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BEFORE THE CITY OF OAKLAND PUBLIC ETHICS COMMISSION
COMMISSIONER JAMES E. T. JACKSON

In the Matter of:

MICHAEL COLBRUNO, et al.,

Respondent.

Case No. 16-01

**FINIDNGS OF FACT AND
CONCLUSIONS**

Public Ethics Commissioner James E. T. Jackson heard this case on November 18, 2019 in Oakland, California. Kellie Johnson, Enforcement Chief, represented petitioner, the Public Ethics Commission (PEC) Enforcement Unit. Clinton Killian, attorney at law, represented respondent Michael Colbruno.

The record was left open for the parties to submit written supplemental closing briefs on alleged conflicts of four identified current and past PEC Commissioners as well as any other topic related to Case No. 16-01, not to exceed 15 pages. The record was closed, and the case submitted on November 25, 2019.

A. FINDINGS OF FACT

1. Petitioner is the Enforcement Unit of the City of Oakland PEC.
2. Respondent is the managing partner of the Milo Group, which is a government

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1 | affairs and public advocacy corporation. Respondent started the Milo Group in 2010 with his
2 | current business partner John Gooding. Prior to that, respondent worked for both state and local
3 | government as the legislative director and chief of staff in the San Francisco Mayor's office, the
4 | San Francisco Board of Supervisors, former Mayor Willie Brown, the California State Assembly
5 | and Clear Channel. In addition, respondent has also served as a Commissioner on the Chabot Joint
6 | Powers Authority Board, the Oakland Planning Commission, and the Oakland Board of Port
7 | Commissioners.

8 | 3. On January 12, 2016, the PEC received a complaint alleging that respondent failed
9 | to register as a lobbyist in Oakland in the years 2012 and 2014. PEC staff informed respondent
10 | about this complaint on March 28, 2016.

11 | 4. On April 7, 2016, PEC staff contacted the City Clerk and requested all lobbyist
12 | filings on file for respondent.

13 | 5. Respondent has filed Lobbyist Registration forms and Quarterly Reports consistently
14 | and correctly in 2010, 2011, 2013 and from 2016 to the present.

15 | 6. The City Clerk could not provide PEC staff with any Lobbyist Registration forms for
16 | the years 2013 and 2014. Nor could the City Clerk's Office provide any quarterly reports at all for
17 | the years 2012 and 2014. And the City Clerk's Office could not produce two out of four Lobbyist
18 | Quarterly Reports for the year 2015.

19 | 7. The City Clerk's original paper lobbyist registration filings were previously
20 | available for public inspection in an unsupervised area.

21 | 8. The City Clerk's Office provides contemporaneous copies of all lobbyist filings to
22 | the PEC which the PEC then posts on its website.

23 | 9. Prior to April 11, 2016, the PEC did not have any lobbyist registration forms for
24 | respondent for the years 2013 and 2014 nor any quarterly lobbyist reports for respondent for the
25 | years 2012 and 2014 or the first half of 2015.

26 | 10. On April 11, 2016, respondent completed the following filings:

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- 1 (a) 2012 Lobbyist 1st Quarterly Report;
- 2 (b) 2012 Lobbyist 2nd Quarterly Report;
- 3 (c) 2012 Lobbyist 3rd Quarterly Report;
- 4 (d) 2012 Lobbyist 4th Quarterly Report;
- 5 (e) 2013 Lobbyist Registration Form;
- 6 (f) 2014 Schedule A – Statement of Lobbying Activities attachment to 2014 Quarterly
- 7 Lobbying Report;
- 8 (g) 2014 Schedule A – Statement of Lobbying Activities attachment to 2014 Quarterly
- 9 Lobbying Report;
- 10 (h) 2014 Lobbyist 1st Quarterly Report;
- 11 (i) 2014 Lobbyist Registration Form;
- 12 (j) 2014 Lobbyist 3rd Quarterly Report;
- 13 (k) 2014 Lobbyist 4th Quarterly Report;
- 14 (l) 2015 Lobbyist 1st Quarterly Report and Schedule A – Statement of Lobbying Activities
- 15 attachment; and
- 16 (m) 2015 Lobbyist 2nd Quarterly Report.

17 11. On April 27, 2016, PEC staff informed respondent that petitioner was opening an
18 investigation into this complaint.

19 12. Following its investigation, PEC staff noticed respondent's case as Item No. 7 on the
20 agenda for the monthly PEC meeting held on April 2, 2018.

21 13. On April 2, 2018 at its regular monthly meeting, PEC staff presented a staff report
22 on a proposed Stipulation, Decision and Order in respondent's case. Respondent was not present.
23 The PEC declined to adopt staff's recommendation to approve the Stipulation and directed staff to
24 continue negotiating for settlement with respondent while moving forward with the case.

25 14. On June 4, 2018 at its regular monthly meeting, PEC staff presented its Investigation
26 Summary and Probable Cause memorandum on respondent's case as Item No. 7 on its agenda.

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1 Respondent was present. The PEC found probable cause to set this matter for hearing before a
2 single Commissioner. The hearing date was eventually set for November 18, 2019.

3 **1. Petitioner's Evidence**

4 15. Petitioner submitted petitioner's Exhibit Nos. 1-22 and 35, listed in **Appendix A**,
5 attached to and incorporated into these Findings and Conclusions. Petitioner submitted a
6 supplemental closing brief on November 25, 2019 and additional exhibits which are listed as
7 Exhibit Nos. 23-34 and 36 in **Appendix A**.

8 16. Respondent is a seasoned lobbyist who has successfully completed and filed
9 Lobbyist Registration forms and Quarterly Reports consistently and correctly from 2010 to 2011,
10 2013 and from 2016 to the present.

11 17. On August 20, 2013, respondent completed and filed his Lobbyist 2nd Quarterly
12 report by noting that he did not perform any lobbying activity in the city of Oakland on behalf of
13 California Nurses Asso. for the period of Aril 1, 2013 through June 30, 2013.

