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Petitioner/Complainant

5 BEFORE THE CITY OF OAKLAND

6 PUBLIC ETHICS COMMISSION

8 ENFORCEMENT UNIT OF THE CITY OF OAKLAND)

Case No.: 18-11

9 PUBLIC ETHICS COMMISSION,)

Hearing Date: November 18, 2020

10 Complainant,)

11 v.)

DECLARATION OF PUBLIC ETHICS

12) INVESTIGATOR SIMON RUSSELL

13 Respondent.
14

15 Complainant, THE ENFORCEMENT UNIT OF THE CITY OF OAKLAND PUBLIC ETHICS
COMMISSION (“Complainant”), hereby submits this Declaration OF Public Ethics Commission
16 Investigator, Simon Russell.

17 I, the undersigned, do hereby submit the following statement in support of my
18 testimony. This declaration is supported by Attachments 1-69 as set forth in the attached
19 documents incorporated herein.
20

21
22 I, Simon Russell, declare:

23 1. I am an investigator for the City of Oakland Public Ethics Commission (PEC). I was
24 the investigator on the PEC’s investigations of Thomas Espinosa (case #16-14) and Anthony
25 Harbaugh (case #18-11).

26 2. On June 7, 2016, I obtained all of Thomas Espinosa’s e-mails sent to or from his City
27 of Oakland e-mail account on or after January 1, 2015. The e-mails were given to me by the City
28 of Oakland Information Technology Department pursuant to my request.

1 conducted. "Permit inspectors" inspect the progress of building projects for which the City has
2 issued a permit. Their inspections are scheduled ahead of time.

3 9. Normally, when someone wants to do a real estate development in Oakland (either
4 constructing a new building or substantially remodeling an old one), they must first apply for a
5 building permit from the Building Department. They submit that application at the Building
6 Department's front counter, which is accessible to the public and located on the second floor of
7 250 Frank Ogawa Plaza. A "building tech" (sometimes called a "permit tech") reviews the
8 application and determines three things that are relevant in this case: (1) Whether the project site
9 has any outstanding code violation cases on it. (2) Whether the person applying for a building
10 permit also needs a "trade" permit (mechanical, building, and/or plumbing, where applicable).
11 These are issued at the same time as the building permit. (3) Whether the estimated cost of the
12 project seems accurate, based on the plans submitted with the application. (This is important
13 because the estimated cost of the project is used to calculate the applicable fees that the permit
14 applicant must pay to the City).

15 10. For building permit applications, permit inspectors conduct the following types of
16 inspections over the course of the course of the project (though not every single one may be
17 required for a particular project): (1) A field check, to ensure that the on-the-ground construction
18 matches the plans submitted with the permit application (i.e., to prevent fraud – which usually
19 takes the form of understating the scope of the project in order to avoid higher permit fees or
20 additional lengthy reviews by Department staff). This is performed after an application is
21 received, but before the permit is issued. (2) "Frame" or "rough" inspections, which are
22 conducted before the walls of the project are covered up. This is important because once the
23 walls go up, the frame inspection can only be repeated by pulling the walls down, at great
24 expense to the permittee. (3) A final inspection.

25 11. Those inspection results are to be noted on a physical "job card" which is kept in the
26 permittee's possession. (This is the permittee's proof that an inspection has been passed). Only
27 inspections with a "pass" result are noted on the job card. Only permit inspections are tracked on
28 the job card, not code inspections.

1 19. Ms. Williams stated in her interview that she paid Mr. Espinosa fees (at Mr.
2 Espinosa’s request) after other inspectors – specifically Mr. Harbaugh – gave a passing result on
3 inspections at her properties where Mr. Espinosa was working for her.

4 20. Ms. Williams stated in her interview that she once spoke to Mr. Harbaugh on the
5 phone about a discrepancy in the City’s records of inspections that one of her properties had
6 passed, and said that Mr. Harbaugh told her directly that he had not signed off on a final
7 inspection on one of her properties because he had not been paid yet. This was not a reference to
8 Mr. Harbaugh’s salary, but to the payments directly from Ms. Williams.

9 21. I also interviewed Derrick Cañada on July 1, 2019. Mr. Cañada stated that he worked
10 as a property manager for Ms. Williams in or around 2014-2016. Mr. Cañada stated that on two
11 occasions, Ms. Williams gave him envelopes and told him to deliver them to Mr. Harbaugh. Mr.
12 Cañada looked inside one of the envelopes and saw what he believes was “thousands” of dollars
13 in cash. Mr. Cañada confirmed that he delivered the envelopes to Mr. Harbaugh, and that on at
14 least one of those occasions Mr. Harbaugh was waiting for him while sitting in his marked City
15 of Oakland vehicle during work hours. He said that neither Ms. Williams nor Mr. Harbaugh
16 explained to him what the cash was for. However, based on the timing of the payments and
17 subsequent inspections by Mr. Harbaugh on some of Ms. Williams’ properties that had been
18 consistently failing earlier City inspections, he believes the payments were in exchange for Mr.
19 Harbaugh passing those inspections.

