

1 JASON A. BEZIS  
2 State Bar No. 225641  
3 3661-B Mosswood Drive  
4 Lafayette, CA 94549-3509  
5 (925) 962-9643  
6 Bezis4Law@gmail.com  
7 Attorney for Complainants TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION  
8 FUND (TRANSDEF) and BAY AREA TRANSPORTATION WORKING GROUP (BATWG)

9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
10 STATE OF CALIFORNIA

11 In the Matter of

12 METROPOLITAN TRANSPORTATION COM-  
13 MISSION, a California public entity; BAY AREA  
14 TOLL AUTHORITY, a public entity; WATER  
15 EMERGENCY TRANSPORTATION AUTHORI-  
16 TY (WETA), a public entity; ALAMEDA-CONT-  
17 RA COSTA TRANSIT DISTRICT; SAN FRAN-  
18 CISCO COUNTY TRANSPORTATION  
19 AUTHORITY; SOLANO TRANSPORTATION  
20 AUTHORITY; YES ON REGIONAL MEASURE  
21 3 – KEEPING THE BAY AREA MOVING COM-  
22 MITTEE (FPPC ID No. 1398329); BAY AREA  
23 CIVIC LEADERSHIP ASSOCIATIONS; BAY  
24 AREA COUNCIL (BAC); SILICON VALLEY  
25 LEADERSHIP GROUP; SAN FRANCISCO BAY  
26 AREA PLANNING AND URBAN RESEARCH  
27 ASSOCIATION (SPUR); TBWB STRATEGIES  
28 [a.k.a. Public Finance Strategies LLC; a.k.a. Ter-  
ris Barnes Walters Boigon Heath, Inc., a California  
corporation (#C3995036)]; KULLY HALL LLC  
(d/b/a Kully Struble), a Washington limited liabili-  
ty company (UBI #603-069-140); HARMONIC  
INC., a Delaware corporation; JAMES WUNDER-  
MAN, individually and in his capacities as Presi-  
dent and CEO of BAC and vice chair/board mem-  
ber of WETA; MARK JONES; GARY HSUEH;  
PETER BEELER; BARRY BARNES, individual-  
ly and in his capacity as partner of TBWB STRA-  
TEGIES; CARL GUARDINO, individually and in  
his capacities as President & CEO of SILICON  
VALLEY LEADERSHIP GROUP and California  
Transportation Commissioner; and DOES 1-50,  
Respondents.

) FPPC No.:

) **COMPLAINT:**

) **Violations of FPPC Regulation 18420.1**

) **(Payment by Local Agency for a  
Campaign-Related Communication)**

1 To FPPC Chair Miadich, Fair Political Practices Commissioners and FPPC staff:

2 Complainants Transportation Solutions Defense and Education Fund (TRANSDEF) and  
3 Bay Area Transportation Working Group (BATWG) hereby file this Fair Political Practices  
4 Commission complaint alleging illegal use of public resources by the Respondents  
5 METROPOLITAN TRANSPORTATION COMMISSION (hereinafter MTC), BAY AREA  
6 TOLL AUTHORITY (hereinafter BATA), and WATER EMERGENCY TRANSPORTATION  
7 AUTHORITY (hereinafter WETA), among other public entities, to promote passage of the \$4.5  
8 billion Regional Measure 3 (hereinafter RM3) bridge toll increase by voters in the nine-county  
9 San Francisco Bay Area on June 5, 2018. Complainants allege that Respondents MTC, BATA  
10 and WETA have violated the Political Reform Act by failing to file campaign expenditure reports  
11 and by failing to include disclosure statements on their communications. The central allegations  
12 concern violations of FPPC Regulation 18420.1 (Payment by Local Agency for a Campaign-  
13 Related Communication). Complainants request that the FPPC investigate and undertake all  
14 appropriate enforcement action concerning the ten charges detailed below.

15 Complainants believe that Respondents MTC, BATA and WETA illegally coordinated  
16 with the Respondent YES ON RM 3-KEEPING THE BAY AREA MOVING campaign  
17 committee (FPPC ID No. 1398329) and other RM3 proponents to promote voter passage of RM3  
18 on June 5, 2018. Respondent YES ON RM3 campaign committee operated out of 353  
19 Sacramento Street, 10<sup>th</sup> Floor, San Francisco, as evidenced by the address listed in its FPPC  
20 filings and the return address on Respondent YES ON RM3 campaign committee's mass  
21 mailings. See attached Exhibit 1. Respondent BAY AREA COUNCIL is located at that same  
22 physical address and provided a reported \$49,768.33 in nonmonetary contributions to the YES  
23 ON RM3 campaign. Respondent JAMES WUNDERMAN is not only President and CEO of  
24 Respondent BAY AREA COUNCIL but also at all relevant times was Vice Chair of the Board of  
25 Directors of Respondent WETA, a major beneficiary of the RM3 expenditure plan.  
26 Complainants allege that WETA engaged in illegal express advocacy for RM3.

