

BEFORE THE SAN FRANCISCO ETHICS COMMISSION

In the Matter of Victor Makras)
) **Case No. 2021-001**
)
Respondent) **Finding of Probable Cause**
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The San Francisco Ethics Commission (“Commission”) has authority to investigate and administratively enforce violations of City law relating to campaign finance, lobbying, conflicts of interest, governmental ethics, and whistleblower protection. SF Charter § C3.699-13; SF C&GCC Art. IV.

In accordance with Ethics Commission Enforcement Regulation 7(B), on October 28, 2022, the Commission’s Enforcement Director submitted a Probable Cause Report in the above-captioned matter. The Probable Cause Report alleges Victor Makras (“Respondent”) engaged in conduct in violation of the ethics, conflicts of interests, and financial disclosure provisions within Article III of the San Francisco Campaign and Governmental Conduct Code (“SF C&GCC”), when he failed to disclose reportable income and when he participated in governmental decisions in which he had a financial interest.

Respondent did not file a Response to the Probable Cause Report as provided for in Enforcement Regulation Sec. 7(B)(4), therefore no Rebuttal was filed. No Probable Cause Conference was requested or held in this matter.

According to the enforcement regulations of the San Francisco Ethics Commission (“Commission”), the Executive Director may recommend a finding probable cause that a violation occurred “if the evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a respondent committed or caused a violation.” San Francisco Enforcement Reg. § 7(D)(1). The Executive Director’s determination that probable cause exists or does not exist to believe a violation of law has occurred must be in writing and “must be based solely on the evidence and argument presented in the Probable Cause Report, Response, and Rebuttal, as well as any evidence or argument presented by the parties at the Probable Cause Conference.” § 7(D)(2).

Based on these standards and requirements, this written determination provides my assessment of the evidence and arguments presented and my findings regarding the allegations contained in the Probable Cause Report filed in this matter.

SUMMARY OF FINDINGS

Based on a review of the applicable law, information, and exhibits presented in the Probable Cause Report filed on October 28, 2022, according to the standard and requirements established under Enf. Regs. § 7(D)(1) and 7(D)(2) and for the reasons enumerated in this Determination, I find that the evidence is sufficient to find that probable cause exists to believe that Respondent caused or committed the violations of law follows:

Count One: By failing to disclose received income as required on his Statement of Economic Interest (Form 700) from a loan repayment from Harlan Kelly and Naomi Kelly for calendar year 2014, Respondent violated SF C&GCC section 3.1-102(a).

Counts Two through Six: By making or participating in making governmental decisions as a Member of the Port Commission from June 2019 through September 2019 regarding a project in which he had a financial interest, Respondent violated SF C&GCC section 3.206(a) on five occasions.

Count Seven: By failing to file a recusal notification form as required after the January 14, 2020 Port Commission meeting, Respondent violated SF C&GCC section 3.209(b).

BACKGROUND

Respondent Victor Makras (“Respondent”) is a former member of the San Francisco Port Commission who assumed office on May 4, 2018 and served on the Commission until July 1, 2020, when his term ended. Before then, and since 2007, Respondent served on numerous other City boards and commissions, including the San Francisco Employee Retirement System Board (the “Retirement Board”), Police Commission, Fire Commission, and Public Utilities Commission. Respondent served on the Retirement Board from August 2010 to May 2018.

Respondent is a property owner and real estate agent and engages in a variety of property and financial business activities. Respondent conducts business through Victor G. Makras Inc., an incorporated entity in which Respondent is the President and has reporting owning stock valued at over \$1 million. (PC Report Exhibit 1). Respondent also conducts business using the name Makras Real Estate, a fictitious business name utilized by Victor G. Makras, Inc. (PC Report Exhibit 2).

APPLICABLE LAW

Financial Disclosure Requirements (Form 700)

Elected officials and public employees who make or influence government decisions are required under the law to submit a Statement of Economic Interest (Form 700). These financial disclosure filings are designed as a tool for officials to monitor their financial interests to detect and

avoid potential conflicts of interests, and to promote accountability and public trust that officials make governmental decisions without regard to their personal financial interests.

SF C&GCC section 3.1-102(a)(1) requires City officers and many City employees to file a Form 700. Such officials must file within 30 days of assuming or leaving office and must also file annually by April 1st to report financial interests during the previous calendar year. SF C&GCC section 3.1-102(a); 2 CCR 18730.