20 II. SPECIFIC PROPERTIES

21 C. 859 Mead Avenue

22 22. 859 Mead Avenue is a four-unit apartment building in West Oakland that also
23 includes a house, 857 Mead. According to Alameda County Assessor records, Ms. Williams has
24 owned the property since 1998. **(Attachment 16)**

25 23. On March 27, 2017, I obtained the Accela inspection log for 857 Mead from the
26 Building Department. **(Attachment 58)**

27 24. According to the Accela inspection log for 857 Mead, in 2014 Ms. Williams obtained
28 a building permit for this property (no. RB1403610). The City inspector performing the field

1 check (Kim Nguyen) noted that the scope of work at the site exceeded what was written on the
2 building permit application, and stated that Williams needed to obtain electrical and plumbing
3 permits as well. **(Attachment 58)**

4 25. According to the Accela inspection log for 857 Mead, Ms. Williams subsequently
5 obtained electrical and plumbing permits (nos. RE1502087 and RP1501661). She never passed
6 the field check or inspections on the electrical permit (performed by City inspectors Bill
7 Bergstrom and Joanneke Verschuur), and no inspections were done on the plumbing permit.
8 **(Attachment 58)**

9 26. According to the Accela inspection log for 857 Mead, on September 23, 2015, Mr.
10 Harbaugh performed a frame inspection at this property pursuant to the building permit taken out
11 earlier by Williams (the one which inspector Nguyen had flagged as under-reporting the actual
12 scope of work). He gave a “Pass” result, noting “frame and insulation ok to cover.”

13 **(Attachment 58)**

14 27. On August 12, 2019, I downloaded from Accela a log detailing when this particular
15 inspection was scheduled on the system and assigned to Mr. Harbaugh. **(Attachment 59)** The
16 log shows that inspection was originally assigned to Inspector Verschuur by Department Hearing
17 Coordinator Vera Gumby at 9:55 AM on September 23 (the date of the inspection). One minute
18 later, Harbaugh re-assigned the inspection to himself. The following day (September 24), he
19 reported that he completed the inspection at 10:15 AM on September 23 – twenty minutes after
20 Gumby had originally assigned it to Verschuur.

21 28. According to an application filed with the Planning and Building Department, Ms.
22 Williams applied for an electrical permit at the Mead property on or around October 23, 2015.

23 **(Attachment 2)**

24 29. In a text message conversation obtained via subpoena from Ms. Williams dated
25 December 23, 2015, Ms. Williams texts Mr. Espinosa and asks, “What is up with the electric on
26 Mead?” **(Attachment 5)**

27 30. In a text message conversation obtained via subpoena from Ms. Williams dated
28 January 12, 2016, Williams texts Mr. Espinosa and says “Please call me about Mead.... I also

1 expect the green tags for Mead to be there today. You stated it was already done.... I still need
2 the Mead stickers. You told me this was already handled. This is one of the reasons why the
3 electricity is STILL not on at Mead.... Please get this sticker handled and make sure it is verified
4 in the City records....” (**Attachment 6**)

5 31. In the same text message conversation, Mr. Espinosa replies, “I will have to talk to
6 hardball to go put another one on tomorrow.” (**Attachment 6**)

7 32. In an interview with me on June 8, 2017, I asked Ms. Williams about this text
8 message conversation and she stated the “green tag” mentioned by her is a reference to a sticker
9 which a City inspector puts on an electrical box once an electrical permit has been finalled. The
10 presence of a green tag signifies to PG&E that the City has approved resumption of electrical
11 service at the site. In the same interview, Ms. Williams stated that she understood Mr. Espinosa’s
12 reference to “hardball” to be an auto-correct for “Harbaugh.” She said Mr. Harbaugh was
13 familiar to her as a City inspector.

14 33. In an interview with me on September 21, 2017, Mr. Harbaugh was shown a copy of
15 the above text message conversation between Ms. Williams and Mr. Espinosa. When asked what
16 Mr. Espinosa could have meant by “hardball,” Mr. Harbaugh stated it was probably an auto-
17 correct for “Harbaugh.”

18 34. In a text message conversation obtained via subpoena from Ms. Williams dated
19 January 13, 2016 (the day after the text conversation described immediately above), beginning at
20 10:21 AM, Mr. Espinosa tells Ms. Williams that the “inspector[’]s going over there.” At 12:52
21 PM the same day, Mr. Espinosa texts Ms. Williams a photo of an electrical box labeled “857”
22 and “859.” The electrical box has a green tag on it. Mr. Espinosa then writes, “So there it is and
23 I’m paying right now the 300 call me.” Mr. Espinosa then texts Ms. Williams a photograph of
24 someone’s hand holding three hundred dollar bills. (**Attachment 6**)

25 35. On March 16, 2017, I obtained the Accela inspection log for the Mead property from
26 the Planning and Building Department. (**Attachment 1**) The log shows that Mr. Harbaugh
27 conducted an electrical inspection at the Mead property on January 13, 2016 (the same day as the
28 text conversation described above between Mr. Espinosa and Ms. Williams concerning an

1 electrical box and three hundred dollars for an inspector). Mr. Harbaugh gave a “Pass” result and
2 noted “green tag issued for meter release.”

3 36. According to David Miles, who was Mr. Harbaugh’s supervisor at the Planning &
4 Building Department and with whom I spoke about this matter, Harbaugh was scheduled to
5 conduct inspections in East Oakland on January 13, 2016, and would not have had reason to
6 conduct an inspection in West Oakland where the Mead property is located.

7 37. On August 12, 2019, I downloaded from Accela a log detailing when this particular
8 inspection was scheduled on the system and assigned to Mr. Harbaugh. **(Attachment 3)** The log
9 shows that this inspection was scheduled by Maurice Early (one of the Department’s schedulers)
10 on January 14, 2016 – the day after the actual inspection took place. The log also shows that at
11 8:59 AM on January 14, 2016 (three minutes after Mr. Early supposedly scheduled the
12 inspection and assigned it to Mr. Harbaugh), Mr. Harbaugh entered his inspection result onto
13 Accela. In his entry, Mr. Harbaugh wrote that he conducted the inspection at 12:30 PM on
14 January 13, 2016 (the previous day).