27 Complainants allege that Respondents MTC/BATA illegally supplied public resources  
28 that Respondent YES ON RM3 campaign committee used to produce television and internet

1 advertisements supporting passage of RM3. Complainants allege that Respondents MTC/BATA  
2 coordinated with Respondents SILICON VALLEY LEADERSHIP GROUP (SVLG), SVLG  
3 President and CEO CARL GUARDINO, and HARMONIC INC. to produce campaign materials  
4 supporting RM3.

5 Respondent TBWB STRATEGIES [a.k.a. Public Finance Strategies, LLC, California  
6 Secretary of State File No. 200425210046, dissolved on/about July 18, 2018; a.k.a. Terris Barnes  
7 Walters Boigon Heath, Inc., a California corporation (#C3995036)], a political consulting firm,  
8 apparently played a major role in coordination between the public entities and Respondent YES  
9 ON RM3 campaign committee and its allies. Respondent TBWB STRATEGIES apparently was  
10 a common consultant to Respondents MTC/BATA and Respondents YES ON RM3 campaign  
11 committee; Respondent TBWB is believed to have served as political consultant contractor to  
12 Respondents MTC/BATA to develop the RM3 campaign strategy, including MTC/BATA so-  
13 called “informational” materials, immediately before it became the lead consultant to  
14 Respondent YES ON RM3 campaign committee (it is possible TBWB served simultaneously as  
15 consultant to both MTC/BATA and the YES ON RM3 committee). Complainants on May 1,  
16 2019 submitted a Public Records Act request to MTC/BATA seeking to confirm TBWB’s status  
17 as an MTC/BATA consultant on RM3 development prior to placement of RM3 on the ballot. As  
18 of this filing, Complainants have not received such information from MTC/BATA. **Respondent**  
19 **TBWB engaged in similar practices in the course of the 2017 Los Angeles County Measure**  
20 **H campaign, as the FPPC found in 2018 (*In the Matter of County of Los Angeles, Hilda***  
21 ***Solis, Mark Ridley-Thomas, Sheila Kuehl, Janice Hahn, Kathryn Barger, and Public Finance***  
22 ***Strategies, LLC dba TBWB Strategies, FPPC Case No. 17/150).***

23 TBWB Strategies openly states in its marketing materials that it “has a proven approach  
24 to successful public finance measures that involves five critical steps” that include a “Public  
25 Planning Process” for the first three steps until “Call for Election,” followed by an “Independent  
26 Advocacy Campaign” until “Election Day.” See attached Exhibit 2.<sup>1</sup> As discussed *infra*,  
27 Respondent TBWB’s “approach” appears to be an illegal business model under the 1988 *League*  
28 *of Women Voters* legal precedent and California Attorney General Opinions, including No.

1 13-304, issued in 2016. The existence of common consultants, such as Respondent TBWB, may  
2 explain how Respondents shared common, mutually-reinforcing messages between public  
3 agencies and private actors to form what could be described as a pro-RM3 “echo chamber,”  
4 apparently funded in part, illegally, at public expense.

5 Along with matters within the jurisdiction of the FPPC, several of the ten charges  
6 detailed *infra* allege criminal and civil misappropriation of public funds (Penal Code § 426 and  
7 Government Code § 8314 violations) and illegal express advocacy for RM3 by public entities  
8 (Government Code § 54964 violations). Therefore, Complainants also request the FPPC’s  
9 assistance in bringing potential violations to the attention of relevant federal, state and local law  
10 enforcement agencies and prosecutors for review and action, as appropriate. Complainants have  
11 included “permalinks” to webpages and videos in the Internet Archive wherever possible because  
12 Respondents may spoliage, destroy or otherwise remove from public view many of these  
13 materials once this complaint is made public.

14 Regional Measure 3 increases tolls on the seven State-owned bridges in the San  
15 Francisco Bay Area (Bay Bridge, San Mateo-Hayward Bridge, Dumbarton Bridge, Richmond-  
16 San Rafael Bridge, Carquinez Bridge, Benicia-Martinez Bridge and Antioch Bridge) by one  
17 dollar in 2019, another dollar in 2022 and a third dollar in 2025 to raise \$4.5 billion, according to  
18 MTC/BATA’s own estimate. RM3 empowered the Bay Area Toll Authority (BATA) to increase  
19 bridge tolls thereafter without another popular vote. All nine Bay Area counties participated in  
20 the RM3 election on June 5, 2018 election. RM3 passed with 55 percent of the vote. RM3 lost  
21 in many of the Bay Area’s working class and socioeconomically diverse communities, including  
22 the cities of Vallejo, Richmond, Concord, Pittsburg, Antioch, San Leandro and Hayward and  
23 many precincts in the east Oakland flatlands.

24 The contents of this complaint are the result of a year-long investigation by TRANSDEF  
25 and BATWG. Complainant TRANSDEF (Transportation Solutions Defense and Education  
26 Fund) is a non-profit environmental organization created in 1994 by transit activists to advocate  
27 for better solutions to transportation, land use and air quality problems in California, especially  
28 in the San Francisco Bay Area. Complainant BATWG (Bay Area Transportation Working

1 Group) is an all-volunteer organization formed in 2012 to monitor and respond to ongoing Bay  
2 Area transportation issues and events. BATWG is dedicated to finding ways of easing regional  
3 traffic congestion by improving the reliability and general appeal of the region’s passenger rail  
4 and bus systems. Confidential sources aided the TRANSDEF/BATWG investigatory team in  
5 locating some of the material presented below.