Members of the Port Commission and members of the Retirement Board must file the Form 700 with the Commission and are designated under the law as Category 1 filers, meaning that they must “disclose income (including gifts) from any source, interests in real property, investments, and all business positions in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management.” SF C&GCC §§ 3.1-103(a)(1), 3.1-107, 3.1-345, 3.1-410. “Income” is defined as “a payment received, including, but not limited to, any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, [and] forgiveness or payment of indebtedness received by the filer....” Gov’t Code § 82030. Thus, such officials must report when they receive a payment that constitutes the repayment of a loan they had made to someone else. Income is only reportable if the source is located in or is doing business in (or is planning to do business in or has in the last two years done business in) the filer’s jurisdiction. *Id.* If income is received by a filer through a business entity, the actual source of the income must still be reported if the filer received \$10,000 or more from that source in a calendar year. *Id. at* § 87207(b)(2). The filer must also report the business entity as a source of income. *Id. at* § 87207(a)(1).

Conflicts of Interests

The San Francisco Campaign and Governmental Conduct Code (“SF C&GCC”) incorporates provisions of the California Political Reform Act (“PRA”) and provides that “[n]o officer or employee of the City and County shall make, participate in making, or seek to influence a decision of the City and County in which the officer or employee has a financial interest within the meaning of California Government Code Section 87100 *et seq.* and any subsequent amendments to these Sections.” SF C&GCC § 3.206(a) (incorporating Gov’t Code § 87100).

Making or Participating in Making a Decision

A governmental decision is any action taken by a government agency that has a financial effect on any person other than the governmental agency making the decision. 2 CCR §18700(c)(4). A public official “makes” a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. 2 CCR § 18704(a). A public official “participates in” a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review. 2 CCR § 18704(b).

Financial Interests

A public official cannot make or participate in making a governmental decision if it is reasonably foreseeable that the decision will materially financially affect any of the official's personal financial interests. Gov't Code § 87103. A public official's financial interests include any "real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more." *Id.* at § 87103(b). An indirect interest includes property held by a spouse and property held by a business entity in which the official or the official's spouse own a 10 percent or greater interest. *Id.* at § 87103. A public official's financial interests also include any "business entity in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more," and "any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management." *Id.* at § 87103(a), (d).

Reasonably Foreseeable Financial Effect

The financial effect of a governmental decision on a financial interest is reasonably foreseeable when the financial interest is explicitly involved in a governmental decision before the official or the official's agency. 2 CCR § 18701(a). Even if a financial interest is not explicitly involved in the decision, a financial effect on that interest is still foreseeable if the "effect can be recognized as a realistic possibility and more than hypothetical or theoretical." 2 CCR § 18701(b). State regulations provide factors that serve as "general guidelines" for considering whether a financial effect is reasonably foreseeable. One such factor is "[w]hether the public official should anticipate a financial effect on the official's financial interest as a potential outcome under normal circumstances when using appropriate due diligence and care." *Id.* at § 18701(b)(2).

Material Financial Effect

For an official to be prohibited from making or participating in making a governmental decision, it must be reasonably foreseeable that the financial effect the decision will have on the official's financial interest will be material. Different materiality standards apply depending on the type of financial interest at issue.

i. Real Property

Regulation 18702.2 sets forth the standards applicable to the effect of a governmental decision on a real property interest. If a governmental decision involves real property that is located more than 500 feet but within 1,000 feet from another parcel of real property in which an official has a financial interest, the decision is deemed to have a material financial effect on the official's parcel of real property if the decision would "change the parcel's development potential, income producing potential, highest and best use," or market value, or if the decision would alter the parcel's "character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality...." *Id.* § 18702.2(a)(8)(A)–(E).

ii. Business Interest

The version of Regulation 18702.1 operative at the times relevant to this case provided that a governmental decision's effect on an official's interest in a privately held business entity is material "if a prudent person with sufficient information would find it is reasonably foreseeable that the decision's financial effect would contribute to a change in ... the value of [the] privately-held business entity." 2 CCR § 18702.1(b) (2019).¹ The regulation provides examples of such decisions. One example is a decision that "would [m]ake improvements in the surrounding neighborhood such as redevelopment projects, traffic/road improvements, or parking changes that may affect, either temporarily or permanently, the amount of business the entity receives." *Id.* at § 18702.1(b)(4). Another example is a decision that would "[d]ecide the location of a major development, entertainment facility, or other project that would increase or decrease the amount of business the entity draws from the location of the project." *Id.* at § 18702.1(b)(5).

