November 15, 2022

Samuel J. Harvey Secretary, City of Berkeley Fair Campaign Practices Commission (FCPC) 2180 Milvia Street, 4th Floor Berkeley, CA 94704

Re: Complaint alleging BERA violation by Elgstrand for Rent Board 2022

Dear Mr. Harvey,

As the principal officer of the candidate controlled committee, "Elgstrand for Rent Board 2022" (hereinafter referred to as "the Committee"), I would like to provide a written response to the allegations made in Item # 6 on the November 17, 2022 FCPC agenda alleging violations of the Berkeley Election Reform Act by the Committee. As my response outlines, it is clear that no BERA violation has occurred.

First and foremost, I take my responsibility as a candidate to comply with state and local election laws very seriously. I am committed to full transparency regarding who has donated to my campaign and about my campaign's activities. To that end, I have made sure that my Treasurer and I participated in briefings on campaign finance regulations, we have filed all required campaign disclosure statements by required deadlines, and also promptly filed my mass mailing with the Office of the City Clerk.

In response to the allegation that the Committee did not properly disclose my \$7,500 personal loan to my campaign on campaign communications, it is important to note that these communications were created prior to the loan being provided. First, my campaign literature was designed and printed prior to the loan to my campaign. Second, the mass mailing in question was designed and at the printer before I needed to take the step of loaning my campaign funds to make sure I could cover the cost of the postage and other campaign expenditures. When it became clear, after I sent the mailer to the printer/mail house, that postage would exceed the amount of available funds, I had to make the decision to loan money to my campaign.

Due to the fact that Berkeley's Public Financing Program caps matching funds for Rent Board candidates at \$8,000, it made the decision that as an independent candidate I could not raise the funds needed to run a competitive citywide campaign, and therefore opted out of public financing. The current cap disadvantages independent candidates and promotes slates of candidates since they can pool their resources collectively. While not the subject of this complaint, I urge the commission to increase the amount of matching funds for Rent Board candidates for future elections.

As the attached information illustrates, the graphic design of the mass mailing was approved on October 3, 2022 and submitted and received by the printer by October 10, 2022, prior to the loan being made to my campaign. The mailing would have been submitted to the printer earlier, but my laptop broke while I was out of town and I was unable to replace it until my return. The design and production of the mailer was made prior to the loan needing to be made. I cannot predict what may happen in the future, and feel that I should not be punished for actions post facto. Given these facts, I feel that no violation occurred and no further investigation is warranted.

The second alleged violation was that the Committee provided inaccurate information to voters. While the Commission Secretary rightly pointed out that this allegation is outside the scope of BERA, I do want to take this opportunity to clear this up. The claim is that my Committee stated that I was the only candidate endorsed by a majority of the City Council, when apparently there were two other candidates that were also endorsed by a majority of Councilmembers. As the attached information illustrates, it is hard to ascertain on the candidates webpages that they are endorsed by a majority of Councilmembers. In addition, this was not stated in candidate forums or in printed literature by the candidates.

Given that I had no knowledge of this, given the lack of transparency in how their endorsements are reported, I could not intentionally mislead voters, and immediately after receiving confirmation of this, I updated my website and communications. This allegation is false and should also be dismissed.

This issue is something that could have easily been resolved with a phone call, email or even a text, not by wasting the FCPC's time in a formal complaint.

I unfortunately believe that the complainant knowing that these allegations were false attempted to weaponize the complaint process in an attempt to discredit me right before an election. In fact the complainant issued a press release which was widely distributed to local media and got the attention of The Daily Californian. The way I first found out about this complaint was not by City staff or the complainant, but from a reporter asking me to comment on it. Which brings me to my final point.