6  
7 **CHARGE 1: Respondent MTC/BATA Impermissibly Produced and Distributed the Two**  
8 **Minute, Fifteen-Second “Mark Jones” Video Promoting RM3**

9 The template for the illegal actions alleged in this complaint can be found in *In the*  
10 *Matter of San Francisco Bay Area Rapid Transit District (BART)*, FPPC No. 16/19959. That  
11 decision concluded that BART acted as a campaign committee in the November 2016 Measure  
12 RR campaign concerning a \$3.5 billion BART bond measure and that BART violated the  
13 Political Reform Act by failing to file campaign expenditure reports and failing to include a  
14 disclosure statement on its advertisements. The Stipulation, Decision, and Order says on page 6,  
15 “BART published two videos on YouTube that constituted advocacy in support of Measure RR  
16 ... BART hired Mark W. Jones in July 2016 to shoot, log, and edit the ‘Rebuild BART’ video.”

17 This complaint against MTC/BATA and other respondents alleges that MTC/BATA acted  
18 as a campaign committee in the June 2018 Regional Measure 3 election concerning a \$4.5 billion  
19 bridge toll increase and that MTC/BATA violated the Political Reform Act by failing to file  
20 campaign expenditure reports and failing to include a disclosure statement on its  
21 communications. Just as BART did to promote Measure RR in 2016, MTC/BATA apparently  
22 also hired Respondent MARK JONES to produce videos to promote passage of RM3 in 2018.  
23 This suggests serial offenses and a pattern and practice of illegal use of public resources to  
24 promote passage of ballot measures by San Francisco Bay Area transportation agencies, without  
25 proper campaign expenditure reporting and advertisement disclosure statements in violation of  
26 the Political Reform Act.

27 Respondent MARK JONES is believed to be a contractor, employee, or otherwise an  
28 agent of Respondents MTC/BATA. A current LinkedIn profile says “Mark Jones Video

1 Journalist at Metropolitan Transportation Commission San Francisco Bay Area.”<sup>2</sup> It says that he  
2 has worked as “Video Journalist” for MTC since January 2011. It also says that he is “Owner  
3 MVP MultimediaVideoProductions” since 2010, “I produce, shoot and edit video news  
4 productions for corporate and government entities, primarily concentrating on the transit  
5 industry.” Sometime in early 2018, respondent MARK JONES produced or co-produced a video  
6 of two minutes, fifteen seconds (2:15) duration concerning RM3. Respondents MTC/BATA and  
7 other public entities benefiting from RM3 promoted the MTC/BATA/Jones video on official  
8 government websites and through social media during the weeks leading up to the RM3 election.  
9 Complainants believe that public funds used to design, create, distribute and promote the MTC/  
10 BATA/Jones video constitute independent expenditures by MTC/BATA and other entities to  
11 promote RM3 and/or contributions by MTC/BATA and other entities to the Yes on RM3  
12 campaign committee. In violation of the Political Reform Act, no entity has reported to the  
13 FPPC such independent expenditures or contributions.

14 The MTC/BATA/Jones video can be viewed on the YouTube internet platform under the  
15 title “RM3 June 5th” by “Mark Jones Published on May 29, 2018.”<sup>3</sup>

16 The two minute, fifteen second video nowhere discloses in text, onscreen or by spoken  
17 word or otherwise that MTC/BATA sponsored, financed or paid for it. The viewer is left with the  
18 mistaken impression that the Mark Jones video is an objective, unbiased news report or third-  
19 party analysis of RM3. In actuality, it is a campaign communication created by Respondents  
20 MTC/BATA, RM3’s sponsoring public entity.

21 A transcript of the MTC/BATA/Jones video is attached as Exhibit 3. The male narrator is  
22 believed to be Respondent MARK JONES. The narrators say at the beginning of the video,  
23 “Bridge tolls have long been used to finance new transportation projects needed to keep a  
24 growing Bay Area on the move. In 1988 and again in 2004, Bay Area voters approved  
25 congestion relief plans through bridge tolls.” The narrator says, “In 2018, voters will again  
26 decide on a new generation of congestion relief improvements through tolls.” The narrator’s last  
27 words in the video are, “June 5th voters will get their say on whether to invest in the future of  
28 Bay Area transportation.”