Distinguishability Standard – The "Public Generally" Exception

A governmental decision's financial effect on a public official's financial interest does not give rise to a conflict of interest if the effect is indistinguishable from its effect on the public generally. This requires that the decision affect a significant segment of the public and the effect on the official's financial interest is not unique compared to the effect on the significant segment of the public. Gov't Code § 87103; 2 CCR § 18703(a). The version of Regulation 18703 that was operative at the times relevant to this case provided that a "significant segment of the public" is "at least 25 percent of ... all real property, commercial real property, or residential real property within the official's jurisdiction." 2 CCR § 18703(b)(2) (2019).²

There is a "unique effect" on a public official's property where there is a disproportionate effect on, among other things, "[t]he development potential or use of the official's real property or the income producing potential of the official's real property or business entity," or on "[a]n official's business entity or real property resulting from the proximity of a project that is the subject of a decision." 2 CCR § 18703(c)(1)–(2).

Recusal Procedures and Notification

Any member of a City commission who is required to recuse from participation in a governmental decision because of a conflict of interest must comply with a specific recusal procedure. The official must "publicly identify the circumstances that give rise to the conflict of interest in detail sufficient to be understood by the public," "recuse himself or herself from discussing or acting on the matter," and "leave the room until after the discussion, vote, and any other disposition of the matter is concluded..." SF C&GCC § 3.209(a).

¹ This former regulation is available on the [FPPC's website](#).

² This former regulation is available on the [FPPC's website](#).

Additionally, each time a member of a City commission who is required to file a statement of economic interests recuses himself or herself from a decision, the official must file a recusal notification form with the Ethics Commission within 15 calendar days after the date of the meeting at which the recusal occurred. *Id.* § 3.209(b). An official must file the recusal notification form with the Ethics Commission even if the member is not present at the meeting that would have involved the conflict of Interest. SF C&GCC § 3.209(b)(2).

Statute of Limitations

The Ethics Commission may not bring an administrative action for violations of Article III of the Code more than four years after the date on which the violation occurred. SF C&GCC § 3.242(e); Enforcement Reg. § 13(A). For statute-of-limitations purposes, an action for administrative penalties is brought by the Executive Director on the date that the Enforcement Director delivers the probable cause report. Enforcement Reg. § 13(A). However, the statute of limitations is tolled “[i]f the respondent(s) engaged in concealment or deceit” and is tolled “for the period of concealment or deceit.” *Id.*

SUMMARY OF FACTS AND EVIDENCE

Loan to Harlan and Naomi Kelly

In 2015, Respondent filed a Form 700 covering calendar year 2014, in which he failed to report a loan repayment in the amount of \$70,000 he received from Harlan Kelly and Naomi Kelly, a married couple (jointly “the Kellys”) (Probable Cause Report Exhibit 3). The Probable Cause Report provides evidence of the circumstances of this personal loan and efforts taken by Respondent to conceal it.

In 2012, Respondent arranged for a group of 20 individuals to loan \$715,000 to the Kellys. (PC Report Exhibit 4). Harlan Kelly was at that time the General Manager of the San Francisco Public Utilities Commission, and Naomi Kelly was at that time the San Francisco City Administrator. The loan was made on September 10, 2012, and was secured by the Kellys’ primary residence and two other properties. (*Id.*) The Kellys already had a prior home loan in the amount of \$371,602.95 through Chase Bank that was also secured by their primary residence. (PC Report Exhibit 5).

The next year, on December 2, 2013, Respondent made a \$70,000 loan to the Kellys. (PC Report Exhibit 6). Respondent did this by issuing four checks from a bank account belonging to Victor G. Makras, Inc. /dba Makras Real Estate. (*Id.*) Each check was paid toward a separate credit card, one belonging to Harlan Kelly and three belonging to Naomi Kelly. (*Id.*) The payments totaled \$70,000 and covered all of the approximately \$57,000 of outstanding balances on the credit cards. (*Id.*) The remainder of the total payment, approximately \$13,000, was an overpayment on the credit card belonging to Harlan Kelly and resulted in a negative balance on the card, which Harlan Kelly told Respondent would “give us a contingency” to cover costs through February 2014. (*Id.*, PC Report Exhibit 7). The Kellys were contemplating refinancing the debt on their home. Respondent, in a text message to

Harlan Kelly stated, “I recommend that I pay your credit cards directly. This will avoid a large check going into your account, [t]hen needing to explain it to the bank. (PC Report Exhibit 5). Respondent added, “[b]anks do not like seeing anything unusual about the flow of cash in and out of checking and savings accounts. This will make the loan process go easy.” (*Id.*).

Later, in May of 2014, Respondent assisted the Kellys in executing a modification of the earlier \$715,000 loan he had arranged from the consortium of investors, increasing the size of the total loan by \$200,000, which resulted in what appeared to be a total principal sum owed of \$915,000. (PC Report Exhibit 8). However, the Probable Cause Report notes, there is no evidence that this additional loan amount was ever loaned from the consortium of investors to the Kellys.