I believe (but do not have direct evidence to corroborate) that this complaint was written and initiated by another individual in addition to Mr. Hagstrom. This individual has a lengthy history of harassment, bullying and abuse towards me. Over the years, this individual has extorted thousands of dollars from me (which I was able to recover), broke into my bedroom and trashed it, and attempted to cause mental harm to me. The

### ITEM 6 Addendum

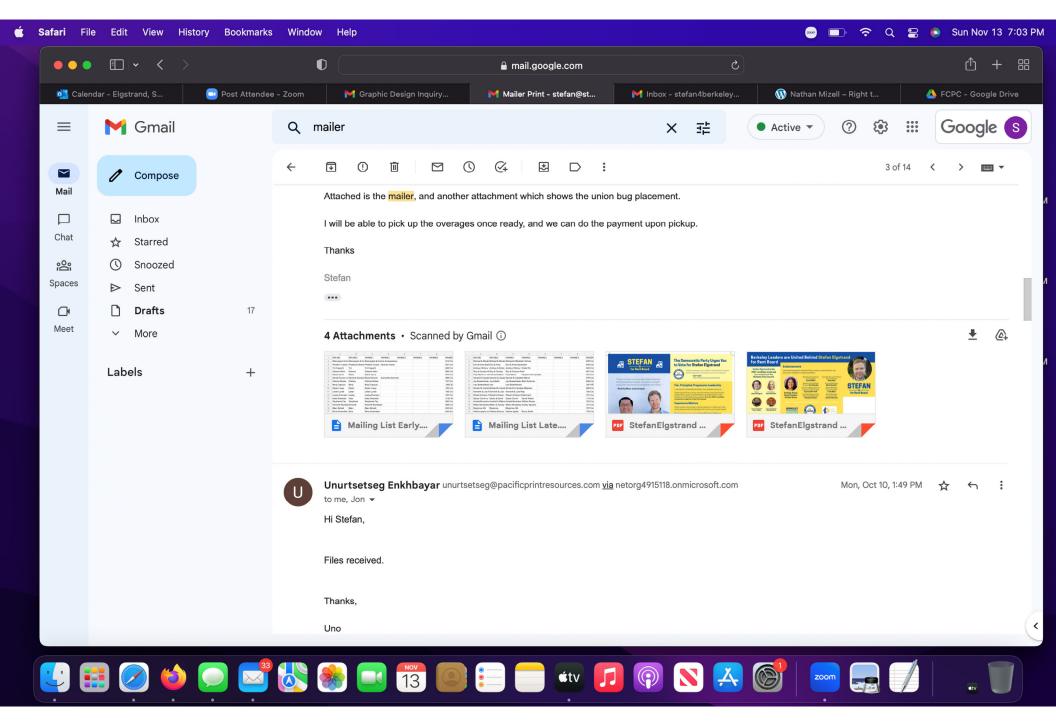
individual also led a campaign of intimidation and threats against my supporters and perceived supporters during this election. It is with great pain that I raise this, and for my own mental health, I wish I do not need to go into more detail that could trigger traumatic memories and mental anguish. Unfortunately, this individual is now attempting to use the FCPC as a tool to continue their attacks against me. This kind of behavior must be condemned, not enabled.

I am proud of the positive campaign that my team of volunteers and I ran. I also have great respect for the work of the FCPC and City Staff in holding campaigns accountable. Given the facts of the matter and the true intention of this frivolous complaint, I respectfully request that you do the right thing and dismiss this complaint.