14 18. On August 20, 2013, respondent completed and filed his Lobbyist 2nd Quarterly
15 report by noting that he did not perform any lobbying activity in the city of Oakland on behalf of
16 Gateway Bank for the period of Aril 1, 2013 through June 30, 2013.

17 19. On October 31, 2013, respondent completed and filed his Lobbyist 3rd Quarterly
18 report by checking the space marked, "Check here if you did not engage in any reportable lobbying
19 activity during the period of time covered by this report." Respondent did not attach any
20 documents disclosing lobbying activity from July 1, 2013 through September 31, 2013.

21 20. The PEC's Quarterly Lobbyist report forms evolved over the years to require more
22 information. In 2012-2014, the information that lobbyists were required to report included:

23 (a) Name and address of the client or employer of the lobbyist;

24 (b) Item(s) of governmental action on which the lobbyist worked for their client;

25 (c) Name of all officials, name and title of all board members or commissioners, and job
26 title and office or department of each city employee who were lobbied; and;

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1 (d) A brief narrative description of the position advocated on behalf of the client or
2 employer identified in (i), no more than three sentences.

3 21. In 2015, the PEC's Quarterly Lobbyist report forms required a total dollar amount
4 received or expected from the client on whose behalf the lobbyist performed for that quarter.

5 22. The Lobbyist Registration Act in Oakland requires individuals who operate as
6 lobbyists to file their individual information on behalf of whom they are lobbying, rather than who
7 their company or business as a whole are lobbying. The Act specifies that "lobbyist" means an
8 individual, and that "no person" may lobby in the city without first registering.

9 23. Respondent testified that he did some lobbying in 2012 but none in 2014 and the
10 first half of 2015. Both 2012 and 2014 were election years in Oakland. Respondent's filings show
11 that he did in fact engage in lobbying in 2012, 2014 and 2015.

12 24. In contrast to the correctly completed and filed forms submitted by respondent in the
13 years 2010, 2011, 2013 and 2016, respondent filled out his missing 2012, 2014 and 2015 forms as
14 follows:

15 (a) 2012 Quarterly Lobbying Reports: For the year 2012, respondent did not check the
16 space marked "Check here if you did not engage in any reportable lobbying activity during the
17 period of time covered by this report."

18 (b) 2014 Quarterly Lobbying Reports: For the year 2014, respondent reported lobbying
19 the following individuals on behalf of the following clients for the following reasons: (i) AMG
20 Development for development at 105th & San Leandro; (ii) Councilmembers Kalb, Schaaf, Kaplan,
21 McElhaney, and Kernighan on behalf of Recology for advocating against waste/recycling RFP; (iii)
22 Mayoral aide Ms. Campbell-Washington on behalf of Gateway Bank to encourage the city's
23 engagement in community banking and microlending; (iv) Blum for various issues related to
24 medical cannabis; and (iv) Councilmembers Kaplan, Kernighan, Mayor Quan, Ms. Campbell-
25 Washington, City Attorney Parker, Alex Katz, and Arturo Sanchez on behalf of Harborside Health
26 Center for various issues related to medical cannabis and federal forfeiture. Also within these 2014

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1 Quarterly filings, for one Quarterly Report, respondent responded “N/A” for topic of governmental
2 lobbying and persons met with for clients California Nurses Association and Gateway Bank.

3 “N/A” means not applicable.

4 (c) 2015 1st and 2nd Quarterly Lobbying Reports: For the year 2015, respondent
5 reported lobbying the following individuals on behalf of the following clients for the following
6 reasons in receipt of the following compensation:¹ (i) Planning Dept. employees Rachel Flynn and
7 Robert Merkamp, Scott Miller and Pete Vollman, Mayor Schaaf and City Attorney Parker on behalf
8 of AMG Development for management, monitoring and development at 104th & San Leandro,
9 receiving a combined \$47,500; (ii) Mayor’s Office, Councilmembers Gallo, Kaplan, Kalb and
10 McElhaney, City Administrator’s Office employee Mr. Minor on behalf of Blum for various issues
11 related to medical cannabis including dispensaries and cultivation, receiving a combined \$70,000;
12 (iii) Mayor Schaaf and City Council on behalf of Harborside Health Center for reasonable cannabis
13 policy business regulations and forfeiture action, receiving a combined \$70,000; (iv) Mayor’s
14 Office, City Administrator’s Office, City Attorney’s Office and Councilmembers Kaplan, Kalb,
15 Guillen, McElhaney, Washington, Gallo, Brooks and Reid on behalf of AirBnB for general policy
16 discussion regarding shared rentals and reasonable regulation of short term rentals receiving a
17 combined \$62,500; (v) Mayor’s Office, City Administrator’s Office on behalf of Recurrent Energy
18 for site search for battery storage for solar energy, receiving \$19,500; (vi) Planning Dept.
19 employees Rachel Flynn and Robert Merkamp and City Attorney Parker on behalf of Signature
20 Development for various issues regarding Brooklyn Basement development, receiving \$19,500;
21 (vii) Mayor Schaaf and City Attorney Parker on behalf of Signature Development Group for land
22 use/development of Brooklyn Basin project receiving \$40,000; and (viii) City Council, City
23 Attorney Parker, Mayor’s Office Matt Nichols, Transportation Director on behalf of Volta for
24 general discussion regarding charging stations and EV parking, receiving a combined \$47,500.

25
26 ¹ By 2015, the PEC’s Quarterly Lobbyist report forms required a total dollar amount received or expected from the client on whose behalf the lobbyist performed for that quarter.

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1 25. Respondent knew or should have known that under the Lobbyist Registration Act, he
2 was responsible for filing information with the city regarding who his clients were, the issues he
3 was lobbying on, and which government officials he met with. Respondent's claims that he was
4 confused, and that the PEC staff directed him how to fill out the forms for these years are specious
5 because of all the times that respondent correctly filled out this paperwork. This includes those
6 months when respondent correctly checked the box indicating under penalty of perjury that he
7 personally performed no lobbying activities for six months of 2013. Moreover, PEC staff did not
8 have access to respondent's clients, topics of lobbying or government officials with whom
9 respondent may have met; this information came from respondent.

