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Enforcement Chief
2 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
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4

5 Petitioner

6 BEFORE THE CITY OF OAKLAND

7 PUBLIC ETHICS COMMISSION
8

9 In the Matter of

) Case No.: 16-07

10 AB&I FOUNDRY, A DIVISION OF
11 MCWANE, INC.,

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

12 Respondent.
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15 **STIPULATION**

16 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and AB&I
17 Foundry, a division of McWane, Inc. (Respondent), agree as follows:

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

- 1 4. This Stipulation is not binding on any other law enforcement agency, and does not
2 preclude the Commission or its staff from referring the matter to, cooperating with, or
3 assisting any other government agency with regard to this matter, or any other matter
4 related to it;
- 5 5. Respondent violated the Oakland Campaign Reform Act by contributing \$4,600 more
6 than the contribution limit of \$700 to *Kaplan for Oakland Mayor 2014*, in violation of
7 the Oakland Municipal Code section 3.12.050. (Count 1.)
- 8 6. Respondent violated the Oakland Campaign Reform Act by contributing \$1,800 more
9 than the contribution limit of \$700 to *Parker for Oakland Mayor 2014*, in violation of
10 the Oakland Municipal Code section 3.12.050. (Count 2.)
- 11 7. The attached exhibit (“Exhibit in Support of Stipulation, Decision and Order, PEC Case
12 No. 16-07”) is a true and accurate summary of the facts in this matter and is
13 incorporated by reference into this Stipulation;
- 14 8. The Commission will impose upon Respondent a total administrative penalty in the
15 amount of \$14,400;
- 16 9. A cashier’s check from Respondent, in said amount, made payable to the “City of
17 Oakland,” is submitted with this Stipulation as full payment of the administrative
18 penalty, to be held by the Commission until the Commission issues its decision and
19 order regarding this matter;
- 20 10. In the event the Commission refuses to accept this Stipulation, it shall become null and
21 void, and within fifteen business days after the Commission meeting at which the
22 Stipulation is rejected, all payments tendered by Respondent in connection with this
23 Stipulation will be reimbursed to them; and

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

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7 Dated: _____

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

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10 Dated: _____

Kurt Winter, General Manager, on behalf of AB&I
Foundry, a division of McWane, Inc., Respondent

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of AB&I Foundry, a division of McWane, Inc.,” PEC Case No. 16-07, 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

In 2015, proactive efforts by the State's Fair Political Practices Commission (FPPC) detected a pattern of activity that led to the opening of this case—which turned into a joint investigation between the FPPC and the City of Oakland (City) Public Ethics Commission (Commission).

The investigation revealed that AB&I Foundry, a division of McWane, Inc. (AB&I Foundry), used its employees as undisclosed intermediaries to make contributions in excess of the contribution limit to two candidates for Oakland Mayor in the November 4, 2014, election, in violation of the Oakland Campaign Reform Act (OCRA).

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 4, 2014, election, a person was prohibited from making contributions in excess of \$700 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.)

SUMMARY OF THE FACTS

Rebecca Kaplan has been the City Councilmember, At-Large, since 2009, and was an unsuccessful candidate for Oakland Mayor in the November 4, 2014, election. At all relevant times, *Kaplan for Oakland Mayor 2014* was Ms. Kaplan's controlled committee for the November 4, 2014, election. On June 13, 2014, Ms. Kaplan filed a Form 301 with the City Clerk that indicated that she accepted the voluntary expenditure ceiling.

Bryan Parker was an unsuccessful candidate for Oakland Mayor in the November 4, 2014, election, and at all relevant times *Parker for Oakland Mayor 2014* was his controlled committee for the November 4, 2014, election. On May 6, 2013, Mr. Parker filed a Form 301 with the City Clerk that indicated that he accepted the voluntary expenditure ceiling.

AB&I Foundry is, and was at all relevant times, a large manufacturer of iron water works and plumbing products. One of its plants is, and was at all relevant times, located in Oakland.