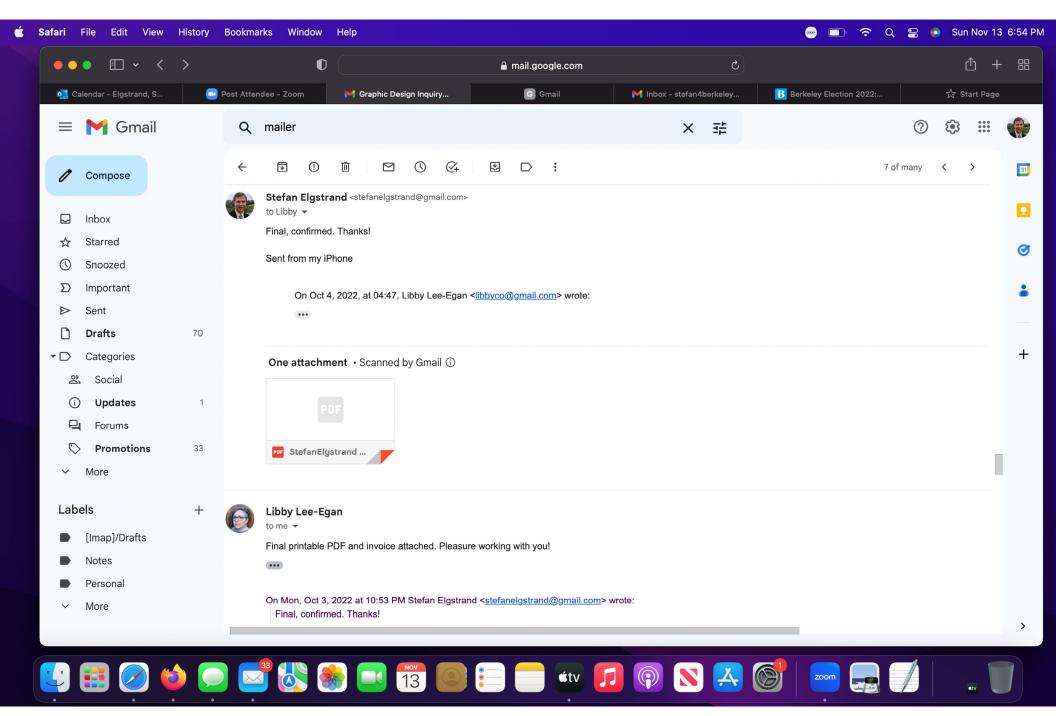
Sincerely,

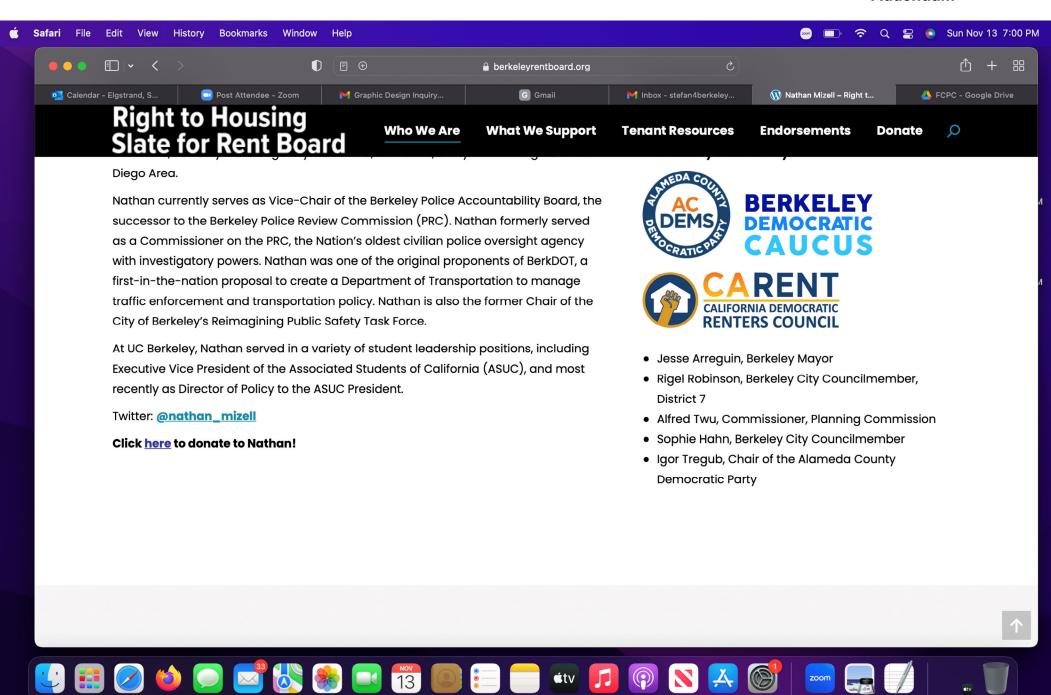
Stefan Elgstrand

### ITEM 6 Addendum



### ITEM 6 Addendum







Fair Campaign Practices Commission

Date: November 16, 2022

To: Fair Campaign Practices Commission

From: Samuel Harvey, Secretary

Subject: Complaint alleging violation of BERA by the Committee for an

Affordable and Resilient Berkeley – Yes on Measure L

On October 26, 2022, Commission staff received the attached complaint regarding a contribution received by the Committee for an Affordable and Resilient Berkeley – Yes on Measure L (the "Committee"). (Attachment 1.) The complaint states that the Committee "received a \$25,000 donation on October 15, 2022 from the San Francisco Foundation" and that the complainant would like the Commission "to investigate this donation as we feel this is a failure to report the true source of the contribution and that the San Francisco Foundation is likely acting as a pass through for an individual donor that is not being disclosed by the Yes on Measure L committee." (See Complaint, Attachment 1.) As the complaint notes, the Committee received a \$25,000 contribution from the San Francisco Foundation ("SFF") on October 15, 2022. (See Committee Late Contribution Report, October 16, 2022, Attachment 2.) The complaint provides no further information to support the assertion that an undisclosed individual or entity has used SFF as a "pass through."

As discussed below, after initial review, staff recommends the Commission dismiss this complaint.

### **ANALYSIS**

SFF is a 501(c)(3) nonprofit organized as a "public benefit corporation" under California law. (See SFF Articles of Incorporation, Attachment 3.) SFF is registered as a "major donor" under state law. Under California law, major donors are individuals or entities that make contributions totaling \$10,000 or more to state or local campaign committees in a calendar year. (Cal. Gov. Code § 82013(c).)

In addition to contributing \$25,000 to the Committee, SFF has reported additional contributions totaling \$100,000 to Oakland ballot measure committees during the most recent election cycle. (See SFF Late Contribution Reports (Form 497), Attachment 4)

Generally, ballot measure committees are not subject to the limits on contribution amounts and sources of contributions which apply to candidate committees under BERA and state law. For example, the campaign contribution limits in BERA, such as the \$250 limit in section 2.12.415, do not apply to ballot measure committees. The same is true

November 16, 2022 Page 2 Re: Yes on L