1 The style, tenor, and timing of the MTC/BATA/Jones video can be reasonably  
2 characterized as campaign material and not a fair presentation of facts of RM3 that serve only an  
3 informational purpose. “But a fair presentation of the facts will necessarily include all  
4 consequences, good and bad, of the proposal, not only the anticipated improvement ..., but also  
5 the increased tax rate and such other less desirable consequences as may be foreseen.” *Stanson v.*  
6 *Mott* (1976), 17 Cal.3d 206 (emphasis added). The MTC/BATA/Jones video is not a fair  
7 presentation of the facts of RM3 because it fails to disclose the key fact that RM3 would cause  
8 increased bridge tolls. The MTC/BATA/Jones video omits discussion of any “bad”  
9 consequences of RM3. The narrator's exhortation to "invest in the future of Bay Area  
10 transportation" does not constitute disclosure that RM3 is a toll increase. It only includes “good”  
11 consequences, the various transportation projects and programs that it would fund. Reasonable  
12 recipients could assume from the MTC/BATA/Jones video that the generic references to “bridge  
13 tolls” (e.g., “[b]ridge tolls have long been used to finance ... congestion relief plans through  
14 bridge tolls ... congestion relief improvements through tolls”) means that RM3 merely  
15 reallocates existing bridge toll revenues, when in actuality they unknowingly would be voting for  
16 increased bridge tolls. The MTC/BATA/Jones video also is not a fair presentation of the facts of  
17 RM3 because it fails to state when toll increases would be phased in and also that MTC/BATA  
18 could increase tolls in perpetuity without ever again seeking voter approval.

19 Furthermore, the MTC/BATA/Jones video uses inflammatory and argumentative  
20 language. First, the MTC/BATA/Jones video speaks in its opening line of “new transportation  
21 projects needed to **keep a growing Bay Area on the move.**” (emphasis added). Wording in the  
22 opening line of this MTC/BATA-funded video paraphrases and evokes the very name of the “**Yes**  
23 **on RM 3 – Keeping the Bay Area Moving**” campaign committee, a coincidence which  
24 suggests coordination between Respondents MTC/BATA and YES ON RM3 committee on  
25 taglines, slogans and branding (possibly through TBWB Strategies, which apparently was a  
26 common consultant to MTC/BATA concerning RM3 development and to the Yes on RM3  
27 campaign). The video of the series of three individuals smiling for the camera during the  
28 “needed to keep a growing Bay Area on the move” narration implies that “new transportation

1 projects” would inspire public delight. Reasonable people could dispute that the projects are  
2 “new” or “needed” or actually would be effective in keeping the region “on the move.” Second,  
3 the narrator asserts, “But new infrastructure hasn’t kept pace.” Reasonable people could dispute  
4 the definition of “new” and the assertion that infrastructure “hasn’t kept pace.” Third, the video  
5 uses the normative phrase “popular” in its narration to describe RM3 projects (e.g., “extending  
6 the popular new SMART train.”).

7 MTC/BATA published the Mark Jones video on their official website on a special  
8 Regional Measure 3 webpage in their “Advocate + Lead” section. This webpage was captured  
9 by the Internet Archive on June 5, 2018.<sup>4</sup> Attached Exhibit 4A is a computer screenshot.<sup>5</sup>  
10 (MTC/BATA distribution of the Mark Jones video via Facebook is the subject of Charge 2,  
11 *infra.*) A video electronic media advertisement, such as a YouTube video, requires both written  
12 and spoken disclosure information either at the beginning or the end of the communication.  
13 Regulation 18450.4, subd. (b)(3)(G)(iii). "The written disclosure statement shall appear with a  
14 reasonable degree of color contrast between the background and text of the statement, must be of  
15 sufficient size to be readily legible to an average viewer and air for not less than four seconds."  
16 Id. The Mark Jones video lacked these disclosures across the myriad platforms through which it  
17 was disseminated.

#### 18 Other Public Entities that Benefited from RM3 Expenditure Plan Promoted the MTC/BATA/ 19 Jones Video On Their Official Websites

20  
21 Public entities that were major beneficiaries of the RM3 expenditure plan promoted the  
22 MTC/BATA/Jones video on special RM3 webpages on their official websites. Many of these  
23 special webpages otherwise contained permissible presentations of the facts of RM3 (e.g., the  
24 webpages disclose that voter adoption of RM3 would result in a toll increase). These webpages  
25 are cited in this complaint as evidence that the MTC/BATA/Jones video was treated by other  
26 public entities as a fair presentation of facts about RM3. For the reasons cited *supra*,  
27 Complainants contend that the MTC/BATA/Jones video actually was impermissible campaign  
28 material promoting passage of RM3.



1 Respondent ALAMEDA-CONTRA COSTA TRANSIT DISTRICT (d/b/a AC Transit), a  
2 major beneficiary of the RM3 expenditure plan, prominently promoted the MTC/BATA/Mark  
3 Jones video on a special RM3 webpage.<sup>6</sup> A computer screenshot of that webpage, captured on  
4 June 4, 2018, is attached as Exhibit 5. The BART car image on that webpage linked to the MTC/  
5 BATA/Mark Jones video. As discussed *supra*, Complainants argue that the Mark Jones video is  
6 a campaign communication produced and distributed by MTC/BATA, yet no nowhere on AC  
7 Transit's RM3 webpage or within the Mark Jones video is any disclosure of who produced and  
8 distributed it.

9 Respondent SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY, another  
10 major beneficiary of the RM3 expenditure plan, also prominently placed the MTC/BATA/Mark  
11 Jones video on a special RM3 webpage.<sup>7</sup> See attached Exhibit 6, a computer screenshot captured  
12 on June 4, 2018.

