



Fair Campaign Practices Commission

DATE: March 21, 2019

TO: FAIR CAMPAIGN PRACTICES COMMISSION

FROM: MARIAM MORLEY, Renne Public Law Group,
on behalf of Farimah Brown, City Attorney

SUBJECT: Supplemental Staff Report Regarding Complaint of Alleged BERA
Violations by *Droste for City Council 2018* submitted by Harriet
Steele

The initial staff report in this matter, which is included in the packet for this meeting, includes a discussion of the factors that the Commission may consider in determining what action to take after a finding of probable cause. The report states that staff is doing research with respect to two of those factors: 1) the Commission's "policies, procedures, regulations, and past actions in similar situations;" and 2) "[t]he amount of experience of the candidate, if any, and treasurer in campaign reporting, the history or absence of other campaign violations, and the degree to which these persons made good faith efforts to correct any relevant reporting deficiencies." (Procedures for the FCPC, Section VI.C.1(a) and (b).) The initial staff report promised that staff would discuss the results of that research at the Commission's March 21, 2019 meeting.

With respect to the first factor, staff has compiled a draft log of all stipulations that the Commission has entered into since its creation to the present. (A copy of that log, which assigns a number to each stipulation, is attached to this memorandum as Attachment A. Binders containing all the actual stipulations will be available at the meeting.) After reviewing the log, staff has concluded that the matters resolved by the following stipulations may be sufficiently similar to the *Droste for Council 2018* matter that the Commission may wish to consider those stipulations in determining the appropriate action here:

1. *In the Matter of Maudelle Shirek, Charles E. Debose and the Committee to Re-elect Maudelle Shirek* (Stipulation No. 8, dated June 2005);
2. *In the Matter of George Beier, Shirley Issel, Shirley Issel for School Board*

(Stipulation No. 10, dated December 2007); and

3. *In the Matter of Soto-Vigil for Council 2014* (Stipulation No. 19, dated November 2015).

In Stipulation No. 8, Respondents admitted that they had accepted three monetary contributions (\$250, \$250 and \$150) from business entities in violation of Section 2.12.440 of the Berkeley Municipal Code ("BMC"). Respondent Shirek refunded these contributions from her personal funds. Respondents also admitted to omission of required information from a campaign disclosure statement in violation of BMC Sections 2.12.280.G and 2.12.280.H. Stipulation No. 8 did not require Respondents to pay any monetary penalty.

In Stipulation No. 10, Respondent Beier acknowledged that his committee had accepted a \$250 contribution from Respondent Issel's committee and another \$200 contribution from Respondent Issel, resulting in a total contribution that exceeded the \$250 contribution cap of BMC Section 2.12.415 by \$200. Because Respondent Beier's campaign committee had been terminated and its bank account closed, Respondent Beier agreed to make a \$200 payment to the City's general fund from his own monies. The stipulation did not impose any further monetary penalty on Respondents.

In Stipulation No. 19, Respondent stipulated to receipt of contributions totaling \$300 from a single contributor, exceeding the maximum permitted contribution amount by \$50 in violation of BMC Section 2.12.415. Respondent agreed to pay a penalty of \$50. In light of Respondent's "diligence and responsiveness to staff inquiries," the Commission agreed not to impose further penalties as to this violation. For the same reason, the Commission imposed a penalty of \$225 for failure to report late contributions in violation of BMC Section 2.12.295, although the penalties prescribed for this violation in BMC Section 2.12.485 "would total at least \$450."

With the respect to the second factor that staff researched -- the candidate's and the treasurer's experience and any history of campaign violations, staff has the following information. Candidate Droste ran successfully for City Council in 2014, so the 2018 campaign at issue here would have been her second. Ms. Perry is a professional treasurer with significant experience. Ms. Birnbach is not an experienced treasurer. Ms. Perry was the Treasurer to the Ben Bartlett for City Council 2016 campaign, which entered into a stipulation on September 21, 2017 (Stipulation No. 20) admitting to a violation of BMC Section 2.12.335, which requires disclosure of certain campaign contributions on campaign communications. Ms. Perry was not a party to that stipulation. Staff found no record of violations involving Ms. Droste or Ms. Birnbach.