AB&I Foundry used its employees as undisclosed intermediaries and circumvented the local contribution limit in the following manner: an AB&I Foundry manager would request several AB&I Foundry employees to write personal checks to a particular candidate's committee, with

the understanding that AB&I Foundry would reimburse each employee for the amount the employee contributed. The manager would collect the checks from the employees and provide the checks to the committee. AB&I Foundry would reimburse each employee within a few days before or after the checks were sent to the committee.

In this way, AB&I Foundry made eight contributions, totaling \$4,600, to *Kaplan for Oakland Mayor 2014*, in names other than its own, as follows:

AB&I Employee Reported as Contributor	Date of Contribution	Amount of Contribution	Date of Reimbursement by AB&I Foundry
Kevin McCullough	June 30, 2014	\$700	June 27, 2014
Michael Olvera	June 30, 2014	\$700	June 27, 2014
Monica Perez	September 20, 2014	\$100	September 24, 2014
Monica Perez	June 30, 2014	\$300	June 27, 2014
Dave Robinson	June 30, 2014	\$700	June 27, 2014
Richard Watson	June 30, 2014	\$700	June 27, 2014
Kurt Winter	June 30, 2014	\$700	July 2, 2014
Clifford Wixson	June 30, 2014	\$700	July 2, 2014
	Total:	\$4,600	

AB&I Foundry also used this practice to make five contributions, totaling \$2,500, to *Parker for Oakland Mayor 2014*, in names other than its own, as follows:

AB&I Employee Reported as Contributor	Date of Contribution	Amount of Contribution	Date of Reimbursement by AB&I Foundry
Zeydi Gutierrez	June 29, 2014	\$500	July 2, 2014
Dave Robinson	June 29, 2014	\$500	July 2, 2014
Nancy Tavares	June 29, 2014	\$500	July 2, 2014
Kurt Winter	June 29, 2014	\$500	July 2, 2014
Clifford Wixson	June 29, 2014	\$500	July 2, 2014
	Total:	\$2,500	

In 2014, AB&I Foundry also made contributions in its own name to *Kaplan for Oakland Mayor 2014* totaling \$700. It did not make any contributions to *Parker for Oakland Mayor 2014* in its own name.

All of the contributions made by AB&I Foundry were reported on campaign statements filed by the candidates. However, the individual intermediaries, rather than AB&I Foundry, were reported as the contributors.

Count 1: Making Contributions in Excess of the Contribution Limit

AB&I Foundry made contributions in its own name and through the use of intermediaries totaling \$5,300 to *Kaplan for Oakland Mayor 2014*, a committee controlled by a candidate for City office who accepted the voluntary expenditure ceiling for the November 4, 2014, election.

By making contributions totaling \$5,300 to *Kaplan for Oakland Mayor 2014*, AB&I Foundry contributed \$4,600 in excess of the \$700 contribution limit, in violation of Section 3.12.050.

Count 2: Making Contributions in Excess of the Contribution Limit

AB&I Foundry made contributions through the use of intermediaries totaling \$2,500 to *Parker for Oakland Mayor 2014*, a committee controlled by a candidate for City office who accepted the voluntary expenditure ceiling for the November 4, 2014, election.

By making contributions totaling \$2,500 to *Parker for Oakland Mayor 2014*, AB&I Foundry contributed \$1,800 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.

This matter is seriously aggravated by the following facts. AB&I Foundry was a large corporation with a history of making contributions to candidates for City office. In addition, none of the contributions made by AB&I Foundry in its own name or in the name of others were in excess of the contribution limit, and, in fact, many were made in the exact amount of the contribution limit; therefore AB&I Foundry, at the time it committed the violations, knew of OCRA's contribution limits and knew, or should have known, that it was violating OCRA's contribution limits.

AB&I Foundry cooperated in the investigation and agreed to an early resolution to this matter.

AB&I Foundry's cooperation in the investigation included admission that the violations occurred and disclosure of other violations that were not yet discovered.

Pursuant to the Commission's Penalty Guidelines, the base-level fine amount for both counts is \$6,400—the total amount of the unlawful contributions, and the maximum fine is \$19,200—three times the amount of the unlawful contributions. Due to the seriousness of the violations, Commission staff recommends imposing a fine in the amount of \$14,400, which is equal to three-fourths of the maximum fine available.

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 imposing a fine in the amount of \$14,400 on AB&I Foundry.