under state law where the Political Reform Act ("PRA") expressly exempts ballot measure committees from contribution limits. (See Cal. Gov. Code § 85303 ("nothing in this chapter shall limit a person's contributions to a committee . . . provided the contributions are used for purposes other than making contributions to candidates for elective state office.") Importantly, the United States Supreme Court has held that limitations on contributions to ballot measure committees are unconstitutional on First Amendment grounds. (See <u>Citizens Against Rent Control v. Berkeley</u> (1981) 454 U.S. 290.)

Moreover, while BERA contains a provision prohibiting contributions from entities other than natural persons to candidate committees, no similar provision exists for ballot measure committees. Likewise, the PRA does not prevent corporations, including nonprofit organizations, from contributing to ballot measure campaigns. There is therefore no provision in BERA or the PRA which prevents the Committee from accepting a \$25,000 contribution from SFF.

The complaint asserts that SFF is functioning as a "pass through" entity to obscure the identity of an underlying contributor. However, the complaint provides no evidence to support this assertion. Under state law, SFF is considered a "multipurpose organization", meaning it is an entity which raises money for purposes other than making political contributions or expenditures, but which at times spends money for political purposes. (Cal. Gov. Code § 84222.)

Multipurpose organizations are not required to disclose their donors if the organization makes contributions or expenditures only from funds not generated from donations, such as investment income, interest income, capital gains, and income from providing goods or services. (Cal. Gov. Code § 84222(c)(5)(A).) Instead, the organization must briefly describe the source of the "non-donor" funds on its major donor report. (Id.) Alternatively, if SFF has used donor funds to pay for contributions, it is required to disclose the sources of the donations. (See Cal. Gov. Code § 842222(e)(1)(C).) However, failure to do so would be a violation of the PRA and is not covered by BERA.

Major donors file semi-annual campaign statements ("Form 461"). Per California Fair Political Practices Commission ("FPPC") advice to major donors, the description of non-donor funds described above must be included on an organization's Form 461. (FPPC, Major Donor Committees Campaign Disclosure Manual 5, Ch. 4., p. 15.) SFF qualified as a major donor by making contributions in October and November of this year and will therefore file a Form 461 covering the second half of 2022, which will be due on January 31, 2023.