10 **2. Respondent's Testimony and Evidence**

11 26. Respondent submitted respondent's Exhibit Nos. 101-107, listed in **Appendix A**,
12 attached to and incorporated into these Findings and Conclusions. Respondent submitted his
13 supplemental closing brief on November 25, 2019, listed as Exhibit No. 108 in **Appendix A**.

14 27. Respondent opened the Milo Group in 2010 with John Gooding. The Milo Group is
15 a government affairs and public advocacy firm. Respondent comes from an extensive good
16 government background and his partner has drafted and conducted ethics trainings for government.
17 Respondent's family takes their ethical obligations very seriously.

18 28. Respondent hand filed paper lobbyist registration forms and reports from 2010
19 through 2012 in Oakland. After that, respondent relied on a program called PDF Filer to file his
20 lobbyist registration forms and reports. In his experience, some of these electronic filings end up in
21 junk mail or are rejected due to size. Respondent never received "Receipt Requested" notifications
22 or any receipt acknowledgements after making these electronic filings.

23 29. Respondent believed that he filed the 12 missing forms and reports but did not keep
24 any copies of any of these filings. Respondent was unable to produce any evidence tending to show
25 that he made any of these 12 filings at the time each was due.

26 30. After PEC staff contacted respondent about these missing 12 forms and reports, and

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1 after respondent was unable to locate copies of these filings, respondent promptly filed all 12
2 missing forms and reports on April 11, 2016. These included four 2012 Quarterly Lobbying
3 reports, two Lobbyist Registration forms for 2013 and 2014, four 2014 Quarterly Lobbying reports
4 and two 2015 Quarterly Lobbying reports.

5 31. Respondent did not undertake any lobbying activity in 2014 and 2015 and only some
6 in 2012, despite his filings for these years noting lobbying on behalf of numerous clients. Rather,
7 respondent's business partner John Gooding did lobby in Oakland during these years, and the
8 information that appears on respondent's filings accurately reflects the lobbying activities of Mr.
9 Gooding. Respondent filled out these forms in this manner at the direction of PEC staff. This
10 includes backdating the forms, even though all of them were filed on the same date of April 11,
11 2016. Respondent did not understand the registration requirements for years when he did not
12 undertake any lobbying efforts.

13 **3. Other Matters**

14 32. The parties submitted additional briefing on November 25, 2019.

15 33. In his briefing, respondent raised conflict allegations against four separate PEC
16 Commissioners.

17 34. Petitioner responded that no actual legal conflicts had been alleged and that none
18 exist.

19 35. Respondent's conflicts claims are addressed in **Appendix B**, attached to these
20 Findings and Conclusions, and incorporated in full here.

21 **B. CONCLUSIONS OF LAW**

22 1. The authority to bring this action derives from the city of Oakland's Charter,
23 including sections 603(b) and (f). City of Oakland Municipal Code (OMC) Chapter 3.20 contains
24 the city's Lobbyist Registration Act (LRA). The LRA was first adopted in 2002 and has been
25 amended in 2007 and 2018. Ordinances 12431, 12782 and 13469. The PEC shall not commence
26 an administrative action alleging a violation of the LRA more than four years after the date of the

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1 | alleged violation. OMC 3.20.200(A). If the PEC finds a violation of the LRA, it may:

2 | (a) find mitigating circumstances and take no further action;

3 | (b) issue a public statement or reprimand; or

4 | (c) impose an administrative penalty of up to one thousand dollars for each violation. OMC
5 | 3.20.200(B).

6 | 2. The standard of proof applied to this hearing is the preponderance of evidence. Cal.
7 | Evid. Code section 115. The burden of proof is on the petitioner. Cal. Evid. Code section 500.

8 | 3. The parties have stipulated that respondent did not timely file the following
9 | documents:

10 | (a) **Four** quarterly reports for 2012

11 | (b) **One** Lobbyist Registration form for 2013;

12 | (c) **One** Lobbyist Registration form for 2014;

13 | (d) **Four** quarterly reports for 2014; and

14 | (e) **Two** quarterly reports for 2015.

15 | 4. The LRA defines “lobbyist” as, “any individual who: (1) receives or is entitled to
16 | receive one thousand dollars (\$1,000.00) or more in economic consideration in a calendar month,
17 | other than reimbursement for reasonable travel expenses, to communicate directly or through agents
18 | with any public official, officer, or designated employee, for the purpose of influencing any
19 | proposed or pending governmental action of the City; or (2) whose duties as a salaried employee,
20 | officer, or director, of any corporation, organization or association, include communication directly
21 | or through agents with any public official, officer, or designated employee, for the purpose of
22 | influencing any proposed or pending governmental action of the City.” OMC 3.20.030(D). In the
23 | case of any ambiguity, the definition of “lobbyist” shall be interpreted broadly. *Ibid.*

24 | 5. The LRA requires all individual lobbyists who wish to lobby Oakland officials to
25 | register with the PEC annually in January of each year. OMC 3.20.040(A-C). Registration means
26 | filing in writing the lobbyist’s name and their business and residence addresses. *Ibid.* The LRA

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1 further requires all lobbyists who have terminated their lobbying activities in Oakland to notify the
2 PEC. OMC 3.20.050. This termination notification requirement has existed in the LRA since
3 2002. Ordinance No. 12431.

4 6. The LRA further requires lobbyists to file four reports annually on all lobbying
5 activity within the city. OMC 3.20.110. These reports shall be due no later than 30 days after the
6 end of the calendar quarter. *Ibid.*

7 7. Ignorance of the law is not an excuse for noncompliance. Black's Law Dictionary,
8 8th ed. (West Group, 2004) pg. 2181.

9 8. The PEC has adopted Enforcement Penalty Guidelines (Guidelines) that govern this
10 proceeding. These Guidelines provide for consideration of all relevant factors in mitigation and
11 aggravation. The factors to be considered include: (1) the seriousness of the violation; (2) the
12 presence or absence of any intent to conceal, deceive or mislead; (3) whether the violation was
13 deliberate, negligent or inadvertent; (4) whether the violation was isolated or part of a pattern, and
14 whether there is a prior record of violations; (5) whether amendments were voluntarily filed to
15 provide full disclosure upon learning of the reporting violation; and (6) the degree of cooperation
16 with the PEC's investigation, and the demonstrated willingness to remedy any violation.