15 38. In an interview with me on August 27, 2019, Mr. Early said it was not his practice to
16 schedule inspections for a prior date. He did not recall scheduling this inspection. He stated that
17 his computer is sometimes left unattended while he is logged onto Accela.

18 39. In a text message conversation obtained via subpoena from Ms. Williams dated
19 January 22, 2016, Mr. Espinosa texted Ms. Williams and said, “do you think I have the \$300
20 coming that I paid for the inspector on your electrical if so could you deposit that for me.”

21 **(Attachment 7)**

22 40. In an interview with me on June 8, 2017, Ms. Williams acknowledged that Espinosa
23 had informed her via text message on January 22, 2016, that she owed him \$300 for paying the
24 inspector who handled the electrical inspection. Ms. Williams told me that she believes she likely
25 reimbursed Espinosa for the \$300 but doesn’t specifically remember.

26 41. On March 1, 2016, Mr. Espinosa e-mailed Ms. Williams a scanned document
27 containing a handwritten note that reads “\$300 for previous electrical final 857-859 Mead.”

28 **(Attachment 4)**

1 42. In an interview with me on April 24, 2017, Ms. Williams acknowledged receiving
2 Espinosa's e-mail of March 1, 2016, and confirmed that the words "300 for previous electrical
3 final 857-859 Mead" refers to an electrical inspection at the Mead property.

4 *D. 2735 Market Street*

5 43. 2735 Market Street refers to a unit within a complex of apartments. In the records of
6 the Planning & Building Department, this complex is also sometimes referred to as 917 28th
7 Street. According to Alameda County Assessor records, Ms. Williams has owned the
8 Market/28th complex since 2014. **(Attachment 17)**

9 44. On March 27 and April 20, 2017, I obtained the Accela inspection logs for 2735
10 Market Street and 917 28th Street from the Planning and Building Department. The logs indicate
11 that unpermitted renovation work was occurring at 2735 Market Street in 2014. City inspector
12 Bill Bergstrom cited Ms. Williams for the unpermitted work, noting that there was a potential
13 life safety issue with the heating system on the property and instructing her to open the walls and
14 floor for inspection before permits would be issued. The matter was assigned code case number
15 1402577. **(Attachment 8-9)**

16 45. In an interview with me conducted on April 24, 2017, Ms. Williams stated that she
17 had refused to follow Mr. Bergstrom's instruction to open up the walls because she felt
18 Bergstrom was "just horrid." She also stated that after a year of back and forth with the City over
19 safety issues, she hired Mr. Espinosa to do the renovations. She stated to me that she had
20 informed Mr. Espinosa she was having problems with Mr. Bergstrom. She also admitted to me
21 that she would sometimes cancel City inspections if an inspector she did not like was scheduled
22 to perform the inspection.

23 46. According to the Accela inspection log for 2735 Market Street, on two occasions Mr.
24 Espinosa attempted to assign himself to the inspections on the property but City inspector Greg
25 Clarke cancelled them. Inspector Clarke made notes into the Accela database that only he or
26 Inspector Bergstrom should conduct inspections at this property. **(Attachment 8)**

1 47. On September 22, 2015, Ms. Williams applied for a building permit (#B1504047) at
2 2735 Market Street. The City's printed memorandum of the application contains a handwritten
3 note stating "This field check to be done by Bill Bergstrom and Greg Clark." **(Attachment 10)**

4 48. According to the Accela inspection log for 2735 Market Street, on September 29th
5 and October 13, 2015, Inspector Bergstrom was scheduled to perform field checks on building
6 permit application #B1504047, but the contractor canceled both of them. Bergstrom made a note
7 in the Accela log that "only Bill Bergstrom or Greg Clarke can do field check." **(Attachment 8)**

8 49. According to the Accela inspection log for 2735 Market Street, on October 16, 2015,
9 Inspector Bergstrom conducted a field check for building permit application #B1504047 and
10 noted several issues that needed correcting. He did not approve a permit and restated that the
11 walls and floor needed to be opened up and inspected before a field check would be complete.
12 **(Attachment 8)**

13 50. According to the Accela comment log for 2735 Market Street, on October 16, 2015,
14 Building Supervisor Tim Low allowed building permit #B1504047 to be issued, contingent on
15 the sheet rock being exposed prior to an inspection and the cost of the job evaluation increased.
16 The Accela log also has a note that Inspector Bergstrom was to perform the building inspections
17 since he was aware of the history of the building. **(Attachment 11)**

18 51. On October 27, 2015, Mr. Espinosa personally submitted the application and obtained
19 new permits on the 2735 Market Street property. **(Attachment 12)**

20 52. According to the Accela inspection log for 2735 Market Street, on November 5, 2015
21 (a little over a week after Mr. Espinosa obtained the new permits for the property) Mr. Harbaugh
22 performed frame inspections of the building electrical and plumbing permits and gave a "Pass"
23 result to each. **(Attachment 8)**

24 53. On August 12, 2019, I downloaded from Accela logs detailing when these particular
25 inspections were scheduled on the system and assigned to Mr. Harbaugh. **(Attachments 60-62)**
26 The logs show that the plumbing inspection was originally assigned to Anthony Harbaugh on
27 November 4 at 10:30 AM, by Harbaugh himself. However, he did not schedule a date or time for
28 it; instead he left the status as "pending". The following day, Adoracion Silva Rodriguez

1 scheduled the plumbing, building and electrical inspections for the previous day (November 4).
2 The following day (November 5), at or around 9:13 AM, the building, electrical and plumbing
3 inspections were scheduled by Adoracion Silva-Rodriguez; she assigned them to Harbaugh and
4 scheduled them for the previous day (November 4). Harbaugh entered his inspection results onto
5 Accela about ten to fifteen minutes later.