During 2014, Respondent assisted the Kellys in refinancing their two home loans by securing a \$1,310,176 loan from Quicken Loans. (PC Report Exhibit 5). This loan amount was based on the \$367,865.81 current principal that the Kellys owed on their prior home loan through Chase Bank and the \$915,000 that the Kellys purportedly owed to Respondent’s consortium of investors (in addition to closing costs and fees). (*Id.*). The Quicken Loans loan proceeds were distributed in October 2014. (PC Report Exhibit 9). A total of \$367,865.81 was distributed to Chase Bank to satisfy the first home loan secured by the Kellys’ home. (*Id.*) A total of \$715,000 was distributed to the consortium of investors to satisfy the loan they had made to the Kellys in 2012. (PC Report Exhibit 10). This loan repayment was \$200,000 less than the \$915,000 that the Kellys and Respondent had represented to Quicken Loans as being outstanding on the loan from the consortium of investors. (PC Report Exhibit 11). The Probable Cause Report explains this misrepresentation was the basis for Respondent being convicted on August 26, 2022, of bank fraud and making false statements to a bank.

The extra \$200,000 of the Quicken Loans loan proceeds, which corresponds to the amount of the note modification arranged by Respondent and signed by the Kellys in May of 2014, was not paid to the consortium of investors. (*Id.*). Instead, Respondent held these funds in a trust account belonging to Makras Real Estate. (*Id.*). Shortly thereafter, Respondent used \$70,000 of the Kellys’ loan proceeds in the trust account to repay himself for the \$70,000 loan he had made to the Kellys on December 3, 2013, when he made four direct payments totaling that amount to the four credit cards belonging to the Kellys. (PC Report Exhibit 12, *see also*, Exhibit 6). Respondent used the remaining \$130,000 from November 11, 2014, through June 11, 2015, to pay off additional expenses for the Kellys, largely relating to work done on the Kellys’ home. (PC Report Exhibit 11).

On February 21, 2015, Respondent filed a Form 700 covering calendar year 2014. (PC Report Exhibit 3). Respondent did not disclose any income received from the Kellys on this Form 700. Respondent only reported income from Victor G. Makras, Inc., a number of rental property tenants, and stocks. Where the Form 700 instructs the filer to “list the name of each reportable single source of income of \$10,000 or more” for a business entity in which the filer has a financial interest, Respondent checked the box indicating “none” and listed no sources of income. (*Id.*).

Respondent's Port Commission Service and the Mission Rock Development

Respondent owns five properties located at 188 King Street, a multi-story condominium complex. Title to four of the properties at 188 King Street is held by Victor G. Makras, Inc. Title to the fifth King Street property is held by Farah Makras, Respondent's spouse. (PC Report Exhibit 13; Exhibit 14). The properties at 188 King Street are immediately across from the main entrance to Oracle Park, home of the San Francisco Giants, and approximately 920 feet from the perimeter of the Mission Rock Development ("the Project"). (PC Report Exhibit 15; Exhibit 16).

The Project is a large-scale real estate development project which, according to the Port, "will be a new mixed-used neighborhood consisting of 8 acres of new parks and open space"³ The Project will consist of four phases and will ultimately include the construction of approximately 1,600 units of rental housing and 1.4 million square feet of new commercial and office space. (PC Report Exhibit 17). The Project also includes space for small-scale manufacturing, retail, neighborhood services, waterfront parks, and public infrastructure. The Project covers 28 acres and is bounded generally by China Basin, the San Francisco Bay, Mission Rock Street, and Third Street. The Project is on land that is both owned by and under the regulatory jurisdiction of the Port. (PC Report Exhibit 18). In all, Phase 1 of the Project will include 537 residential units, approximately 600,000 square feet of office space, and approximately 8 acres of open spaces. (PC Report Exhibit 19).

In January 2018, before Respondent assumed office as a member of the Port Commission, the Port Commission gave general authorization to undertake development of the Project at Seawall Lot 337 and Pier 48 by approving an environmental impact report and granting other approvals, but subsequent approvals by the Port would be needed to complete the various phases of the Project. Following the January 2018 approval of the Project, the Port Commission continued to engage in more decision-making processes relating to the Project.

Respondent's Participation in Governmental Decisions regarding the Project

Between September 2018 and September 2019, Respondent participated in governmental decisions related to the Project.