17 9. The PEC has broad discretion in evaluating a violation and determining the
18 appropriate penalty based on the totality of circumstances. The list of aggravating and mitigating
19 factors in the Guidelines is not an exhaustive list, but rather a sampling of factors that could be
20 considered. Guidelines, pg. 2. The Guidelines contain two separate administrative penalty
21 schemes: Streamline and Mainline. *Id.* at pp. 3-4. The Streamline Penalties are reserved for those
22 cases that settle. *Ibid.* The Mainline Penalties are reserved for cases involving more serious
23 violations and violations that do not qualify for the Streamline penalties. *Id.* at pg. 4. The
24 Streamline Penalties do not apply here.

25 10. The Guidelines' Mainstream Penalties provide a base level per violation sum of
26 \$750.00 and a statutory limit per violation sum of \$1000.00. Guidelines, pg. 5.

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1 11. In mitigation, the evidence does not show any intention to conceal, or a deliberate
2 violation of law by respondent. Respondent quickly took steps to search his records for proof of
3 completed filings for the 12 filings at issue, and then when he could find none, he expeditiously
4 completed and filed the missing forms and reports.

5 12. In aggravation, respondent is a seasoned lobbyist with over a decade of lobbying
6 experience in Oakland and other jurisdictions. Respondent has filed Lobbyist Registration forms
7 and Quarterly Reports consistently and correctly from 2010 to 2011, 2013 and from 2016 to the
8 present:

9 (a) On August 20, 2013, respondent completed and filed his Lobbyist 2nd Quarterly report
10 by noting that he did not perform any lobbying activity in the city of Oakland on behalf
11 of California Nurses Asso. for the period of April 1, 2013 through June 30, 2013.

12 (b) On August 20, 2013, respondent completed and filed his Lobbyist 2nd Quarterly report
13 by noting that he did not perform any lobbying activity in the city of Oakland on behalf
14 of Gateway Bank for the period of April 1, 2013 through June 30, 2013.

15 (c) On October 31, 2013, respondent filled out his Lobbyist 3rd Quarterly report by
16 checking the space marked, "Check here if you did not engage in any reportable
17 lobbying activity during the period of time covered by this report." Respondent did not
18 attach any documents disclosing lobbying activity from July 1, 2013 through September
19 31, 2013.

20 13. The evidence presented during the hearing and submitted in the parties' additional
21 briefing shows respondent did in fact undertake lobbying activities in 2012, 2014 and 2015. Exhs.
22 2, 3, 4, 5, 7, 12, 13, 14, 15, 16, 18, 19, 20. His filings show he lobbied Oakland officials on behalf
23 of AMG Development, Harborside Health Center, Recology, Blum, AirBnB, Signature
24 Development, VOLTA and Recurrent Energy during the years when he failed to complete required
25 lobbyist registration forms and quarterly reports. Likewise, the evidence shows that respondent
26 comes from a strong public government background and successfully completed filings in 2010,

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1 2011 and 2013. In 2013, respondent clearly indicated that he did not personally perform any
2 lobbying activities for two of his clients in his 2013 Lobbyist 2nd Quarterly report. Exhs. 9, 10.
3 Moreover, respondent indicated that he personally performed no lobbying activities for any of his
4 clients at all in his 2013 Lobbyist 3rd Quarterly report. Exh. 11. Respondent failed to keep records
5 of any of his filings, despite the LRA requiring all lobbyists do so for a period of at least five years.
6 OMC 3.20.100. Respondent has demonstrated his knowledge of the LRA's requirements and his
7 responsibilities there under. The evidence does not support respondent's claims that he was
8 confused about what needed to be included in the city of Oakland's Lobbyist Registration forms.
9 Nor does it support respondent's contention that he deferred to PEC staff as to what needed to be
10 filled out in the form.

11 14. Respondent offered conflicting testimony regarding his filing and lobbying activities
12 for the years 2012, 2013, 2014 and 2015. Respondent testified that he likely filed all forms and
13 reports over the four year period but that the files may have been either stolen from the City Clerk's
14 Officer, were too large for the City's system to handle, or may have ended up in junk or spam mail
15 boxes. Respondent could not produce copies of any of the missing 12 filings. He further testified
16 that he did little to no lobbying activity in 2012, 2014 and the beginning of 2015, but his filings
17 show that he lobbied numerous officials and employees on behalf of high profile or lucrative clients
18 such as Harborside Health Center, Recology, AirBnB and Blum.

19 15. Petitioner argues that this case warrants the imposition of substantial civil penalties
20 considering the seriousness of the violations and the aggravating factors. Respondent's failure to
21 file his forms and reports are significant violations under the LRA. The LRA requires openness and
22 transparency about who is influencing whom, and to whose benefit. Currently, the only way for
23 members of the public to obtain this information is to look through the city's LRA filings.
24 Respondent deprived the public of this information over a four year period, with two of those years
25 being election years. During the hearing, respondent admitted that the information currently
26 contained within his April 11, 2016 filings are to this day inaccurate. Petitioner requests that

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1 respondent be fined \$12,000.00, which is based on the Guidelines' statutory ceiling of \$1,000 per
2 violation. Respondent has served in or around government for the past three decades. Respondent
3 is an experienced lobbyist who has successfully and correctly filed his lobbyist Registration forms
4 and Quarterly reports in 2010, 2011, 2013 and from 2016 to the present. This includes checking the
5 appropriate space when he did not engage in any lobbying activities. Petitioner pointed out that
6 while respondent's clients Blum and Harborside Health were able to obtain cannabis permits,
7 numerous other individuals and entities who have attempted to secure such permits have not been
8 able to do so, including many people of color.