6 54. According to Mr. Harbaugh's phone records, Mr. Harbaugh and Mr. Espinosa
7 contacted one another at Mr. Harbaugh's personal cell phone number during work hours on
8 November 4 (at 12:49 PM) November 5 (at 2:40 PM) and November 6, 2015 (at 9:44 AM, 9:54
9 AM, 11:47 AM, 11:57 AM, and 12:51 PM). Mr. Harbaugh was at the number 925-628-9051 and
10 Mr. Espinosa was at the number 510-882-3181. Analysis of their phone records shows that Mr.
11 Harbaugh and Mr. Espinosa did not normally call one another. **(Attachment 66)**

12 55. According to text messages I received via subpoena from Ms. Williams, on
13 November 5, 2015 (the day after Mr. Harbaugh's inspection), Mr. Espinosa texted Ms. Williams
14 a photograph of a handwritten bill to Ms. Williams that included a \$300 amount for "inspection
15 rough 2735 Market." The total amount on the bill is \$6,108. **(Attachment 13)**

16 56. According to Mr. Espinosa's bank records, on November 6, 2015, Mr. Espinosa
17 deposited a check from Ms. Williams for \$6,108 into his personal bank account at Chase Bank.
18 **(Attachments 14-15)**

19 57. According to the Accela inspection log for 2735 Market Street, on November 20,
20 2015, Mr. Harbaugh performed the final inspections on three of the permits for 2735 Market
21 Street that Mr. Espinosa had obtained, and again gave a "Pass" result to each. **(Attachment 8)**

22 58. According to Mr. Harbaugh's phone records, Mr. Harbaugh and Mr. Espinosa
23 contacted one another at Mr. Harbaugh's personal cell phone number on November 20, 2015 (the
24 date of the inspection on Accela) at 12:40 PM. Mr. Harbaugh was at the number 925-628-9051
25 and Mr. Espinosa was at the number 510-882-3181. Analysis of their phone records shows that
26 Mr. Harbaugh and Mr. Espinosa did not normally call one another. **(Attachment 67)**

27 59. On August 12, 2019, I downloaded from Accela logs detailing when these particular
28 inspections were scheduled on the system and assigned to Mr. Harbaugh. **(Attachments 18-20)**

1 The log shows that this inspection was scheduled by Maurice Early (one of the Department's
2 schedulers) on November 23, 2015 – three days after the actual inspection took place. The log
3 also shows that Mr. Early had originally assigned the building permit inspection to Mr.
4 Bergstrom, but then assigned it to Harbaugh less than a minute later. **(Attachment 18)** The log
5 also shows that ten minutes after this, Mr. Harbaugh entered his inspection results onto Accela.
6 **(Attachments 18-20)**

7 60. In an interview with me on August 27, 2019, Mr. Early said it was not his practice to
8 schedule inspections for a prior date. He did not recall scheduling these inspections. He stated
9 that his computer is sometimes left unattended while he is logged onto Accela

10 61. According to Mr. Harbaugh's phone records, Mr. Harbaugh and Mr. Espinosa
11 contacted one another at Mr. Harbaugh's personal cell phone number on November 23, 2015 (the
12 date of the inspection on Accela) at 11:18 AM and 2:29 PM. Mr. Harbaugh was at the number
13 925-628-9051 and Mr. Espinosa was at the number 510-882-3181. Analysis of their phone
14 records shows that Mr. Harbaugh and Mr. Espinosa did not normally call one another.

15 **(Attachment 67)**

16 62. On the same Accela log I downloaded on August 12, 2019, the log shows that on
17 December 4, 2015, Building Supervisor Tim Low changed the result of Harbaugh's final
18 building inspection to "Partial." Mr. Low did not record an explanation for the change on Accela.

19 **(Attachment 18)**

20 63. On March 27, 2017, I received the Accela comment log for 2735 Market Street from
21 the Building Department. The log shows that a few days after Mr. Low changed the results of
22 Mr. Harbaugh's inspection, Mr. Clarke noted on Accela that the issued permit did not cover the
23 scope of work outlined in the application for it (specifically it did not cover the balcony and
24 stairs). An inspection was scheduled on the property on January 7, 2016. **(Attachment 21)**

25 64. According to the Accela inspection log 2735 Market Street, on January 7, 2016,
26 Inspector Clarke conducted an inspection on the Market St. property and gave a "Partially
27 abated" result. **(Attachment 8)** Again, on February 9, 2016, Inspector Clarke performs another
28 inspection and gave it a "Partially abated" result. **(Attachment 8).**

E. 877 27th St.

65. According to Alameda County Assessor records, Ms. Williams has owned parcel # 3-5-23 (a property with the address of 877 27th Street in Oakland) in her own name since 1999.

(Exhibit 28)

66. On March 16, 2017, I obtained the Accela inspection log for 877 27th Street from the Building Department. **(Attachment 22)** On April 21, 2017, I obtained copies of permit applications for this property from the Building Department. **(Attachment 23)** The records show that on November 10, 2015, Mr. Espinosa applied at the Building Department for four permits (building, electrical, mechanical, and plumbing) for 877 27th Street on Ms. Williams' behalf.