Additionally, major donors also must file "Late Contribution Reports" for all contributions over \$1,000 made within 90 days of an election. (Cal. Gov. Code § 84203.) SFF's late contribution reports are included herein as Attachment 4.

<sup>&</sup>lt;sup>1</sup> See BMC § 2.12.440 "No proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, including non-profit corporations, or labor union shall make a contribution to any candidate or committee (supporting or opposing any candidate) directly or indirectly, and no campaign treasurer (of any such committee) shall solicit or accept such contribution."

November 16, 2022 Page 3 Re: Yes on L

Finally, while BERA does not address multipurpose organizations or major donors, BMC section 2.12.319 provides that

No contribution shall be made, directly or indirectly, of anything belonging to another person or received from another person on the condition that it or part of it be used as a contribution. No contribution shall be made, directly or indirectly, by any person on behalf of another person.

However, as discussed above, SFF appears to be functioning as a multipurpose organization making contributions to ballot measure committees from nondonor funds. In this case, there is no evidence that SFF is using funds received from another source "on the condition" that those funds be use as contributions, or that contributions are otherwise being made on behalf of another person.

### **RECOMMENDATION**

Under the Commission's Procedures, at this stage, the Commission may (1) direct the Secretary to investigate the complaint, to the extent the Secretary has not already done so; (2) dismiss the complaint; or (c) find probable cause to believe BERA has been violated. (FCPC Procedures Section V.B.2.)

Based on the foregoing, staff conclude that the complaint does not state sufficient facts to suggest that a violation of BERA may have occurred. The Commission Secretary recommends that the Commission dismiss this complaint, with the caveat that the Secretary will review SFF's Form 461 to be filed by January 31, 2023 and return to the Commission in the event that staff recommends any further action.

### Attachments:

- 1. Complaint received October 26, 2022
- 2. Committee or an Affordable and Resilient Berkeley Yes on Measure L, Late Contribution Report (Form 497), filed October 16, 2022.
- 3. San Francisco Foundation, Articles of Incorporation
- 4. San Francisco Foundation, Late Contribution Reports (Form 497)



# Complaint of Noncompliance Berkeley Election Reform Act ("BERA")\*

CITY OF BERKELEY - CITY CLERK 2022 OCT 26 AM8:49

Full Name:	Carla Woodworth	Received
Date:	October 25, 2022	110001400
Address:	Berkeley, CA 94704	OCT 26 2022
	nal but suggested): carla@tennypress.com	
Phone (option	nal but suggested): 510 849-3048	— City Attorn
	ies alleged to have committed or are about to commit a or an Affordable and Resilient Berkeley-Yes on Measure L	•
•	se and accurate statement of the facts that constitute the space is needed, you may attach additional pages:	ne violation of BERA.
Documents:	Attach any documentation supporting the facts alleged	J.
	that are not based upon personal knowledge should ide hat gives rise to the complainant's belief in the truth of	
	der penalty of perjury under the laws of the State of submitted hereon and in the attachments is true a	
Signature (	Pasla Woodworth Date	10/25/2022

<sup>\*</sup>Use this "Complaint of Noncompliance" form to allege a violation of BERA pursuant to Berkeley Municipal Code Section 2.12.225 and the *Procedures of the Fair Campaign Practices Commission*.

### **Carla Woodworth**

From:

Carla Woodworth < carla@tennypress.com>

Sent:

Tuesday, October 25, 2022 10:55 AM

To:

'attorney@cityofberkeley.info'

Subject: Attachments:

October 25, 2022

Berkeley Fair Campaign Practices Complaint

San Francisco Foundation Contribution 10152022-\$25,000.pdf

BY EMAIL: attorney@cityofberkeley.info

Received

CITY OF BERKELEY - CITY CLERK

2022 OCT 26 AHR:49

OCT 26 2022

City Attorney

Sam Harvey Berkeley City Attorney's Office Fair Campaign Practices Commission 2180 Milvia, 4<sup>th</sup> Floor Berkeley, CA 94704