9 16. Respondent argues that he should not be penalized with the imposition of any civil
10 penalties that are cumulatively \$2,500.00 or higher. Respondent comes from an extensive good
11 government background and his partner has drafted and conducted ethics trainings for government.
12 Respondent's family takes their ethical obligations very seriously. Fault may lie with the city for
13 not having an electronic filing system as to why the 12 filings are missing. Alternatively, some of
14 the larger filings may have ended up in a junk mail folder. Moreover PEC staff shares in
15 responsibility for its direction in how to fill out the 12 missing forms and reports that were
16 backdated and contain inaccurate information.

17 1. Analysis

18 17. **Counts One through Four and Seven through 12: Failing to Timely File** 19 **Quarterly Lobbyist Reports for 2012, 2014 and the first half of 2015.**

20 (a) The LRA defines "lobbyist" as an individual, not a corporation. OMC 3.20.030(D).
21 The LRA requires individual lobbyists who operate within the city to report their unique and
22 personal lobbying activities to the city. OMC 3.20.110. The LRA has done so since September
23 2002. Ordinance 12431. The LRA requires lobbyists to file quarterly reports for every year they
24 lobby within the city of Oakland. OMC 3.20.110. These filings must be made within 30 days after
25 the end of the particular calendar quarter being reported on. *Ibid.* The LRA further requires
26 lobbyists to either check a space if they have performed no lobbying or to fill out an attachment

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1 containing the following information if they did lobby:

2 (i) Name and address of the client or employer on whose behalf the lobbying was
3 done;

4 (ii) Item of governmental action on which the lobbyist performed the work;

5 (iii) Name of all officials, name and title of all board members or commissioners,
6 and job title and office or department of each city employee who were lobbied; and

7 (iv) A brief narrative description of the position advocated on behalf of the client or
8 employer identified in (i), no more than three sentences.²

9 (b) Respondent did not timely file any 2012 or 2014 Lobbyist Quarterly reports and did
10 not file the first two 2015 Lobbyist Quarterly reports.

11 (c) The evidence shows that respondent comes from a strong public government
12 background and successfully completed filings in 2010, 2011 and 2013. The evidence also shows
13 that respondent did in fact engage in lobbying in 2012, 2014 and 2015. Exhs. 2, 3, 4, 5, 12, 13, 14,
14 15, 16, 18, 19, 20. Moreover, respondent was familiar with how to report no lobbying activity
15 under the LRA. In 2013, respondent clearly indicated that he did not personally perform any
16 lobbying activities for two of his clients in his 2013 Lobbyist 2nd Quarterly report. Exhs. 9, 10.
17 And respondent indicated that he personally performed no lobbying activities for any of his clients
18 at all in his 2013 Lobbyist 3rd Quarterly report. Exh. 11. Respondent has competently
19 demonstrated his knowledge of the LRA's requirements and his responsibilities there under. The
20 evidence does not support respondent's claims that he was confused about what needed to be
21 included in the city of Oakland's Lobbyist Quarterly reports. Nor does it support respondent's
22 contention that he deferred to PEC staff as to what needed to be filled out in the form. The burden
23 on filing timely and accurate information falls on the respondent. The LRA requires individuals to
24

25 ² OMC 3.20.110(A-C). The LRA makes further information demands on lobbyists if they or their
26 client/employer hires certain city employees, if any elected officials employ the lobbyists for non-city
purposes, or if the lobbyists act as an agent or go-between in providing campaign contributions to any city
official. None of these categories are relevant here. OMC 3.20.110(D-F).

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1 file information regarding their individual lobbying efforts. This information must be submitted
2 under penalty of perjury and lobbyists must keep records of all filings going back five years.

3 18. **Counts Five and Six: Failing to Timely File a Lobbyist Registration Form for**
4 **2013 and 2014.**

5 (a) The LRA defines “lobbyist” as an individual, not a corporation. OMC 3.20.030(D).
6 The LRA requires individual lobbyists to register annually with the PEC before they personally
7 undertake lobbying within the City. OMC 3.20.040 (A-C). These annual filings must occur during
8 the month of January. OMC 3.20.040(C).

9 (b) Respondent did not timely register as a lobbyist for the years 2013 and 2014.

10 (c) The evidence shows that respondent did in fact undertake lobbying activities in
11 2013. Exhs. 8, 9. Likewise, the evidence shows that respondent performed lobbying activities in
12 2014 as well. Exhs. 12, 13, 14, 15, 16. The evidence shows that respondent comes from a strong
13 public government background and successfully completed filings in 2010, 2011 and 2013. In
14 2013, respondent clearly indicated that he personally lobbied for two of his clients in his 2013
15 Lobbyist 2nd Quarterly report. Exhs. 6, 8, 9. And respondent indicated that he personally
16 performed no lobbying activities for any of his clients at all in his 2013 Lobbyist 3rd Quarterly
17 report. Exh. 11. Respondent has demonstrated his knowledge of the LRA’s requirements and his
18 responsibilities there under. The evidence does not support respondent’s claims that he was
19 confused about what needed to be included in the city of Oakland’s Lobbyist Registration forms.
20 Nor does it support respondent’s contention that he deferred to PEC staff as to what needed to be
21 filled out in the form.

22 19. The violations in this case are serious and go to the ethical integrity of individuals
23 who are paid to sway official’s opinions and help push policies and legislation that favor their
24 clients. The city of Oakland has a strong and important interest in requiring lobbyists to provide the
25 information that the LRA mandates. Respondent’s assertions that the city’s filing system is to
26 blame are not well taken. The LRA places the record-keeping burden on lobbyists. OMC 3.20.100.

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1 This section requires lobbyists to keep records of their filings for a period of not less than five
2 years. *Ibid.* Therefore, on April 11, 2016, respondent was mandated by law to have copies of all
3 12 filings, “necessary to substantiate the registration and disclosure required to be made under this
4 Act.” *Ibid.* Respondent did not comply with this portion of the LRA either.³ Further, only
5 respondent is responsible for the content of the filings; the burden again is on the individual
6 lobbyist making the representations in their filings. OMC 3.20.030(D), 3.20.040(A-C), 3.20.050,
7 3.20.110(A-F). PEC staff does not know what activity a lobbyist has undertaken in a given year;
8 rather they rely upon the lobbyists to provide truthful, accurate information. In fact, all Lobbyist
9 Quarterly reports, going back to the relevant time frame of 2012, demand that individual lobbyists
10 filling out these reports attest under penalty of perjury that the provided information is true and
11 correct. PEC staff has no way of knowing whether the information lobbyists provide is truthful;
12 again, that burden falls on the individual lobbyist.