67. The Accela inspection log shows that on November 23, 2015, City of Oakland Building Inspector Joanneke Verchuur conducted the frame inspections for the permits Mr. Espinosa had obtained on the 27th St. property and gave a "Partial" result to the electrical permit and noted in the City Planning and Building Department database that additional work needed to be done. She gave a "Not Pass" result to the plumbing permit noting several existing issues with the plumbing. **(Attachment 22)**

68. The Accela inspection log shows that on December 11, 2015, Mr. Harbaugh performed frame inspections at 877 27th Street on those same electrical and plumbing permits, as well as the other two permits (building and mechanical) for which Mr. Espinosa applied on November 10, 2015, on behalf of Williams. Mr. Harbaugh gave a "Pass" result to each.

(Attachment 22)

69. On August 12, 2019, I downloaded from Accela logs detailing when these particular inspections were scheduled on the system and assigned to Mr. Harbaugh. **(Attachments 24-27)** The logs show that Maurice Early (one of the Building Department's schedulers) assigned them on December 8, 2015, to Mr. Harbaugh; Principal Inspections Supervisor David Miles re-assigned them to other inspectors at 7:15 and 7:35 AM on December 11, 2015; and then Mr. Harbaugh finally re-assigned them to himself at 8 AM that same morning (the day of the inspection).

1 78. At that time, the owners of 4163 Rifle Lane were Melinda Garay and Esther Lucero,
2 according to Alameda County Assessor Records. **(Attachment 32)**

3 79. In an interview with me on October 31, 2017, Ms. Lucero told me that in 2015 she
4 and Ms. Garay decided to move out of the Rifle Lane property and sell it. The owners hired
5 Gimme Shelter -- a real estate company owned by Bill Charman – as their broker. According to
6 Lucero, Multiple buyers were interested in the property but the unresolved permit problem on the
7 property hindered the sale.

8 80. Eventually, potential buyers named Jorge Iriso and Aimee Cole entered into a
9 contract to buy the property. I interviewed Jorge Iriso on October 25, 2017. Mr. Iriso told me that
10 he and Ms. Cole had wanted a guarantee from the City that the permit issues with the house
11 would be fixable and an estimate of the cost before they would close the contract. He also said
12 that he and his realtor requested that someone from the City visit the property with them to
13 assess the situation.

14 81. The realtor for the sellers was Megan Micco (acting under the supervision of Mr.
15 Charman). I interviewed Ms. Micco on June 30, 2017. Ms. Micco told me that Mr. Espinosa
16 visited the Rifle Lane property in February 2016, to meet with her and the potential buyers. She
17 said that at that meeting, Mr. Espinosa warned of a significant fine being levied against the
18 property as well as the possibility of major inspections that could require opening up the walls of
19 the structure. During that meeting, Ms. Micco asked Mr. Espinosa to speak on her cell phone to
20 Mr. Charman.

21 82. I interviewed Mr. Charman on May 11, 2017. Mr. Charman told me that when he
22 spoke on the phone to Mr. Espinosa during the Rifle Lane site visit, Mr. Espinosa told Mr.
23 Charman to meet him at the Building Department in a week or two and that the permit issue
24 could be resolved.

25 83. In my interview with her, Ms. Micco also stated that on or around the same day of
26 Mr. Espinosa's visit to the Rifle Lane property, Mr. Harbaugh also visited the property and
27 performed an inspection. During that visit, Mr. Harbaugh gave Ms. Micco a printout with his
28 handwritten notes about repairs needed for the property. **(Attachment 33)** Also handwritten on

1 the document are the words “Anthony H 925-628-9051.” This is Mr. Harbaugh’s personal cell
2 phone number, not the number of his City-issued cell phone.

3 84. In an interview with me on September 21, 2017, Mr. Harbaugh identified some of the
4 handwriting in the middle of this document as his own (beginning with the words “double shut
5 off” and ending with “rear stairs to back yard”),

6 85. The Accela inspection and comment logs for 4163 Rifle Lane have no record of Mr.
7 Espinosa or Mr. Harbaugh’s visits to the property that day, nor of Mr. Harbaugh’s inspection.

8 **(Attachments 30-31)**

9 86. On October 2, 2017, Mr. Harbaugh provided investigators with his assignment sheet
10 for February 2, 2016, which is a computer printout listing all of the addresses to which he had
11 been assigned to perform inspections that day. **(Attachment 34)** 4163 Rifle Lane is not on the
12 list that was printed by the computer. However, at the bottom of the list Mr. Harbaugh has
13 handwritten “4163 Rifle Lane.”

14 87. In his interview with me, Mr. Iriso told me that he and Ms. Cole eventually retracted
15 their offer for the property because the licensing and permitting issues remained unresolved.
16 In her interview with me, Ms. Micco told me that Mr. Cole and Ms. Iriso pulled out of the sales
17 contract on February 5, 2016.

18 88. According to a permit application filed with the Building Department on February 9,
19 2016, Mr. Charman applied for building, electrical and plumbing permits to “Remodel existing
20 bathroom. Remove unapproved forms for addition at the rear of the building.” **(Attachment 43)**

21 89. In his interview with me, Mr. Charman stated that on the same day that he applied for
22 the above permits, he was asked by Mr. Espinosa to meet him at a bench outside of City Hall.
23 Mr. Charman further stated that Mr. Espinosa told him during that meeting that in order to
24 complete a re-inspection and legally complete the unpermitted building, Mr. Charman needed to
25 pay Mr. Espinosa \$1,500.