13 Respondent SOLANO TRANSPORTATION AUTHORITY, yet another major  
14 beneficiary of the RM3 expenditure plan, especially for highway projects, also created a special  
15 RM3 webpage that near its top included a link to the MTC/BATA/Jones video.<sup>8</sup> See attached  
16 Exhibit 7, a computer screenshot captured on June 4, 2018. The link to the MTC/BATA/Mark  
17 Jones video is through the "Watch MTC's video" hyperlink.<sup>9</sup>

18 Complainants ask the FPPC to investigate how these public entities (AC Transit, San  
19 Francisco County Transportation Authority, Solano Transportation Authority and others) came to  
20 place links to the MTC/BATA/Mark Jones video on their websites. Complainants suspect that  
21 MTC/BATA specifically requested, demanded or coerced RM3 expenditure plan beneficiaries to  
22 place links on their websites in order to drive traffic to the MTC/BATA/Jones video. As such,  
23 the FPPC should investigate Respondents AC TRANSIT, SAN FRANCISCO COUNTY  
24 TRANSPORTATION AUTHORITY and SOLANO TRANSPORTATION AUTHORITY for  
25 coordination with MTC/BATA to improperly influence the RM3 electorate. As argued *supra*, the  
26 MTC/BATA/Jones video is not a fair presentation of facts about RM3 within its "four corners" as  
27 its audio and video contents failed to disclose that voter passage of RM3 would cause a bridge  
28 toll increase. It also failed to disclose the amount and duration of that bridge toll increase and

1 that Respondents MTC/BATA produced it, funded it or otherwise caused or aided in its  
2 production.

3  
4 **CHARGE 2: Two MTC/BATA Facebook Posts Were Not Fair Presentations of Facts of**  
5 **RM3 and Therefore Were Campaign Communications Subject to Campaign Expenditure**  
6 **Reporting and Campaign Disclosure Statements**

7 On or about May 31, 2018, the official “MTC BATA: Metropolitan Transportation  
8 Commission and Bay Area Toll Authority” Facebook page promoted the MTC/BATA/Mark  
9 Jones video. See Exhibit 8, a computer screenshot captured on June 4, 2018. MTC/BATA did  
10 not engage in a fair presentation of facts in its Facebook post promoting this video: “Regional  
11 Measure 3 On June 5, voters in all nine Bay Area counties will decide on a \$4.45 billion  
12 package of congestion relief projects known as Regional Measure 3. Watch this video to learn  
13 more.”<sup>10</sup>

14 The day before the June 5, 2018 election, MTC/BATA also promoted the Mark Jones  
15 video as its “Featured Video” on its “THE BAY LINK” Facebook page.<sup>11</sup> Exhibit 9 is a  
16 screenshot captured on June 4, 2018. Respondent MTC/BATA did not engage in a fair  
17 presentation of facts concerning RM3 because neither of these Facebook posts nor the MTC/  
18 BATA/Mark Jones video itself disclosed that a toll increase would be imposed if voters passed  
19 RM3.

20 As documented *supra* in Exhibit 1, Respondent YES ON RM 3 – KEEPING THE BAY  
21 AREA MOVING campaign committee was based at the office of Respondent BAY AREA  
22 COUNCIL, 353 Sacramento Street, 10<sup>th</sup> Floor, San Francisco. Respondent JAMES  
23 WUNDERMAN, President and CEO of Respondent BAY AREA COUNCIL, was among the  
24 persons who “liked” and/or commented on the May 31, 2018 MTC BATA Facebook post about  
25 the MTC/BATA/Jones video (see Exhibit 8). Complainants request that the FPPC investigate  
26 coordination between Respondent MTC/BATA and Respondents JAMES WUNDERMAN, BAY  
27 AREA COUNCIL and YES ON RM3 committee concerning the creation, distribution and  
28 promotion of the MTC/BATA/Jones video, among other campaign activities.

1                   **CHARGE 3: MTC/BATA Illegally Created/Coordinated Content for YES ON RM3**  
2                   **Campaign Committee Television & Facebook 30-Second Spots: “BART\_to\_San\_Jose.mov”**  
3                   **Video Clip.**

4                   Charges 3, 4, 5 and 6 are based on Respondents MTC’s/BATA’s apparent coordination  
5                   with Respondent YES ON RM3 campaign committee and other Yes on RM3 supporters to make  
6                   illegal use of public resources to support campaign activities favoring RM3. In all four charges,  
7                   video that apparently originated at MTC/BATA and was presumably created at MTC/BATA  
8                   expense made its way into video messages expressly advocating “yes” votes for RM3.  
9                   

10                  MTC/BATA distributed these videos through a link on this webpage (since deleted, but  
11                  preserved in the Internet Archive), perhaps among other means:

12                  [https://web.archive.org/web/20180605020513/https://mtc.ca.gov/our-work/advocate-lead/  
13                  regional-measure-3](https://web.archive.org/web/20180605020513/https://mtc.ca.gov/our-work/advocate-lead/regional-measure-3) Note that the video Y01Y6aiv1f4, while not captured in this archive, exists  
14                  as FN3. See Exhibit 4A.