13 C. ORDER

14 Based on all the foregoing, it is recommended that respondent Michael Colbruno be ordered
15 to pay a total administrative penalty of **\$5,250.00**⁴ for the 12 violations of the City of Oakland
16 Lobbyist Registration Act.

17 Dated: December __, 2019
18

19
20 By: _____
Commissioner James E. T. Jackson

21
22
23
24 _____
25 ³ Petitioner addressed these added potential violations in their case but emphasized that no causes of
26 action were brought on these grounds. Therefore, this Order does not consider Respondent’s failure to keep
records as a separate charge.

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APPENDIX A – EXHIBIT LIST

Exhibit No. and Description	Offered by:	Submitted without objection:
1. Investigation Summary/Probation Cause Memorandum	Petitioner	Yes
2. 2012 Lobbyist 1 st Quarterly Report filed April 11, 2016	Petitioner	Yes
3. 2012 Lobbyist 2 nd Quarterly Report filed April 11, 2016	Petitioner	Yes
4. 2012 Lobbyist 3 rd Quarterly Report filed April 11, 2016	Petitioner	Yes
5. 2012 Lobbyist 4 th Quarterly Report filed April 11, 2016	Petitioner	Yes
6. 2013 Lobbyist 4 th Quarterly Report and Schedule A attachment on Statement of Lobbying Activities filed January 29, 2014 ¹	Petitioner	Yes
7. 2013 Lobbyist Registration form filed April 11, 2016	Petitioner	Yes
8. 2013 Lobbyist 1 st Quarterly Report and Schedule A attachment on Statement of Lobbying Activities filed April 25, 2013	Petitioner	Yes
9. 2013 Lobbyist 2 nd Quarterly Report and Schedule A attachment on Statement of Lobbying Activities filed August 20, 2013	Petitioner	Yes
10. 2013 Schedule A attachment on Statement of Lobbying Activities filed August 20, 2013 disclosing	Petitioner	Yes

¹ Exh. No. 6 appears to be mislabeled in petitioner's Exhibit Binder Table of Contents as "2014 Lobbyist 1st Quarterly Report / And Lobbyist Disclosure Form filed January 29, 2014"

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lobbying activity for 2 nd Quarter of 2013		
11. 2013 Lobbyist 3 rd Quarterly Report filed October 31, 2013	Petitioner	Yes
12. 2014 Schedule A attachment of Statement of Lobbying Activities for 2014 Lobbyist Quarterly report filed April 11, 2016	Petitioner	Yes
13. 2014 Schedule A attachment of Statement of Lobbying Activities for 2014 Quarterly Report filed April 11, 2016	Petitioner	Yes
14. 2014 Lobbyist 1 st Quarterly Report and Lobbyist Registration form filed April 11, 2016	Petitioner	Yes
15. 2014 Lobbyist 3 rd Quarterly Report filed April 11, 2016 ²	Petitioner	Yes
16. 2014 Lobbyist 4 th Quarterly Report filed April 11, 2016 ³	Petitioner	Yes
17. 2015 Lobbyist 4 th Quarterly Report and Lobbyist Disclosure form filed January 27, 2016	Petitioner	Yes
18. 2015 Lobbyist 1 st Quarterly Report and Schedule A attachment on Statement of Lobbying Activities filed April 11, 2016	Petitioner	Yes
19. 2015 Lobbyist Registration form filed April 8, 2015	Petitioner	Yes
20. 2015 Lobbyist 2 nd Quarterly Report and Schedule A attachment on Statement of Lobbying Activities filed April 11, 2016	Petitioner	Yes

² Exh. No. 15 mistakenly shows it to be a “2014 Lobbyist 1st Quarterly Report,” however the parties agree that the handwritten time period on this form shows it to be the respondent’s 2014 Lobbyist 3rd Quarterly report.

³ Exh. No. 16 mistakenly shows it to be a “2014 Lobbyist 3rd Quarterly Report,” however the parties agree that the handwritten time period on this form shows it to be the respondent’s 2014 Lobbyist 4th Quarterly report.

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21. 2015 Lobbyist 3 rd Quarterly Report and Disclosure form filed October 7, 2015	Petitioner	Yes
22. Oakland Municipal Code Lobbyist Registration Act, Chapter 3.20	Petitioner	Yes
23. Letter from Nicole Drake Lau 6-19-18	Petitioner	Yes
24. Letter from Michael Colbruno	Petitioner	Yes
25. Email from Respondent's Staff Re PRR	Petitioner	Yes
26. Email from Respondent's Staff Re PRR additions	Petitioner	Yes
27. Email from Respondent's Staff Re PRR third	Petitioner	Yes
28. Email from Respondent Re PRR Videos of PEC meetings	Petitioner	Yes
29. Email from Respondent Re PRR Video and Conflict of Interest	Petitioner	Yes
30. Email Responding to Respondent on Conflict of Interest	Petitioner	Yes
31. Email from PEC Staff to Respondent Re PRR Video Links	Petitioner	Yes
32. Email Re Staff Response to the Respondent's request for City Attorney Memo on Conflicts	Petitioner	Yes
33. Email from PEC Staff to Respondent with Video links	Petitioner	Yes
34. PEC Staff response to Respondent regarding PRR Conflict of Interest	Petitioner	Yes
35. Wiley Rein News Alert – "Heavy Penalties Assessed against Unregistered Lobbyist in Chicago" Laham, Carol and Brooks, Louisa dated March 2017	Petitioner	Yes
36. Petitioner's supplemental closing brief	Petitioner	Yes