On June 11, 2019, Respondent attended a regularly scheduled meeting of the Port Commission during which the Port Commission held a closed session to discuss negotiations between the Port and the developers of the Project regarding "the lease and development of the [Project]." (PC Report Exhibit 20). Respondent voted to enter closed session and was present in the closed session. (*Id.*) The purpose of the closed session was for Port staff to "seek[] direction from the Port Commission on fees which affect land value" and for the Port Commission to "develop a negotiating strategy tailored to maximize

³ PORT OF SAN FRANCISCO, Projects and Programs, Mission Rock and Pier 48, available at <https://sfport.com/projects-programs/mission-rock>.

the City's return" on the Project and "maximize the benefits to the Port, the City and the People of the State of California." (PC Report Exhibit 21).

On July 9, 2019, during a regular meeting of the Port Commission, Commissioners heard an informational presentation on a proposal to expand the development of Phase 1 of the Project, which would, among other things, accelerate construction and create a "safer, more enjoyable, and livelier pedestrian and retail experience."⁴ (PC Report Exhibit 22). During the presentation, the Port Commission's Senior Project Manager provided "some site context," stating, "today, the parking lot at Seawall Lot 337 as it exists with the narrow band of existing China Basin Park fronting on China Basin Channel. And then, at full buildout over four phases, a new neighborhood at the waterfront, a very exciting place to be." (PC Report Exhibit 23). After the presentation, Respondent asked questions of Port staff, inquiring about the composition of the streets that would be turned over to the City through the project. (*Id.*). Respondent also expressed concern that the new technology employed may lead to potential street maintenance issues. (*Id.*). Respondent then directed Port Commission staff to perform research about the street design and report back to the Port Commission to inform its later vote on the Phase 1 plan. (*Id.*).

On August 13, 2019, the Port Commission held another conference in closed session to discuss negotiations between the Port and the developers of the Project regarding "the lease and development of the [Project]." (PC Report Exhibit 24, *see also*, Exhibit 25). Like the June meeting, Respondent voted to enter closed session and was present in the closed session. (*Id.*)

On September 24, 2019, during a regular meeting of the Port Commission, Respondent participated in discussions and voted in support of two resolutions. (PC Report Exhibit 26, *see also*, Exhibit 27). The first resolution was the approval of Phase 1 of the Project and the "adoption of the Mission Rock Parks Plan." According to the agenda materials, the first resolution would approve a \$145 million departmental budget for accomplishing Phase 1. (Probable Cause Exhibit 28). The staff memorandum underscored that the parks plan would "[c]reate a parks and open space public realm that meets the needs of the neighborhood and appeals and attracts a diverse audience beyond the borders of the neighborhood." (*Id.*). The second resolution was for the formation of a non-profit entity, "Mission Rock Utilities," to operate a District Energy System and Non-Potable Water Plant that would provide recycled water and thermal energy to Mission Rock residents and commercial tenants. The purpose of this aspect of the Project was to ultimately make the Project more economically feasible. (*Id.*).

During the meeting, Respondent pointed out that at the July 9, 2019, presentation, he had shared some concerns about the road work to be done. (PC Report Exhibit 27). Respondent stated that he had contacted Port staff, the sponsor of the Project, and others to seek information about the roads

⁴ The September 24, 2019, Port Commission meeting minutes indicate that Phase 1 originally consisted of parcels that lined the China Basin Park but was later reconfigured to focus on the corner on the northern edge of the Project, marked as Parcels A, B, G, and F.

to be constructed as part of the Project and that the Port needed to factor risk associated with the roads into its decisions on the Project. (*Id.*). Respondent also questioned the discrepancy between the amount the developer would receive in annual return on their investment (18%) versus the amount the Port Commission would receive on its investment (10%) and the rationale behind the discrepancy. (*Id.*). Respondent ultimately voted in favor of a motion to approve both resolutions. (*Id.*).

On January 14, 2020, during a regular meeting of the Port Commission, Commissioners voted to approve new street names in the Project, an extension of the street grid, and the Schematic Design related to the Project. Respondent was absent from the meeting. (PC Report Exhibit 29).

On May 26, 2020, during a regular meeting of the Port Commission and prior to an agenda item regarding approval of the Infrastructure Plan Amendment and Memorandum of Understanding for the Project, Respondent publicly announced that he had a prohibited financial interest, recused himself from discussion of the agenda item, left the meeting room, and did not return until after the vote. (PC Report Exhibit 30). On June 2, 2020, Respondent filed a Notification of Recusal form with the Ethics Commission and reported that, because he owned property located at 188 King Street that was “within 1,000 feet of lot 337,” he recused himself from an agenda item that pertained to the Mission Rock Development project during the Port Commission Meeting on May 26, 2020. (PC Report Exhibit 16).