26 90. Mr. Charman paid Espinosa \$1,500 with a check. **(Attachment 36)** Mr. Espinosa
27 deposited the payment in his personal bank account on that same day. **(Attachment 35)**

1 91. On August 26, 2019, I downloaded a log from Accela showing all changes made to
2 the Accela record for the building permit for which Mr. Charman had applied on February 9,
3 2016. **(Attachment 37)** The log shows that on February 10, 2016 (the day after receiving a check
4 for \$1,500 from Mr. Charman), Mr. Espinosa logged into Accela and changed the description of
5 the work to be conducted under the permits for the Rifle Lane property. It also shows that Mr.
6 Espinosa entered into Accela that the code complaint on the property (dating from 2013) had
7 been “abated.” The code case was then closed, as reflected on the Accela inspection log for the
8 property. **(Attachment 30)**

9 92. In my interview with Building Department supervisor David Miles on July 7, 2017, I
10 asked whether it was correct procedure for a code case to be ruled “abated” and closed before the
11 permits meant to rectify the violation had been finalized. Miles said that this was incorrect
12 procedure, that permits need to be finalized before a code case can be abated, and simply
13 obtaining the permits is not enough. According to Miles there was no “legitimate” reason for
14 Espinosa to abate the code case before the permits were finalized.

15 93. The Accela inspection log for 4163 Rifle Lane shows that on February 10, 2016 (the
16 same day that Mr. Espinosa changed the permit description and abated the code case for this
17 property on Accela), Mr. Harbaugh conducted frame inspections pursuant to each permit on the
18 Rifle Lane property and gave a “Pass” result to each. **(Attachment 30)**

19 94. None of Harbaugh’s daily assignment sheets include the inspections he claimed on
20 Accela to have conducted at the Rifle Lane address on February 10, 2016. **(Attachment 34)**

21 95. On August 16, 2019, I downloaded from Accela a log detailing when this particular
22 inspection was scheduled on the system and assigned to Mr. Harbaugh. The log shows that Mr.
23 Harbaugh assigned the inspections to himself on February 10, 2016, and inputted his inspection
24 results on February 11, 2016 (stating that he had conducted the inspections the previous day).
25 **(Attachments 37-39)**

26 96. The Accela inspection log for 4163 Rifle Lane shows that on February 16, 2016, Mr.
27 Harbaugh conducted final inspections pursuant to each permit on the Rifle Lane property and
28 gave a “Pass” result to each. **(Attachment 30)**

1 97. None of Harbaugh’s daily assignment sheets include the inspections he claimed on
2 Accela to have conducted at the Rifle Lane address on February 16, 2016. **(Attachment 34)**

3 98. On August 16, 2019, I downloaded from Accela a log detailing when this particular
4 inspection was scheduled on the system and assigned to Mr. Harbaugh. The log shows that Mr.
5 Harbaugh scheduled all of those inspections himself on the morning of February 16 (after
6 initially scheduling Principal Inspections Supervisor David Miles to perform them), then
7 reported the result in the late afternoon that day. **(Attachments 40-42)** The status of each permit
8 on Accela also changes to “Final” that day. **(Attachment 30)**

9 99. On May 11, 2017, Mr. Charman provided investigators with a copy of the job card for
10 these permits. **(Attachment 63)**

11 *G. 2326 Myrtle Street*

12 100. 2326 Myrtle Street is a single-family home is located in West Oakland.

13 101. On November 28, 2016, I received the Accela inspection and comment logs for
14 2326 Myrtle from the Building Department. **(Attachments 44-45)** The inspection log shows that
15 on November 30, 2015, the Building Department received a complaint for 2326 Myrtle Street
16 alleging that major construction was occurring on the property without permits including open
17 trenches, and that the structure was lifted. **(Attachment 44)**

18 102. The inspection log also shows that on December 7, 2015, Inspector Gene Martinelli
19 inspected the property and verified the violation. He also issued a stop-work order on the
20 property. **(Attachment 44)**

21 103. According to Alameda County Assessor records, on December 25, 2015, title to
22 2326 Myrtle Street passed from Elvecio Machado to Alex Machado. **(Attachment 46)**

23 104. On November 8, 2016, I interviewed Maryline Pavlic, who worked for Mr. Machado
24 as his bookkeeper and is also his wife. Ms. Pavlic stated that Elvecio was Mr. Machado’s
25 brother, and that Mr. Machado is a house flipper who intended to remodel and sell 2326 Myrtle
26 Street.

27 105. The Accela inspection log for 2326 Myrtle Street shows that on January 21, 2016,
28 Mr. Machado applied for a building permit #RB1600937 on the property. **(Attachment 44)**

1 The Accela inspection log for 2326 Myrtle Street shows that on February 9, 2016, Inspector
2 Felix Menendez inspected the property's foundation and issued a "Not Pass" result.

3 **(Attachment 44)**

4 106. The Accela inspection log for 2326 Myrtle Street shows that on February 11, 2016,
5 Inspector Gene Martinelli inspected the property again and issued a "Not Pass" result. He
6 commented on Accela, "Stop Work issued for plans misrepresent the original building on the
7 submitted and approved plans." **(Attachment 44)**

8 107. On November 13, 2016, Ms. Pavlic provided me with a copy of a job card for 2326
9 Myrtle. The job card bears two permit numbers on it: #RB1600256 (the permit Mr. Machado
10 applied for on January 21, 2016), which has been crossed out; and #RB1600937, which has been
11 hand-written. **(Attachment 47)**

12 108. According to the Accela inspection log for 2326 Myrtle, permit #RB1600937 was
13 not applied for until March 3, 2016. **(Attachment 44)**

14 109. The job card for 2326 Myrtle bears an entry dated February 24, 2016, with the
15 initials "AH" next to it, indicating that the property had passed an inspection for "footing/grade
16 beam." **(Attachment 47)** As described above, by that date permit #RB1600937 already had a
17 stop-work order put on it, and permit #RB1600937 did not yet exist.