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101. Staff Report on Proposed Stipulation in Case No. 16-01 In the Matter of Michael Colbruno dated March 23, 2018	Respondent	Yes
102. Stipulation, Decision and Order in Case No. 16-01 In the Matter of Michael Colbruno	Respondent	Yes
103. What Port Commissioner Must Know About State and Port Conflict of Interest Rules – Recusals and Prohibited Transactions, undated	Respondent	Yes
104. Email communications (1) from Exec. Dir. Whitney Barazoto to attorney Clinton Killian and Enforc. Dir. Kellie Johnson dated November 15, 2019 and (2) from attorney Clinton Killian to Exec. Dir. Whitney Barazoto dated November 15, 2019	Respondent	Yes
105. Letter from Respondent Michael Colbruno to the PEC Commissioners dated May 22, 2018	Respondent	Yes
106. Video recording of April 2, 2018 PEC meeting	Respondent	Yes
107. Video recording of June __, 2018 PEC meeting	Respondent	Yes
108. Respondent's supplemental closing brief	Respondent	Yes

APPENDIX B – CONFLICT CLAIMS AGAINST COMMISSIONERS SMITH, CROWFOOT, NISHIOKA AND TUMAN

1. Commissioner Jodie Smith

The Milo Group is a California corporation that was incorporated in 2010, with three officers: CEO John Gooding, Secretary Alistair McElwee and CFO Michael Colbruno (respondent). The Milo Group currently is comprised of: respondent (Partner), John Gooding (Partner), Nara Dahlbacka (VP), Alistair McElwee (Operations) and Nicole Drake (Operations Manager).

Respondent¹ has a current case pending before the Public Ethics Commission (PEC) related to his failure to register and file quarterly lobbyist forms and reports under the City's Lobbyist Registration Act (LRA) over the course of four years, with two of these years being election years.

Respondent² alleges that Commissioner Jodie Smith is conflicted out of participating in anything having to do with respondent's case for the following three reasons:

1. Emblidge, Moscone & Otis ("EMO"; Ms. Smith's employer) and the Milo Group "jointly represented" RescueAir Systems before the SF Board of Supervisors; and
2. Attorney Scott Emblidge represented Ms. Nicole Drake when she was a member of Berkeley's Rent Stabilization Board; and
3. Attorney Emblidge procured a restraining order against a citizen who was harassing SF Supervisor Carole Migden. Respondent was Ms. Migden's staff member.

Respondent fails to include any identifying information which would assist in analyzing whether Commissioner Smith had or has an impermissible financial conflict of interest, such as: identifying a qualifying financial interest, dates of employment for Commissioner Smith, or dates when any of the incidents described took place.

¹ Respondent claims that he, "immediately raise[d] ethical conflicts with commissioners Jodi Smith, Lisa Crowfoot, and Christina [sic] Nishioka," in the beginning of 2016. Exh. 107, Appendix A. The evidence shows, however, that respondent did not raise any conflict complaints about Commissioner Smith until Operations Manager Nicole Drake's June, 19, 2018 letter – well after the two PEC meetings at issue in respondent's case. Further, this letter addressed only alleged conflicts of Commissioner Smith. These allegations are the same as those addressed in this Appendix B.

² Respondent made further allegations that Commissioner Smith said, "I don't care that much about that," in response to PEC staff pointing to the fact that respondent took full responsibility and immediately complied with staff's request to file the missing forms and reports during the PEC's April 2, 2018 meeting, however a review of the video of Case 16-01 during this meeting does not show Commissioner Smith making this comment. Links to the PEC's April 2, 2018 and June 4, 2018 meetings were included among respondent's evidence. See Appendix A, Exh. Nos. 106 and 107.

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Commissioner Smith provided PEC staff with the following facts:

1. EMO performed work for RescueAir, Inc. and its President, Anthony Turiello between July 24, 2013 and Sept. 15, 2013, comprising approximately 13.5 hours. This work had nothing to do with the Milo Group, which may well have been lobbying for RescueAir; and
2. EMO attorney Emblige performed less than two hours of billable work for Rent Board Commissioner Nicole Drake regarding a problem she had with public employers in Berkeley between November 2011 and March 2012; and
3. As an in house San Francisco Deputy City Attorney, Attorney Emblige obtained a restraining order on behalf of Supervisor Migden in the early 1990s. It is possible that this order extended to respondent, who was Ms. Migden's aid at the time. This work pre-existed the EMO firm and Mr. Emblige was paid for this work by his employer at the time, the City and County of San Francisco; and
4. Ms. Smith began her employment with EMO in January of 2015. She became a Commissioner with the PEC on June 22, 2017, and her term expires on January 21, 2020.

A. Conflict of Interest Laws:

The California Political Reform Act ("PRA") prohibits a public official (including a member of a City board or commission) from participating in any government decision that will have a reasonably foreseeable material financial effect on any of the official's economic interests.

California Government Code Section 1090 ("Section 1090") prohibits a board or commission member from having a financial interest in any government contract "made" by their board or commission.

These conflict of interest laws apply to board members on boards charged with making recommendations to the City Council about grants or contracts to/with agencies, organizations or individuals.

The City's Government Ethics Act ("GEA") incorporates both the PRA and Section 1090 by reference into local law.

When recusal is required, the member must refrain from voting on funding or other action items that could have a foreseeable financial effect, or discussing the items formally, whether at the committee meetings, or informally with other committee members at or outside the meeting. (Note that in order to allow the member to vote on other funding items, the PRA allows the committee to bifurcate funding decisions so that the decision to fund this organization could be taken first, with the interested member recusing himself/herself, followed by the decision or decisions to fund the remaining agencies, allowing the participation of the member in the follow up decision(s).)

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The conflicts alleged in this case arise under two separate laws: Gov. Code 1090 and OMC section 2.25.040(A) (based on Gov. Code 87100 *et seq.*). Government Code section 1090 prohibits city officers from being financially interested in any contract made by them in their official capacity. OMC section 2.25.040(A) prohibits all “Public Servants” from making, participating in making or seeking to influence a decision of the City in which the Public Servant has a financial interest within the meaning of the Political Reform Act. “Public Servant” includes commission and board members. OMC section 2.25.030(D)(2). “Financial interest” means a business entity in which the public servant has an investment of \$2,000 or more in which she is a director, officer, partner, trustee, employee or manager. Additionally, “financial interest” can mean income aggregating to \$500 or more in the previous 12 months, including community property.