Respondent does not appear to have made or participated in making any further governmental decisions at Port Commission meetings regarding the Project. Respondent’s membership on the Port Commission ended on July 1, 2020, after Respondent was not reappointed to another term.

ASSESSMENT OF EVIDENCE AND FINDINGS

The Probable Cause Report provides evidence sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that Respondent committed a violation of law by failing to disclose loan repayment income.

COUNT ONE:

Respondent violated SF C&GCC section 3.1-102(a) when he failed to report income received from a reportable source on the Form 700 covering calendar year 2014.

As a member of the Retirement Board, Respondent was required to file a Statement of Economic Interests (Form 700) by April 1, 2015, to report personal financial interests during the previous calendar year (2014). Respondent filed a Form 700 for this period, but did not report any income received from Harlan Kelly or Naomi Kelly. Respondent was required to report the \$70,000 payment that he received in October 2014 that was a repayment from the Kellys for the loan Respondent made to the Kellys in 2013. This repayment was made to Respondent from a trust account that contained the \$200,000 remainder of the Kellys’ Quicken Loans home loan proceeds.

The \$70,000 repayment to Respondent constituted reportable income. First, the repayment meets the definition of income. It was a “payment received” by Respondent. Also, it was a “payment of indebtedness received by the filer,” which is one of the examples of income listed explicitly in state law. Gov’t Code § 82030. The sources of the income, Harlan Kelly and Naomi Kelly, both lived in San Francisco and did business in San Francisco at the time of the payment as employees of the City and County. This income was thus reportable. Second, that this repayment was received through Makras Real Estate did not shield Respondent from disclosing the source of the funds, which was the Kellys. Because Respondent received over \$10,000 from the Kellys, he was required to report them as a source of income, even though the repayment from them passed through a business entity. *See id. at* § 87207(a)(1). Respondent checked the box for “none” where the Form 700 specifically instructs the filer to disclose sources of income of \$10,000 or more received through a business entity.

While this Form 700 reporting violation occurred more than four years prior to the delivery of this report, the Probable Cause Report details, the applicable statute of limitations was tolled by Respondent’s concealment and deceit. As detailed in the Probable Cause Report, Respondent took actions to conceal the \$70,000 personal loan, and the repayment thereof, to help the Kellys obtain a larger loan from Quicken Loans by artificially inflating the amount of debt that was secured by the Kellys’ home. Respondent took action to help the Kellys execute the \$200,000 note modification in May of 2014 so that it would appear the Kellys owed \$915,000 to the consortium of investors (instead of the true principal sum of \$715,000). The extra \$200,000 of ill begotten loan proceeds was managed by Respondent; the first \$70,000 of this money was paid to Respondent to repay the personal loan Respondent had made to the Kellys in December of 2013. The remaining \$130,000 covered other personal expenses for the Kellys.

As further detailed in the Probable Cause Report, these uses of the refinancing loan proceeds were not proper (the \$70,000 personal loan was not secured by the Kellys’ home, nor were the subsequent \$130,000 of expenses), and neither purpose was a legitimate basis for receiving home loan refinancing. The Probable Cause Report concludes that the Respondent thus sought to hide the \$70,000 loan so that this fraud scheme would not be discovered and points to evidence showing that Respondent advised the Kellys that he should pay the Kellys’ credit card companies directly instead of giving the Kellys the \$70,000 in cash with the knowledge that the latter approach would create suspicion in the loan application process. Respondent facilitated the execution of the \$200,000 note modification, even though no additional funds were loaned by the consortium of investors; this resulted in a misstatement on the Kellys’ loan application, which untruthfully characterized the personal loan as being part of the larger home loan from the consortium of investors, which it was not.

The Probable Cause Report is persuasive that both of these acts show Respondent’s concealment and deceit regarding the personal loan. Respondent’s actions likewise concealed the loan and deceived the public when he filed his Form 700 with the Ethics Commission for calendar year 2014 and reported no income from the Kellys. Reporting this income could have exposed the improper loan. This concealment and deceit tolls the statute of limitations for the period of concealment, which

extends to at least the release of the public indictment against Respondent for bank fraud, lying to a bank, and conspiracy on October 19, 2021. Less than four years has elapsed since October 19, 2021, and Respondent's Form 700 violation is therefore still within the applicable statute of limitations.

Conflicts of Interest

The Probable Cause Report also provides evidence sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that Respondent committed multiple violations by making or participating in making governmental decisions in which he had a financial interest.