15                  On the left side of the webpage are the words, “Videos: RM 3 Projects Download videos  
16                  of the Regional Measure 3 projects.” and a link to the webpage (Exhibit 4B)(which still was a  
17                  live webpage as of the filing of this complaint):

18                  <https://mtcdrive.app.box.com/s/bd0761nw2prl71mt7c4n63k6mwyj14z>

19                  Exhibits 10A and 10B are computer screenshots of this MTC “Box” webpage. The MTC  
20                  “Box” webpage says along its right side, “Owner Peter Beeler Enterprise Owner  
21                  Metropolitan Transportation Commission Created Jan 23, 2018, 1:48 PM Modified Jan 23,  
22                  2018, 1:51 PM Size 1.4 GB”. The webpage has the Metropolitan Transportation Commission  
23                  logo at its top left. PETER BEELER is a Respondent on the basis of this information. Mr.  
24                  BEELER, according to a LinkedIn profile, is “Lead Graphic Designer” at MTC.  
25                  

26                  This MTC “Box” webpage consists of links to download seventeen different video clips,  
27                  all in .mov file format, ranging in size from 6.4 MB to 229.7 MB. All seventeen video clips were  
28

1 “Updated Jan 23, 2018 by Peter Beeler.” Screenshots of selected video clips are attached as  
2 Exhibit 11A, 11B and 11C.

3 The seventeen videos are purportedly “informational” activities about RM3 projects.  
4 Complainants believe that they actually are campaign materials. Any voter who stumbled upon  
5 these seventeen videos on the MTC/BATA website would be baffled as to their significance  
6 because, in retrospect, they were clearly aimed at Respondent YES ON RM3 committee to be  
7 used for campaign purposes and not aimed at the general public. The seventeen videos were  
8 “hidden” in plain sight through a “trapdoor” link to the “Box” that contains them. The seventeen  
9 videos appear to be “B-roll” video created and/or distributed at public expense to be used by the  
10 Yes on RM3 campaign in their television spots and videos to promote passage of RM3. The  
11 videos contain no narration. Exhibit 11A, the video titled “BART\_to\_San\_Jose.mov,” is not  
12 what it purports to be; it is actually footage of a BART train along Liberty Street in El Cerrito,  
13 two counties away and nearly 50 miles north of that BART project. Therefore,  
14 “BART\_to\_San\_Jose.mov” is an argumentative title and not a fair presentation of facts of RM3.  
15 If MTC/BATA were providing objective, neutral information about RM3, then such a set of  
16 videos would include at least one video illustrating the bridge toll increase (such as a toll  
17 collector collecting money from a motorist or an automobile passing through a FasTrak lane at a  
18 bridge toll plaza), as this would be a major consequence of RM3’s passage. The evidence  
19 presented *infra* in Charges 3 through 6 tends to prove that these MTC/BATA videos were created  
20 to promote passage of RM3.  
21

22 The facts that this “Box” was created on January 23, 2018 (as documented in Exhibits  
23 10A and 10B) and all seventeen video clips were placed there (“updated”) on January 23, 2018  
24 were not arbitrary. The MTC/BATA board of directors voted fewer than 24 hours later, on  
25 January 24, 2018, to place RM3 on the June 2018 ballot. Respondent YES ON RM3 committee  
26 already was in operation on January 23, 2018; it issued a news release five days earlier on  
27 January 18, 2018 that stated in part,  
28

1 The coalition including the Bay Area Council, Silicon Valley Leadership Group,  
2 and SPUR is dynamically engaged in working with the nine-county region to  
3 ensure communities have a promising transit future secured through the approval  
4 of RM3 by voters this June ... This seasoned campaign team led by TBWB  
5 Strategies and Barry Barnes includes strategic partners Jessica Reynolds of  
6 Reynolds Strategies, Annie Eagan of Annie Eagan Consulting, Dan Kully of  
7 Kully Struble, and Adam Alberti of Singer Associates, Inc. The team's vast  
8 experience and recent success with Measure AA will support the coalition in  
9 leading a compelling RM3 campaign that will have high returns for the nine-  
10 county region.<sup>12</sup>

11 See attached Exhibit 12, the text of the YES ON RM3 committee January 18, 2018 news release.

12 Respondent SAN FRANCISCO BAY AREA PLANNING AND URBAN RESEARCH  
13 ASSOCIATION (SPUR) is added to this complaint on the basis that it was one of three major  
14 components of Respondent BAY AREA CIVIC ORGANIZATIONS in formation of Respondent  
15 YES ON RM3 committee and either participated in coordination with Respondents MTC, BATA  
16 and/or WETA on RM3 campaign activities or has knowledge of any such coordination.

17 Complainants believe that MTC's "Box" and the webpage directing users to it constitute  
18 strong evidence of coordination between MTC/BATA, the Yes on RM3 committee and its allies  
19 to illegally use public resources (the seventeen videos) to support passage of RM3.