FCPC HISTORY OF STIPULATIONS
[DRAFT - 3/2019]

No.	Stipulation Date	Committee(s) Name	Candidate(s) Name	Treasurer(s) Name	BERA Violation(s)	Remedy in Stipulation
1.	May 26, 1983	All Berkeley Coalition (Carol Sibley)	--	Carol Sibley (signed on behalf of ABC, not confirmed if treasurer)	Errors in "campaign reporting requirements" from April 1981 to June 1982 per BMC 2.12.005 et seq.	Admission to violation, agrees to pay \$1,800
2.	Nov. 16, 1983	The Committee to Re-elect Mayor Eugene "Gus" Newport (Lee Halterman)	Eugene "Gus" Newport	Hardy Frye (Chairperson, not confirmed if treasurer)	BMC 2.12.440 – accepting contribution from a corporation; BMC 2.12.415 - contribution in excess of \$250 (\$1,498); BMC 2.12.250D - refusal to make available financial records BMC 2.12.315 – failure to report expenditures made by agent or indep. contractor	Admission to violation, agrees to pay \$1,500, file statement disclosing as expenditures amounts spent by Wealth Exchange to promote Berkeley Soul Festival benefit concert
3.	Oct. 1997	Jelinek for Mayor (1994)	Don Jelinek	William Samsel	BMC 2.12.415 - Receipt of excess contributions (8) BMC 2.12.440 - prohibited contributions from business	Admission to violation, refund of contributions, append Stip. to statements
4.	Jun. 1998	Chris Kavanagh	Chris Kavanagh	--	BMC 2.12 - Failure to file pre-election and semi-annual statements; failure to report campaign expenditures	Admission to violation, file amended campaign statements, append Stip. to statements

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No.	Stipulation Date	Committee(s) Name	Candidate(s) Name	Treasurer(s) Name	BERA Violation(s)	Remedy in Stipulation
5.	Feb. 1999	Beier for City Council	George Beier	John Caner	BMC 2.12 - Receipt of \$5,000 loan from Gordon Wozniak, refunded and replaced with loan from Beier; Stip. found violation inadvertent	Admission to violation, filing of revised statements, append Stip. to statements
6.	May 2001	Margaret Breland for City Council 2000	Margaret Breland	Alvinus Cray	Failure to timely reimbursement payments made on behalf of the Committee (within 45 days)	Admission to violation, amending forms, reimburse agent, sign contract w/ agent, append Stip. to statements
7.	Oct. 2002	Shirley Dean for Mayor	Shirley Dean	Tom Lutten (former Treasurer), Robert Smith (Treasurer)	BMC 2.12.415 Excess contributions, failure to report contributions as for prior election to retire debt	Filing amended statements, refunding of contributions. No admission of violation. append Stip. to statements
8.	Jun.2005	Committee to Re-Elect Maudelle Shirek	Maudelle Shirek	Charles E. DeBose	BMC 2.12.440 - Deficiencies in business contributions v. individual; BMC 2.12.280-omitted information and late filing of statements	Filing amended statements, admission of violation. append Stip. to statements

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No.	Stipulation Date	Committee(s) Name	Candidate(s) Name	Treasurer(s) Name	BERA Violation(s)	Remedy in Stipulation
9.	Nov. 2007	Dona Spring for City Council	Dona Spring	Dona Spring	Failure to: report contribution; report loans; file late contribution report; acceptance of excess contribution; disclose accurate campaign bank account balance; promptly process contributions; keep adequate campaign records BMC 2.12.015, 2.12.280, 2.12.415, 2.12.250	Admission to violations, filing amended statements, pay \$200 to COB for late filing penalty, append Stip. to statements
10.	Dec. 2007	George Beier for City Council Shirley Issel for School Board	George Beier Shirley Issel	Robert Beier Shirley Issel	BMC 2.12.415- accepted aggregate contribution exceeding \$250	Admission to violations, Pay \$200, append Stip. to both statements
11.	Feb. 2008	Committee to Defend Affordable Housing	--	Mel Martynn (9/11/06 – 9/30/07) Jesse Arreguin (starting 9/30/07)	BMC 2.12.295 - Failure to file timely late contribution report (6); BMC 2.12.415 - allocation of contribution	Admission to violations, pay Late penalty of \$90, append Stip. to statements