Commissioner Smith began her employment with EMO in January of 2015. All of the incidents upon which the alleged conflict of interest claim is based, occurred long before her employment with EMO as well as her term as a PEC Commissioner. Based on these facts, there was no conflict for Ms. Smith to disclose, because she was not employed by EMO when the firm represented RescueAir in 2013, nor when EMO represented Ms. Drake in 2011 and 2012. She could not have conceivably benefitted from any of these financial transactions. And EMO did not exist when Mr. Emblige represented Supervisor Migden in the 1990’s.

Moreover, even if Commissioner Smith had been employed by EMO at the time of its RescueAir engagement, she would not have a financial conflict of interest regarding voting on ethics matters related to the Milo Group because she was not receiving any income from the Milo Group. Although it is unclear whether Ms. Drake was employed by the Milo Group in 2011/12, Commissioner Smith was not employed by either EMO or the Milo Group and therefore, there is no conflict.

B. Conclusion

Based on the foregoing analysis, Commissioner Smith does not have a conflict of interest that prohibits her from participating in the case involving respondent’s alleged failure to register and file periodic lobbyist reports under the LRA.

2. Commissioner Lisa Crowfoot

Respondent³ makes the following allegations against former Commissioner Crowfoot: Respondent had a, “professional relationship with Ms. Crowfoot’s husband in his various roles at the San Francisco Board of Supervisors, San Francisco Mayor’s Office and California Governor’s Office.” Exh. No. 107, Appendix A. Respondent fails to identify any specific financial interest at stake, including the amount at issue. Nor are there any dates attached to when and for how long this “professional relationship” existed. Respondent mis-cites state Fair

³ Respondent claims that he, “immediately raise[d] ethical conflicts with commissioners Jodi Smith, Lisa Crowfoot, and Christina [sic] Nishioka,” in the beginning of 2016. Exh. 107, Appendix A. The evidence shows, however, that respondent did not raise any conflict complaints about Commissioner Crowfoot until the hearing in this matter on November 18, 2019.

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Political Practices Commission (FPPC) Regulation 18707 for the proposition that board and commission members, “cannot participate in a hearing if there is an ‘*appearance of possible improprieties*,’” however this is not what FPPC Regulation 18707 states. Rather, this quote comes from the FPPC’s August 2015-January 2016 Conflicts of Interest Guide and states as follows:

Under the [PRA], a public official will have a statutory conflict of interest with regard to a particular government decision **if it is foreseeable that the outcome of the decision will have a financial impact on the official’s personal finances or other financial interests. In such cases**, there is a risk of biased decision-making that could sacrifice the public’s interest in favor of the official’s private financial interest. In fact, preventing conflicts of interest was of such vital importance to the voters that the [PRA] not only prohibits actual bias in decision making but also **seeks to forestall . . . the appearance of possible improprieties.**⁴

Support for this contention comes from the case *Witt v. Morrow*, where the court of appeal held that the whole purpose of the PRA, “is to preclude a government official from participating in decisions where it appears he may not be totally objective ***because the outcome will likely benefit a corporation or individual by whom he is also employed.***”⁵ But for conflicts laws to apply, there has to be a financial interest at issue that can be analyzed. As explained above, respondent has not provided any information with which a meaningful analysis could be undertaken. Respondent has failed to identify any financial interest whatsoever. The scant allegations, without more, do not rise to the level of a conflict of interest.

3. Commissioner Krisida Nishioka

Respondent⁶ alleged that former Commissioner Nishioka’s husband had a political relationship with respondent.

This issue is moot, however, as former Commissioner Nishioka recused herself, not on the basis of any conflict of interest, but to avoid any appearance of bias.

4. Commissioner Joseph Tuman

Respondent makes the following allegations against Commissioner Joseph Tuman: Commissioner Tuman ran for Mayor of Oakland in 2014, while respondent was assisting then-incumbent Mayor Jean Quan with her re-election campaign.

A. Conflict of Interest Laws:

⁴ *Witt v. Morrow*, 70 Cal.App.3d 817 at 822-823 (1977).

⁵ *Ibid.*

⁶ Respondent claims that he, “immediately raise[d] ethical conflicts with commissioners Jodi Smith, Lisa Crowfoot, and Christina [sic] Nishioka,” in the beginning of 2016. Exh. 107, Appendix A. The evidence shows, however, that respondent did not raise any conflict complaints about Commissioner Nishioka until the hearing in this matter on November 18, 2019.

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The California Political Reform Act (“PRA”) prohibits a public official (including a member of a City board or commission) from participating in any government decision that will have a reasonably foreseeable material financial effect on any of the official’s economic interests.

California Government Code Section 1090 (“Section 1090”) prohibits a board or commission member from having a financial interest in any government contract “made” by their board or commission.

These conflict of interest laws would apply to board members on boards charged with making recommendations to the City Council about grants or contracts to/with agencies, organizations or individuals.

The City’s Ethics Act (“GEA”) incorporates both the PRA and Section 1090 by reference into local law.

When recusal is required, the member must refrain from voting on funding or other action items that could have a foreseeable financial effect, or discussing the items formally, whether at the committee meetings, or informally with other committee members at or outside the meeting. (Note that in order to allow the member to vote on other funding items, the PRA allows the committee to bifurcate funding decisions so that the decision to fund this organization could be taken first, with the interested member recusing himself/herself, followed by the decision or decisions to fund the remaining agencies, allowing the participation of the member in the follow up decision(s).)

The conflicts alleged against Commissioner Tuman on their face do not allege any financial gain or benefit to Commissioner Tuman whatsoever. It is unclear if respondent’s conflict allegation is more appropriately cast as a bias claim. If this is the case, then Commissioner Tuman must address any potential bias claims prior to hearing matters involving respondent.

B. Conclusion

Based on the foregoing analysis, Commissioner Tuman does not have a conflict of interest that prohibits him from participating in the case involving respondent’s alleged failure to register and file periodic lobbyist reports under the LRA.