20 Complainants also question whether MTC/BATA supplied higher resolution version of  
21 these videos to the Yes on RM3 campaign committee through other means, as the file sizes might  
22 be too small to provide "broadcast quality" resolution. For example, the  
23 "BART\_to\_San\_Jose.mov" video in the MTC "Box" is a mere 31 MB large. Note also the  
24 difference in image quality of the "BART.mov" video clip between the MTC video and the YES  
25 ON RM3 television spot in the Exhibit 16 comparison. Complainants suspect that the Exhibit 4B  
26 "trapdoor" weblink to the MTC "Box" (Exhibits 10A and 10B) possibly is a façade or "cover  
27 story" for higher resolution videos whose very existence would prove illegal coordination: they  
28 would have been provided directly by MTC/BATA and/or its employees, contractors and/or  
agents (e.g., common consultants) to the YES ON RM3 campaign committee or its agents  
through exchange of flash/thumb drives, DVD or e-mails. Complainants ask the FPPC to refer

1 this issue to appropriate law enforcement agencies for investigation and prosecutorial action to  
2 the extent that it exceeds the FPPC's jurisdiction.

3 MTC/BATA likely will cite in its response *Santa Barbara County Coalition Against*  
4 *Automobile Subsidies v. Santa Barbara County Association of Governments* (2008) 167 Cal.  
5 App. 4th 1229 to claim that supplying these MTC/BATA videos to the Yes on RM3 campaign  
6 was completely legal, merely because they were posted to some publicly-accessible webpage or  
7 "Box" before the MTC/BATA board of directors voted to placed RM3 on the ballot. That is far  
8 too simplistic a reading of the *SBCAG* opinion and the *League of Women Voters v. Countywide*  
9 *Crim. Justice Coordination Com.* (1988) 203 Cal.App.3d 529 precedent that it cites. The  
10 seventeen videos that MTC/BATA placed in the "Box" have nothing to do with permissible  
11 "formulation and drafting of a proposed ballot measure." Rather the seventeen videos that MTC/  
12 BATA placed in the "Box" were impermissible "expenditure of funds for election campaigning."  
13 The seventeen videos that MTC/BATA placed in the "Box" can be reasonably construed as  
14 partisan campaigning.

15 The *League of Women Voters* court opinion, cited *supra*, held that "promotion of a single  
16 view" as the turning point at which a public entity "cross[es] the line of improper advocacy":

17  
18 It is only at the point the activities of CCJCC and its subcommittees cross the line  
19 of improper advocacy or promotion of a single view in an effort to influence the  
20 electorate that the actions of elected officers or their deputies, undertaken at  
public expense, likewise would become improper ...

21 The *League of Women Voters* court opinion spoke about how "promotion of a single  
22 viewpoint with the object of influencing voters" is improper:

23 The foregoing principles and statutory authorizations provide direct or implied  
24 authority for the district attorney, the sheriff and their respective deputies to  
25 participate in CCJCC, its subcommittees and pursue at public expense any activity  
26 legitimately within the scope of CCJCC's mandate **other than the advocacy or**  
**promotion of a single viewpoint with the object of influencing the voters on a**  
**particular issue.** (Emphasis added.)

1 Based on reasoning in the *League of Women Voters* opinion, the California Attorney  
2 General has issued an opinion that concluded that a district may not use public funds to hire a  
3 consultant to develop a strategy for building support for a ballot measure, even before the  
4 legislative body votes to place the measure on the ballot. That Attorney General opinion states,  
5 “[A] community college district board may not spend district funds on activities that form  
6 the basis for an eventual campaign to obtain approval of a bond measure.” 88  
7 Ops.Cal.Atty.Gen. 46, 53 (2005). See also California Attorney General Opinion No. 13-304,  
8 issued in 2016, which re-affirmed these arguments, stating, “[A] district may not use public  
9 funds to hire a consultant to develop a strategy for building support for the measure.”<sup>13</sup> The  
10 same legal reasoning applies to MTC/BATA and RM3. Yet Respondents MTC/BATA and  
11 TBWB STRATEGIES, in concert with others, apparently impermissibly spent MTC/BATA funds  
12 on activities to form the basis for the eventual campaign to obtain approval of RM3. MTC/  
13 BATA may not use public funds to hire a consultant to develop a strategy for building support for  
14 the measure, yet it apparently did just that.

15 MTC/BATA’s seventeen videos arguably were created and compiled at public expense for  
16 the ultimate purpose of influencing the electorate through Respondents YES ON RM3  
17 committee, TBWB STRATEGIES, BARRY BARNES, BAY AREA COUNCIL, JAMES  
18 WUNDERMAN, SILICON VALLEY LEADERSHIP GROUP, and CARL GUARDINO, among  
19 others. Uploading the seventeen videos to a backchannel of the agency’s official website a few  
20 hours before the governing board placed RM3 on the ballot does not create a “safe harbor” for  
21 MTC/BATA’s materials. As of January 23, 2018, MTC/BATA had reached a “single view” or  
22 “single viewpoint” on RM3: the ballot measure had already been drafted and placed in the  
23 agenda packet for the January 24, 2018 BATA meeting. In fact, five days earlier on January 18,  
24 2018, Respondent YES ON RM3 issued the news release (Exhibit 12) indicating that  
25 Respondents YES ON RM3 committee, BAY AREA COUNCIL, SILICON VALLEY  
26 LEADERSHIP GROUP, SPUR, BARRY BARNES and TBWB STRATEGIES, among others,  
27 were “actively supportive” of a campaign to secure approval of RM3. MTC/BATA engaged in  
28

1 improper “promotion of a single viewpoint with the object of influencing the voters on a  
2 particular issue” when it distributed these seventeen videos a few hours before the vote to place  
3 RM3 on the ballot.