Dear Mr. Harvey,

On behalf of the Berkeleyans for Better Planning Committee (No on Measure L), I am making a formal complaint with the Berkeley Fair Campaign Practices Commission. The Committee for an Affordable and Resilient Berkeley (Yes on Measure L) received a \$25,000 donation on October 15, 2022 from the San Francisco Foundation. The Yes on Measure L contribution report (California Form 497) reported this contribution on October 16, 2022. The form is attached to this letter. Our committee would like the Berkeley Fair Campaign Practices Commission to investigate this donation as we feel this is a failure to report the true source of the contribution and that the San Francisco Foundation is likely acting as a pass through for an individual donor that is not being disclosed by the Yes on Measure L committee.

Thank you for your attention in this matter.

Sincerely,

Carla Woodworth
Berkeleyans for Better Planning, No on Measure L
2335 Parker Street #2
Berkeley, CA 94704

Attachment: San Francisco Foundation Contribution, California Form 497 (filed 10/16/2022)

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497 Contribution Report

NAME OF FILER		Date of	Date Stamp	CALIFORNIA A C
Committee for an Affordable and	Committee for an Affordable and Resilient Berkeley - Yes on Measure L	This Filing 10/16/2022		FORM 43/
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	*	to Report No.	205169123	
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Borkolov	CA 94705	No. of Pages1		

# 1. Contribution(s) Received

Reason for Amendment:			10/15/2022	DATE RECEIVED
nent:			The San Francisco Foundation San Francisco, CA 94111	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)
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*Contributor Codes  IND – Individual COM – Recipient Committee (other than PTY or SCC) OTH – Other (e.g., business entity) PTY – Political Party SCC – Small Contributor Committee				IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)
r than PTY or SCC) y)	☐ Check if Loan  % Provide interest rate	☐ Check if Loan	25,000.00  Check if Loan  Reprovide interest rate	AMOUNT RECEIVED

FPPC Form 497 (Feb/2019)
FPPC Advice: advice@fppc.ca.gov (866/275-3772)
www.fppc.ca.gov

### **497 Contribution Report**

### Amounts may be rounded to whole dollars.

497 CONTRIBUTION REPORT

NAME OF FILER Committee for	an Affordable and F	Resilient Berkeley -	- Yes on Measure L	Date of This Filing _	10/16/2022	Date Stamp	CALIFO	
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# ARTICLES OF INCORPORATION OF THE SAN FRANCISCO FOUNDATION



APR 2 6 2002

BILL JONES, Secretary of State

### ARTICLE I

The name of this corporation is The San Francisco Foundation.

### ARTICLE II

- A. This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for charitable purposes.
- B. The specific and primary purpose of this corporation is to engage in charitable activities within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any future United States internal revenue law (the "Code"), that benefit the public, with preference given to activities within the San Francisco Bay Area.

### ARTICLE III

The name and address in this state of this corporation's initial agent for the service of process is Betsy Buchalter Adler, c/o Silk, Adler & Colvin, 235 Montgomery Street, Suite 1220, San Francisco, California 94104.

### ARTICLE IV

A. This corporation is organized and operated exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code. Notwithstanding any other provision of these Articles, this corporation shall not carry on any activities not permitted to be carried on (1) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code, or (2) by a corporation, contributions to which are deductible under Sections 170(c)(2), 2055(a)(2), 2106(a)(2)(A)(ii), 2522(a)(2), or 2522(b)(2) of the Code.



B. Except as permitted by law, no substantial part of the activities of this corporation shall consist of the carrying on of propaganda or otherwise attempting to influence legislation, nor shall this corporation participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office.

### ARTICLE V

The Board of Trustees, as required by law, shall have the power to modify any restriction or condition on the distribution of funds for any specified charitable purpose or to specified organizations if, in the sole judgment of the Board of Trustees (without the necessity of the approval of any other party) such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served. The Board of Trustees shall also have the power to replace any custodian or agent for breach of fiduciary duty under the laws of the State of California and to replace any custodian or agent for failure to produce a return of net income which the Board of Trustees deems reasonable over a period of time determined by that body to be reasonable.