Financial Interests

At the times relevant to this case, Respondent reported on the Form 700 that he had an ownership interest of over \$1,000,000 in each of five rental properties located at 188 King Street. Four are held by the Victor G Makras, Inc. and one is held by Respondent's spouse. This ownership is confirmed by property records. Both forms of ownership constitute a financial interest in the properties for Respondent. Because Respondent's interest in these properties is worth over two thousand dollars, Respondent has a financial interest in the properties. Additionally, Respondent has a financial interest in Victor G Makras, Inc. because he has an ownership interest of 10% or more and holds the position of president.

Reasonably Foreseeable Financial Effect

A financial effect on an official's financial interest that is not explicitly involved in a decision is reasonably foreseeable if the "effect can be recognized as a realistic possibility and more than hypothetical or theoretical." 2 CCR § 18701(b). Here, Respondent's five rental properties were not the subject of or directly involved in the decision of the Port Commission. However, they were located very close to the Project, which sought to convert the parking lot at Seawall Lot 337 and the narrow band of existing China Basin Park into a new full-scale neighborhood with 1,600 units of housing and 1.4 million square feet of new commercial and office space. The Project also includes space for small-scale manufacturing, retail, and neighborhood services, waterfront parks, public infrastructure. As the Probable Cause Report concludes, given the proximity of Respondent's financial interests to the Project and the major changes that the project would bring to the surrounding area, the financial effect of Respondent's decisions on the properties, and on Victor G Makras, Inc, is a realistic probability and that Respondent "should anticipate a financial effect on [his] financial interest as a potential outcome under normal circumstances...." *See id.* at § 18701(b)(2).

Material Financial Effect

Respondent had a financial interest in the properties at 188 King Street and in Victor G Makras, Inc., both of which could be impacted by the Project. Thus, there are two ways to determine whether a governmental decision will have a material financial effect on Respondent's financial interests, either of which would suffice to establish a conflict of interest.

Regarding Respondent's real property interest, the properties located at 188 King Street are within 1,000 feet of the Project, which was the subject of the governmental decisions. The proximity of Respondent's properties to the Project means that the Project would have a material financial effect on the properties if the properties would experience a change in development potential, income producing potential, highest and best use, character (a substantial alteration in traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality), or market value. Clearly the project would have such effects on the 188 King Street properties. According to the Mission Rock Project Development Agreement, the Project's features and associated public benefits include "approximately 8 acres of major new and expanded parks, pedestrian plazas and rehabilitated public piers and wharves," "a dynamic range of space for shops, restaurants, cafes, neighborhood-serving retail uses, such as a grocery store, and community spaces, as well as commercial/office and light industrial space," and "development of the under-utilized Project Site." Phase 1 of the Project will include 537 residential units, approximately 600,000 square feet of office space, and approximately 8 acres of open spaces. These significant improvements to the area are likely to increase the income producing potential and market value of rental units at 188 King Street because of the significant increase in amenities that are within a short walking distance and because of the new office space that will drive demand for housing in the area. The Project will also alter the character of the properties by changing the amount of traffic, noise, and intensity of use in the immediate vicinity, with thousands of additional people utilizing the streets surrounding 188 King Street to access the developed Project site.

The Project will also have a material financial effect on Victor G Makras, Inc., which held title to four of the properties at 188 King Street and operated them as rental units. A prudent person with sufficient information would find it reasonably foreseeable that the effects of the Project would contribute to a change in the value of Victor G Makras, Inc. because the entity owns four properties close to the Project. The examples of material financial effects on a business entity that are provided in state regulation are directly applicable to Victor G Makras, Inc. The Project is a large redevelopment project that will improve the surrounding neighborhood and is likely to impact the housing market in the immediate area.

Distinguishability Standard – "Public Generally" Exception

To establish that a "significant segment of the public" is affected by the financial decision, Respondent would have to show that "at least 25 percent . . . of all real property, commercial real property, or residential real property within" the City and County of San Francisco would be affected by the Mission Rock Development Project. 2 CCR § 18703(b). There is no indication that at least 25 percent of the properties across the City are located within the same proximity as Respondent's properties in relation to the Project.

Additionally, Respondent's financial interests in his real properties is uniquely affected by the Project. According to the 2020 San Francisco Housing Inventory published by the Planning Department,

there are over 400,000 residential units of all types in San Francisco.⁵ Most of these are miles away from the Project and are too far away from the Project to be materially affected by it. Thus, it is not the case that the financial effect on Respondent's financial interest is indistinguishable from its effect on the public generally.

Making and Participating in Making Governmental Decisions

The Probable Cause Report provides evidence that it was reasonably foreseeable that the Project would have a material financial effect on Respondent's financial interests, and Respondent was thus prohibited from making, participating in making, or using his official position to influence governmental decisions regarding the Project. Further evidence of this presented in the Report is that Respondent later recused himself from participation in decisions regarding the Project, citing a financial conflict based on his ownership of property within 1,000 feet of the Project site.