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No.	Stipulation Date	Committee(s) Name	Candidate(s) Name	Treasurer(s) Name	BERA Violation(s)	Remedy in Stipulation
12.	Sep. 2009	Barbara Gilbert for Council	Barbara Gilbert	Barbara Gilbert	BMC 2.12.270A – failure to file 6 campaign statements while inactive	Admission to violations, filing Required Form 460s, filing Terminating form, append Stip. to statements
13.	Jan. 21, 2010	BASTA! Berkeleyans Against Soaring Taxes	--	Gregory Harper (4/4/07 - 8/12/09) Cole Smith (starting 8/12/09)	BMC 2.12.295 – failure to file late contribution report for 26 late contributions	Admission to violations, pay late filing penalty of \$600, append Stip. to statements
14.	May 23, June 10, 2013	Berkeley TUFF - Berkeley Tenants United for Fairness;	--	Rita Copeland (Jay James, primary Officer)	BMC 2.12.255, 2.12.270 (1 count) – Failure to open a campaign Committee and to timely File campaign committee Statements BMC 2.12.231 (3 counts) – Contributions from prohibited sources	Admission to violations, pay monetary penalty of \$4,000, append Stip. to statements

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No.	Stipulation Date	Committee(s) Name	Candidate(s) Name	Treasurer(s) Name	BERA Violation(s)	Remedy in Stipulation
15.	June/ July 2013	Stand Up for the Right to Sit Down, A Committee in Opposition to Measure S		Patricia Wall	BMC 2.12.295 – failure to file timely late contribution report for 5 late contributions BMC 2.12.280 – incomplete campaign statement	Admission to violations, file late contribution report, pay \$50 penalty, append Stip. to statements
16.	July 17, 2013	Committee to Elect Jay James for Rent Board Commissioner Kiran Shenoy for Rent Stabilization Board 2012 Judy Hunt – 2012 Rent Stabilization Board Commissioner Re-Elect Nicole Drake To Rent Board 2012	Jay James Kiran Shenoy Judy Hunt Nicole Drake	Jay James Kiran Shenoy Judy Hunt Jamie Krovontka (treasurer); Nicole Drake (assistant Treasurer)	BMC 2.12.280 – failure to report contributions	Monetary penalty of: \$300 James \$300 Shenoy \$20 Hunt \$300 Drake & append Stip. to statements

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No.	Stipulation Date	Committee(s) Name	Candidate(s) Name	Treasurer(s) Name	BERA Violation(s)	Remedy in Stipulation
17.	Mar. 19, 2014	Coalition for Berkeley Civil Sidewalks, Yes on S	--	Jeffrey Kohn (treasurer) Steven Donaldson (assistant treasurer)	BMC 2.12.250.B – Payment of expenditures in cash above a set sum; BMC 23.12.280.H – failure to itemize expenditures of \$50 or more (55 end vendors) BMC 2.12.280.B and G – contributions rec'd. must be disclosed	Admission to violations, pay stipulated monetary penalty of \$3,750, append Stip. to statements
18.	Nov. 19, 2015	Linda Maio for Council 2014	Linda Maio	Sara MacKusick	BMC 2.12.295, “failure to file late contribution report” (1)	Admission to violations, \$50 penalty, append Stip. to statements
19.	Nov. 19, 2015	Soto-Vigil for Council 2014	Alejandro Soto-Vigil	Alejandro Soto-Vigil	BMC 2.12.415 - receipt of contribution exceeding maximum permitted amount (1); 2.12.295 - failure to file late contribution reports (3)	Admission to violations, Monetary penalty of \$275, append Stip. to statements

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No.	Stipulation Date	Committee(s) Name	Candidate(s) Name	Treasurer(s) Name	BERA Violation(s)	Remedy in Stipulation
20.	Sep. 21, 2017	Ben Bartlett for Berkeley City Council 2016	Ben Bartlett	Linda Perry	BMC 2.12.415 – receipt of contribution exceeding maximum permitted amount (1) BMC 2.12.335, requirement to provide a “Major Funding Provided By” disclosure on campaign communication (\$10,000 loan based on check signed by spouse)	Admission to violations, Monetary penalty of \$50, append Stip. to statements
21.	August 16, 2018	Arreguin for Mayor 2016	Jesse Arreguin	Jacquelyn McCormick	BMC 2.12.415 - receipt of contribution exceeding maximum permitted amount (18); FPPC Reg 18526d - failure to disclose nonmonetary contributions (18)	Admission to violations, Pay monetary penalty of \$2,300, append Stip. to statements