibited from making contributions in excess of \$700, per election, to any single candidate for city office who accepted the voluntary expenditure ceiling and any of his or her controlled committees. (Section 3.12.050.)

A person is defined as any individual, proprietorship, firm, partnership, joint venture, syndicate, business, trust, company, corporation, association, committee, or any other organization or group of persons acting in concert. (Section 3.12.040.) Any entities that share two or more officers are considered a single person for purposes of OCRA's contribution limits. (Section 3.12.080, subd. B(3).)

SUMMARY OF THE FACTS

Jean Quan was elected Oakland Mayor on November 2, 2010, and was an unsuccessful incumbent candidate for Oakland Mayor in the November 4, 2014, election. At all relevant times, Re-Elect Mayor Quan 2014 was her controlled committee for the November 4, 2014, election. On February 5, 2013, Ms. Quan filed a Form 301 with the Oakland City Clerk that indicated that she accepted the voluntary expenditure ceiling. On November 4, 2014, Ms. Quan lost in the 15th round, out of 16 total rounds, of the election for Oakland Mayor. Re-Elect Mayor Quan 2014 terminated on November 30, 2015.

Dan Kalb was a successful non-incumbent candidate for Oakland City Council in the November 6, 2012, election, and at all relevant times Dan Kalb for City Council 2012 was his controlled committee for the November 6, 2012, election. On April 20, 2012, Mr. Kalb filed a Form 301 with the Oakland City Clerk that indicated that he accepted the voluntary expenditure ceiling. On

¹ The Oakland Campaign Reform Act is contained in Oakland Municipal Code sections 3.12.010 through 3.12.340, and all statutory references are to this source unless otherwise noted.

November 6, 2012, Mr. Kalb won a seat on the Oakland City Council in the seventh round by receiving approximately 845, or 3.5%, more votes than his appointment. Dan Kalb for City Council 2012 terminated on June 30, 2014.

At all relevant times, the Bay Area Citizens PAC was a committee registered with the California Secretary of State, and John Gooding and Michael Colbruno were two of the committee's five principal officers. The Bay Area Citizens PAC qualified as a committee on or about April 10, 2012, and made its first contribution to a candidate for elective office on June 20, 2012. Since then, the Bay Area Citizens PAC has regularly made contributions to candidates for office in Oakland and other Bay Area communities, to candidates for state office, and to other committees.

On December 17, 2012, the Bay Area Citizens PAC made a \$700 contribution to Dan Kalb for City Council 2012. On June 17, 2013, the Bay Area Citizens PAC made a \$700 contribution to Re-Elect Mayor Quan 2014. On February 19, 2014, the Bay Area Citizens PAC made another \$700 contribution to Re-Elect Mayor Quan 2014.

At all relevant times, the Milo Group was a political consulting firm based out of Oakland, Mr. Gooding was its Chief Executive Officer, and Mr. Colbruno was its Chief Financial Officer. At all relevant times, Mr. Gooding and Mr. Colbruno each owned 45% of the Milo Group's stock ownership and were political consultants at the Milo Group. Mr. Gooding and Mr. Colbruno were also registered lobbyists with the City of Oakland in 2013. Since 2011, the Milo Group has made contributions to candidates for office in Oakland in the 2012 and 2014 elections, to candidates for state office, and to other committees.

On June 5, 2013, the Milo Group made a \$700 contribution to Dan Kalb for City Council 2012. On June 26, 2013, the Milo Group made a \$700 contribution to Re-Elect Mayor Quan 2014.

Mr. Colbruno served on the Oakland Planning Commission from 2006 until May 2013. On April 15, 2013, Mayor Quan appointed Mr. Colbruno to the Port of Oakland Board of Commissioners, and on May 7, 2013, the Oakland City Council unanimously confirmed Mr. Colbruno's appointment. On July 11, 2013, Mr. Colbruno began his four-year term as a member of the Port of Oakland Board of Commissioners.

On June 20, 2013, Mr. Colbruno made a \$700 contribution to Re-Elect Mayor Quan 2014. Mr. Colbruno did not make a contribution to Dan Kalb for City Council 2012.

Mr. Gooding did not make a contribution to Dan Kalb for City Council 2012 or Re-Elect Mayor Quan 2014.

The Bay Area Citizens PAC timely reported the contributions it made to Dan Kalb for City Council 2012 and Re-Elect Mayor Quan 2014 to the California Secretary of State on its campaign statements.

Dan Kalb for City Council 2012 timely reported the contributions it received from the Bay Area Citizens PAC and the Milo Group to the Oakland City Clerk on its campaign statements.

Re-Elect Mayor Quan 2014 timely reported the contributions it received from the Bay Area Citizens PAC, the Milo Group, and Mr. Colbruno to the Oakland City Clerk on its campaign statements.

Count 1: Making Contributions in Excess of the Contribution Limit

The Bay Area Citizens PAC and the Milo Group made contributions totaling \$1,400 to Dan Kalb for City Council 2012, a committee controlled by a candidate for city office who accepted the voluntary expenditure ceiling for the November 6, 2012, election.