A public official "makes" a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action. A public official "participates in" a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review. 2 CCR § 18704(b). On multiple occasions, the Probable Cause report evidences, Respondent made or participated in making decisions regarding the Project, each of which constituted a violation of SF C&GCC section 3.206(a).

COUNT TWO:

**Respondent violated SF C&GCC section 3.206(a) on June 11, 2019,
by participating in making a governmental decision regarding the Project.**

At the Port Commission's June 11, 2019, meeting, Respondent voted to hold a closed session regarding negotiations over the terms of the lease and development of the Project. These negotiations concerned the Project and its ultimate approval by the Port Commission. Based on Respondent's vote to enter closed session for such negotiations and his presence during the closed session, it is reasonable to conclude that a person of ordinary caution and prudence would believe or entertain a strong suspicion that Respondent provided information, opinions, or recommendations while in closed session and thus, that Respondent participated in a governmental decision relating to the Project and thereby violated Code section 3.206(a).

COUNT THREE:

**Respondent violated SF C&GCC section 3.206(a) on July 9, 2019,
by participating in making a governmental decision regarding the Project.**

⁵ San Francisco Planning Department, 2020 San Francisco Housing Inventory, (April 2021) *available at* https://sfplanning.org/sites/default/files/documents/reports/2020_Housing_Inventory.pdf.

At the Port Commission's July 9, 2019, meeting, Respondent participated in an open session discussion regarding the Project. Respondent stated his opinion that the roads in the project could be a liability and that their risk and maintenance issues needed to be factored into the Commission's decision, and Respondent recommended that Port staff to perform research regarding the roads to inform the Commission's later vote. By providing opinions and recommendations and directing Staff to report back to the Commission with information to inform its ultimate vote on the Project, Respondent participated in a governmental decision relating to the Project and thereby violated Code section 3.206(a).

COUNT FOUR:

**Respondent violated SF C&GCC section 3.206(a) on August 13, 2019,
by participating in making a governmental decision regarding the Project.**

At the Port Commission's August 13, 2019, meeting, Respondent again voted to hold a closed session regarding negotiations over the terms of the lease and development of the Project. These negotiations concerned the Project and its ultimate approval by the Port Commission. Based on Respondent's vote to enter closed session for such negotiations and his presence during the closed session, it is reasonable to conclude that a person of ordinary caution and prudence would believe or entertain a strong suspicion that Respondent provided information, opinions, or recommendations while in closed session and thus, that Respondent participated in a governmental decision relating to the Project and thereby violated Code section 3.206(a).

COUNTS FIVE AND SIX:

**Respondent violated SF C&GCC section 3.206(a) on September 24, 2019,
by making two governmental decisions regarding the Project.**

During the September 24, 2019, Port Commission meeting, Respondent voted to approve two action items before the Port Commission relating to the Project. The first was a resolution to approve Phase 1 of the development of the Project and the Project's Parks Plan. Respondent voted in favor of approval. Respondent thus made a governmental decision relating to the Project and thereby violated Code section 3.206(a).

The second action item was a resolution to approve the formation of a non-profit entity to provide recycled water and thermal energy to Mission Rock residents and commercial tenants. Respondent voted in favor of approval. Respondent thus made a governmental decision relating to the Project and thereby violated Code section 3.206(a).

Lastly, the Probable Cause Report also provides evidence sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that Respondent violated the law by failing to comply with applicable recusal notification requirements of City law.

COUNT SEVEN:

**Respondent violated SF C&GCC section 3.209(b)
by failing to file a required recusal notification form.**

As the Probable Cause Report evidence demonstrates, Respondent had a financial interest in the Project and was thus prohibited from participating in decisions regarding it. When a governmental decision regarding the project was made by the Port Commission Respondent at its January 14, 2020, meeting, Respondent failed to follow applicable recusal requirements. Although absent from this meeting, Respondent was required under the law to file a recusal notification within 15 calendar days after the date of the meeting because he would have been legally required to recuse himself from a matter during the meeting. Respondent failed to file a recusal notification and thereby violated Code section 3.209(b).

CONCLUSION

Based on the foregoing, I find the evidence presented sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that Respondent committed or caused the violations detailed above, and therefore I find probable cause that Respondent violated Counts One through Seven as alleged in the Probable Cause Report.

LeeAnn Pelham

DATED: December 21, 2022

LEEANN PELHAM
Executive Director
San Francisco Ethics Commission