18 110. In an interview with me on February 8, 2017, Mr. Harbaugh stated that he is the
19 only inspector in the Building Department with the initials "AH."

20 111. There is no corresponding record of this inspection on the Accela inspection or
21 comment logs for 2326 Myrtle Street. **(Attachments 44-45)**

22 112. None of Mr. Harbaugh's daily assignment sheets include the inspection he claimed
23 on this job card to have conducted at the Myrtle Street address on February 24, 2016. However,
24 Mr. Harbaugh has a handwritten note on his schedule for February 23, 2016, reading, "2326
25 Myrtle, RB OK to pour footings." **(Attachment 34)**

26 113. According to Mr. Espinosa's phone records, Mr. Espinosa and Mr. Harbaugh
27 contacted each other at Mr. Harbaugh's personal cell phone number five times on February 23,
28 2016, at 11:05 AM, 11:22 AM, 12:00 PM, 1:13 PM, and 1:14 PM. Mr. Harbaugh was at the

1 number 925-628-9051 and Mr. Espinosa was at the number 510-410-2780. Analysis of their
2 phone records shows that Mr. Harbaugh and Mr. Espinosa did not normally call one another.

3 **(Attachment 64)**

4 114. On November 13, 2016, Ms. Pavlic provided me with cash withdrawal receipts
5 showing that on February 27, 2016, Mr. Machado made three cash withdrawals totaling \$1,700.
6 Each withdrawal receipt has a handwritten note that says "Tomas Myrtle." **(Attachment 48)**
7 In an interview with me on June 9, 2017, Ms. Pavlic said Mr. Machado paid the cash to Mr.
8 Espinosa for inspections at the Myrtle property.

9 115. According to the Accela inspection log for 2326 Myrtle, on March 3, 2016, an agent
10 of Mr. Machado applied for a new building permit (#RB1600937) at the property. **(Attachment**
11 **44)**

12 116. According to the Accela inspection log for 2326 Myrtle, on March 8, 2016, Mr.
13 Harbaugh performed a field check on permit application # RB1600937 and approved issuance of
14 the permit. **(Attachment 44)**

15 117. According to Mr. Harbaugh's phone records, Mr. Harbaugh called Mr. Espinosa
16 using his personal cell phone number at 9:16 AM and 12:47 PM on March 8, 2016. Mr.
17 Harbaugh was at the number 925-628-9051 and Mr. Espinosa was at the number 510-410-2780.
18 Analysis of their phone records shows that Mr. Harbaugh and Mr. Espinosa did not normally call
19 one another. **(Attachment 65)**

20 118. On August 26, 2019, I downloaded from Accela logs detailing when this particular
21 inspection was scheduled on the system and assigned to Mr. Harbaugh. The logs indicate that the
22 field check was originally assigned to inspector Robert Bernal on March 3, 2016, by Adoracion
23 Silva-Rodriguez (one of the Department's schedulers). The log further that Mr. Harbaugh re-
24 assigned that field check to himself at 9:19 AM on March 8, 2016 (three minutes after he had
25 called Mr. Espinosa), but then cancelled the field check six minutes later. Eight minutes later,
26 Silvia Ford again assigns the field check to Mr. Harbaugh, and Mr. Harbaugh enters the result of
27 his field check later that afternoon (the same afternoon he called Mr. Espinosa). **(Attachments**
28 **49-50)**

1 119. In an interview with me on August 28, 2019, Ms. Silva-Rodriguez noted to me that
2 around this time, the Building Department was only assigning field checks to certain inspectors,
3 including Bernal and possibly one other such as Kim Nguyen.

4 120. The Accela inspection log for 2326 Myrtle Street indicates that on March 29, 2016,
5 Mr. Harbaugh performed a frame inspection at the property and issued a “pass” result.

6 **(Attachment 44)**

7 121. On June 4, 2017, I downloaded from the Accela public portal a log detailing when
8 this particular inspection was scheduled on the system and assigned to Mr. Harbaugh. The log
9 indicates that Mr. Harbaugh scheduled himself to perform the inspection that day. **(Attachment**
10 **51)**

11 122. None of Mr. Harbaugh’s daily assignment sheets include the inspection he claimed
12 on Accela to have conducted at the Myrtle Street address on March 29, 2016. **(Attachment 34)**
13 This inspection does not appear on the job card for permits #RB1600256/#RB1600937 on which
14 Mr. Harbaugh inspection of February 24, 2016, had been noted. **(Attachment 47)** Nor does it
15 appear on another job card for permit #RB1600937 that Ms. Pavlic gave to me on November 13,
16 2016. **(Attachment 52)**

17 123. On November 13, 2016, Ms. Pavlic provided me with a cash withdrawal receipt
18 showing that on April 11, 2016, Mr. Machado withdrew \$1000 in cash from one of his bank
19 accounts. The withdrawal receipt has a handwritten note that says “Tom Espinoza. Project:
20 Myrtle.” **(Attachment 53)**

21 124. The job card for permit #RB1600937 at 2326 Myrtle Street has an entry that “AH”
22 inspected the property on April 13, 2016. **(Attachment 52)**

23 125. The Accela logs for 2326 Myrtle Street have no record of Mr. Harbaugh conducting
24 an inspection there on April 13, 2016. **(Attachments 44-45)**