Because the Bay Area Citizens PAC and the Milo Group shared two or more officers, all contributions made by the Bay Area Citizens PAC and the Milo Group are aggregated for the purposes of the contribution limit. (Section 3.12.080, subd. B(3).)

By making contributions totaling \$1,400 to Dan Kalb for City Council 2012, the Bay Area Citizens PAC and the Milo Group contributed \$700 in excess of the \$700 contribution limit, in violation of Section 3.12.050.

Count 2: Making Contributions in Excess of the Contribution Limit

The Bay Area Citizens PAC and the Milo Group made contributions totaling \$2,100 to Re-Elect Mayor Quan 2014, a committee controlled by a candidate for city office who accepted the voluntary expenditure ceiling for the November 4, 2014, election.

Because the Bay Area Citizens PAC and the Milo Group shared two or more officers, all contributions made by the Bay Area Citizens PAC and the Milo Group are aggregated for the purposes of the contribution limit. (Section 3.12.080, subd. B(3).)

By making contributions totaling \$2,100 to Re-Elect Mayor Quan 2014, the Bay Area Citizens PAC and the Milo Group contributed \$1,400 in excess of the \$700 contribution limit, in violation of Section 3.12.050.

CONCLUSION

Pursuant to the Commission's Enforcement Penalty Guidelines, the Commission determines the appropriate fine amount for a particular violation by starting with the base-level fine amount articulated in the Commission's Enforcement Penalty Guidelines. The Commission may decrease or increase the fine amount to account for the relevant mitigating and aggravating factors surrounding the particular case, which include, but are not limited to: the seriousness of the violation; the presence or absence of any intention to conceal, deceive or mislead; whether the violation was deliberate, negligent or inadvertent; whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations; whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure; and the degree to which the respondent cooperated with the Commission's investigation and demonstrated a willingness to remedy any violations.

Making contributions in excess of the campaign contribution limit is one of the most serious violations of OCRA as it circumvents the limits on campaign contributions and provides an

unfair advantage to one candidate over others in an election. Pursuant to the Commission's Enforcement Penalty Guidelines, the base-level fine amount for a violation of OCRA's contribution limit is equal to the total amount of unlawful contributions.

Regarding Count 1, the violation is aggravated by the fact that the unlawful contribution was made to a candidate that is a sitting member of the Oakland City Council. Also, the respondents are, and were at the time they made the unlawful contribution, a political action committee and a local political consulting firm with a history of making contributions to candidates for office in Oakland. Therefore the respondents knew, or should have known, about OCRA's contribution limits when they made the unlawful contribution. Thus, the violation was negligent at best and intentional at worst.

However, the violation is mitigated by the fact that neither respondent has a prior history of violating OCRA, the respondents were cooperative in the Enforcement Unit's investigation, and the respondents agreed to an early resolution to this matter. The violation is also mitigated by the fact that Dan Kalb for City Council 2012 and the Bay Area Citizens PAC timely reported the contributions, which demonstrates that there was no intent to conceal the unlawful contribution. Additionally, both contributions were made after the pertinent election.

Pursuant to the Commission's Penalty Guidelines, the base-level fine amount for Count 1 is \$700. After consideration of all the mitigating and aggravating circumstances surrounding this particular violation, Commission staff recommends a \$700 fine for Count 1.

Regarding Count 2, the violation is aggravated by the fact that the unlawful contributions were made to a candidate in a competitive election. Though Ms. Quan did not win the election, she made it to the 15th round of an election that was decided in 16 rounds. Additionally, the effect of the unlawful contributions on the election was significant due to the fact that the contributions from the respondents totaled three times the contribution limit. Also, the respondents are, and were at the time they made the unlawful contributions, a political action committee and a local political consulting firm with a history of making contributions to candidates for office in Oakland. Therefore the respondents knew, or should have known, about OCRA's contribution limits when they made the unlawful contributions. Thus, the violation was negligent at best and intentional at worst.

However, the violation is mitigated by the fact that neither respondent has a prior history of violating OCRA, the respondents were cooperative in the Enforcement Unit's investigation, and the respondents agreed to an early resolution to this matter. The violation is also mitigated by the fact that the Bay Area Citizens PAC and Re-Elect Mayor Quan 2014 timely reported the contributions, which demonstrates that there was no intent to conceal the unlawful contributions. Additionally, Ms. Quan was not successful in her reelection and has not been in office since.

Pursuant to the Commission's Enforcement Penalty Guidelines, the base-level fine amount for Count 2 is \$1,400. After consideration of all the mitigating and aggravating circumstances surrounding this particular violation, Commission staff recommends a \$1,400 fine for Count 2.

PROPOSED PENALTY

Based on the fine amounts prescribed by the Commission's Enforcement Penalty Guidelines and consideration of all the relevant aggravating and mitigating circumstances of this particular case, Commission staff recommends a total fine in the amount of \$2,100.