### ARTICLE VI

The property of this corporation is irrevocably dedicated to charitable purposes, and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer, or member, if any, of this corporation, or any other private person. Upon the winding up and dissolution of this corporation and after paying or adequately providing for the debts and obligations of this corporation, the remaining assets shall be distributed to one or more nonprofit funds, foundations, or corporations, each of which is organized and operated exclusively for charitable purposes with tax-exempt status under Section 501(c)(3) of the Code.

DATED: April 19, 2002

Sandra R. Hernández, M.D.

Incorporator

### **Late Contribution Report**

### Type or print in ink. Amounts may be rounded to whole dollars.

LATE CONTRIBUTION REPORT

NAME OF FILER The San Francisco Foundation		Date This	e of Filing	10/14/2022	Date Stamp	CALIFORN FORM	<sup>IA</sup> 497
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Reason for Amendment:

### **Late Contribution Report**

### Type or print in ink. Amounts may be rounded to whole dollars.

LATE CONTRIBUTION REPORT

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CITY San Francisco	STATE CA	ZIP CODE 94111	(explain below)  No. of Pages 2		

### Late Contribution(s) Made

DATE MADE	FULL NAME, MAILING ADDRESS AND ZIP CODE OF RECIPIENT (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CANDIDATE AND OFFICE OR MEASURE AND JURISDICTION	AMOUNT OF CONTRIBUTION	DATE OF ELECTION (IF APPLICABLE)
10/13/2022	Oakland Rising Ballot Committee Supporting Measure T&W San Francisco, CA 94133	The Oakland Fair Elections Act(W) City of Oakland	\$25,000.00	
	ID# 1455486			

Reason for Amendment:

### **Late Contribution Report**

### Type or print in ink. Amounts may be rounded to whole dollars.

LATE CONTRIBUTION REPORT

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11/03/2022	Oakland Rising Ballot Committee Supporting Measure T&W San Francisco, CA 94133	The Oakland Fair Elections Act(W) City of Oakland	\$25,000.00	
	ID# 1455486			

Reason for Amendment:

### **Late Contribution Report**

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DATE MADE	FULL NAME, MAILING ADDRESS AND ZIP CODE OF RECIPIENT (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CANDIDATE AND OFFICE OR MEASURE AND JURISDICTION	AMOUNT OF CONTRIBUTION	DATE OF ELECTION (IF APPLICABLE)
11/03/2022	OAKLAND NEIGHBORS FOR AFFORDABLE HOUSING AND SAFE STREET, YES ON U 2022 Alameda, CA 94501	2022 Affordable Housing Infrastructure Bond(U) City of Oakland	\$25,000.00	11/08/2022
	ID# 1452659			

Reason for Amendment:

### **Late Contribution Report**

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Reason for Amendment:

### **Late Contribution Report**

### Type or print in ink. Amounts may be rounded to whole dollars.

LATE CONTRIBUTION REPORT

NAME OF FILER The San Francisco Foundation			Date of This Filing 10/14/2022	Date Stamp	CALIFORNIA 497
AREA CODE/PHONE NUMBER (415)733-8525	I.D. NUMBER (if applicable) 1307803		Report No. MO-LCR269M		For Official Use Only
STREET ADDRESS			Amendment to Report No.	Page 2 of 2	
CITY San Francisco	STATE CA	ZIP CODE 94111	No. of Pages 2		

### Late Contribution(s) Made

DATE MADE	FULL NAME, MAILING ADDRESS AND ZIP CODE OF RECIPIENT (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CANDIDATE AND OFFICE OR MEASURE AND JURISDICTION	AMOUNT OF CONTRIBUTION	DATE OF ELECTION (IF APPLICABLE)
10/13/2022	Committee for an Affordable and Resilient Berkeley, Yes on L Berkeley, CA 94704	Affordable Housing and Infrastructure Bond(L) City of Berkeley	\$25,000.00	11/08/2022
	ID# 1451556			
10/13/2022	Yes on T Invest In Our Oakland 2022, Sponsored by SEIU Local 1021 and IFPTE Local 21 Oakland, CA 94607	Oakland Progressive Business Tax(T) City of Oakland	\$25,000.00	11/08/2022
	ID# 1444350			

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