25 126. According to Mr. Harbaugh’s phone records, Mr. Harbaugh called Mr. Espinosa
26 using his personal cell phone number several times on April 12 (at 9:25 AM and 2:57 PM), April
27 13 (at 11:42 AM and 2:00 PM) and April 14, 2016 (at 10:00 AM and 4:28 PM). Mr. Harbaugh
28 was at the number 925-628-9051 and Mr. Espinosa was at the number 510-882-3181. Analysis

1 of their phone records shows that Mr. Harbaugh and Mr. Espinosa did not normally call one
2 another. **(Attachment 69)**

3 127. On April 15, 2016, Harbaugh noted in the Accela log for 2326 Myrtle Street that he
4 conducted another inspection of the Myrtle property for electrical and plumbing. His note
5 includes the comment, “4/15/2016, “Rough OK.” **(Attachment 44)**

6 128. There are no corresponding entries on the job card regarding any inspection taking
7 place on April 15, 2016. **(Attachment 52)**

8 129. The job card for permit #RB1600937 at 2326 Myrtle Street has an entry that “AH”
9 inspected the property on May 3, 2016. **(Attachment 52)**

10 130. The Accela logs for 2326 Myrtle Street have no record of Mr. Harbaugh conducting
11 an inspection there on May 3, 2016. **(Attachments 44-45)**

12 131. The job card for permit #RB1600937 at 2326 Myrtle Street has an entry that “AH”
13 inspected the property on June 7, 2016. **(Attachment 52)**

14 132. The Accela logs for 2326 Myrtle Street have no record of Mr. Harbaugh conducting
15 an inspection there on June 7, 2016. **(Attachments 44-45)**

16 *H. 6220 Valley View*

17 133. 6620 Valley View is a single-family home.

18 134. According to Alameda County Assessor records, on October 2, 2015, title to 6220
19 Valley View passed to Mr. Machado and Jasmine Liu. **(Attachment 56)**

20 135. On June 5, 2017, I obtained the Accela inspection and comment logs for 6220
21 Valley View from the Building Department. **(Attachment 54)**

22 136. The Accela logs for 6220 Valley View state that on November 12, 2015, a building
23 permit was pulled for rot repair at 6220 Valley View Road. **(Attachment 54)**

24 137. The Accela logs for 6220 Valley View state that on December 9, 2015, the City
25 received a complaint from an unknown person regarding 6220 Valley View: “WORKING
26 OUTSIDE OF SCOPE OF PERMIT RB1504860 ADDING ON TO HOME.” **(Attachment 54)**

27 The Accela logs for 6220 Valley View state that on January 20, 2016, City building inspector
28 Benjamin Lai conducted an inspection at 6220 Valley View and found that the work being done

1 at 6220 Valley View Road was outside the scope of the building permit issued to Mr. Machado
2 and opened an enforcement case against him, with a follow-up inspection to be conducted on
3 March 10, 2016. **(Attachment 54)**

4 138. The Accela logs for 6220 Valley View state that on February 29, 2016, Mr.
5 Harbaugh performed a final inspection on the Valley View property (the “minor dry rot repair”
6 permit that Mr. Lai had discovered was downplaying the actual scope of work). Mr. Harbaugh
7 gave a “Pass” result, and the permit was finalised. **(Attachment 54)**

8 139. On August 27, 2019, I downloaded from Accela logs detailing when this particular
9 inspection was scheduled on the system and assigned to Mr. Harbaugh. **(Attachment 55)** The
10 log indicated that Harbaugh had scheduled that inspection himself, on the same day that he
11 performed it.

12 140. According to Mr. Harbaugh’s phone records, Mr. Harbaugh and Mr. Espinosa
13 contacted one another at Mr. Harbaugh’s personal cell phone number on February 29, 2016 (the
14 date of the inspection on Accela) at 9:30 AM, 9:32 AM, 10:26 AM, 10:40 AM, and 10:51 AM.
15 Mr. Harbaugh was at the number 925-628-9051 and Mr. Espinosa was at the number 510-410-
16 2780. Analysis of their phone records shows that Mr. Harbaugh and Mr. Espinosa did not
17 normally call one another. **(Attachment 68)**

18 141. The Accela logs for 6220 Valley View state that on May 10, 2016, Mr. Machado
19 applied for a new building permit re: 6220 Valley View. Inspector Lai determined that the value
20 of the job should be valued at \$271,000. **(Attachment 54)**

21 142. In an interview with me on February 21, 2018, Mr. Lai said that the owners of the
22 Valley View property appeared to be trying to low-ball the value of the project to a significant
23 degree, but that he revised their low-ball valuation.

24 143. The Accela logs for 6220 Valley View state that on May 13, 2016, Harbaugh
25 performed a field check on the Valley View property and stated on Accela that the permit was
26 “OK to issue,” and that the job valuation should be lowered to \$125,000. **(Attachment 54)**
27 On August 27, 2019, I downloaded from Accela a log detailing when this particular field check
28 was scheduled on the system and assigned to Mr. Harbaugh. **(Attachment 57)** The log showed

1 that Mr. Harbaugh had scheduled that field check himself on the morning of the field check
2 (May 13, 2016).

3 144. Despite Mr. Harbaugh's recommendation, the Accela comment log shows that the
4 value of the 6220 Valley View job remained \$271,000 on Accela until it was lowered to \$
5 \$207,800 on July 6, 2016, on Inspections Manager Tim Low's decision. **(Attachment 54)**

6
7 Respectfully, Submitted,

8
9 Dated: 11/13/2020


Simon Russell (Nov 13, 2020 13:28 PST)
Simon Russell, Investigator
City of Oakland Public Ethics Commission






Declaration of Simon Russell

Final Audit Report

2020-11-13

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