4 Furthermore, nothing in the statute that authorized MTC/BATA to place RM3 on the  
5 ballot authorized MTC/BATA to use public resources to engage in partisan campaigning in  
6 support of RM3. See Statutes 2017, Chapter 650 (SB 595).

7 Many of the seventeen video clips found in MTC/BATA’s “Box” were featured in the two  
8 minute, fifteen second MTC/BATA/Jones video that is the subject of Charge 1, discussed *supra*.

9 Charges 3, 4 and 5 are similar. In each, Respondent YES ON RM3 – KEEPING THE  
10 BAY AREA MOVING campaign committee utilized MTC/BATA-produced video clips in 30-  
11 second television spot/internet advertisements expressly advocating passage of RM3.

12 In Charge 3, the Yes on RM3 campaign used MTC/BATA-produced  
13 “BART\_to\_San\_Jose.mov” video clip<sup>14</sup> in two 30-second television spot advertisements that  
14 made hundreds of thousands of impressions on voters around the Bay Area.

15  
16 Yes on RM3 Engineer TV Spot Used MTC’s “BART to San Jose.mov” Video Clip

17 The MTC/BATA “BART\_to\_San\_Jose.mov” video clip<sup>15</sup> appears at 0:18-0:20 in the Yes  
18 on RM3 Engineer TV Spot.<sup>16</sup> (See instances of its broadcast, *infra*.) The “Yes on RM3  
19 Engineer” TV spot is known to have aired many times on San Francisco Bay Area broadcast  
20 television and as a Facebook video ad in the weeks leading up to the RM3 election on June 5,  
21 2018. Respondent KULLY HALL, L.L.C. (d/b/a/ Kully Struble) apparently was its creator. It  
22 featured Respondent GARY HSUEH, identified during the spot as a “Senior Transportation  
23 Planner,” narrating the entire 30-second spot. To promote its skills, Respondent TBWB placed  
24 this ad on the internet platform Vimeo.<sup>17</sup> A computer screen shot of this webpage is Exhibit 13.  
25 The video is titled “Regional Measure 3: Engineer.” The video description reads, “30 second  
26 TV buy for RM3 featured Gary the Senior Transportation Planner. RM3 passed with 55% of the  
27  
28



1 vote in the nine-county Bay Area in June 2018 and TBWB ran a campaign coalition of  
2 consultants, business organizations, elected officials and more. Creator: Kully Struble”.

3 From 0:18 to 0:20 within the 30-second spot is three seconds of video of a BART train  
4 rolling through a residential neighborhood, looking down at the train from an aerial perspective.  
5 An onscreen graphic says, “**Strict fiscal safeguards ensure funds only spent relieving traffic**”.  
6 While this video is playing, narrator Respondent GARY HSUEH begins saying, “**And Regional**  
7 **Measure 3’s strict fiscal safeguards ensure funds are only spent relieving traffic.**”  
8

9 Broadcast Television Placements of the YES ON RM3 Engineer Thirty-Second Spot:

10 The Yes on RM3 Engineer TV spot containing the “BART\_to\_San\_Jose.mov” footage  
11 supplied by MTC/BATA ran extensively on Bay Area broadcast television in the weeks leading  
12 up to the June 5, 2018 election, including on these documented stations, dates and times:

- 13 (1) KTVU’s “KTVU Fox 2 News at 4 p.m. on June 1<sup>st</sup> at 4:38 p.m.”<sup>18</sup>
- 14 (2) KGO-TV’s “ABC 7 News at 6 a.m.” on June 4<sup>th</sup> at 6:22 a.m.”<sup>19</sup>
- 15 (3) KPIX’s “CBS 5 News at 6 p.m.” on June 4<sup>th</sup> at 6:22 p.m.”<sup>20</sup>
- 16 (4) KGO-TV’s “ABC 7 News at 6 p.m.” on June 4<sup>th</sup> at 6:42 p.m.”<sup>21</sup>
- 17 (5) KTVU’s “10 o’clock News” on June 4<sup>th</sup> at 10:39 p.m.”<sup>22</sup>
- 18 (6) KRON-TV’s “KRON 4 News at 10” on June 4<sup>th</sup> at 10:54 p.m.”<sup>23</sup>
- 19 (7) KPIX-TV’s “CBS 5 News at 11 p.m.” on June 4<sup>th</sup> at 11:22 p.m.”<sup>24</sup>
- 20 (8) KNTV’s “NBC Bay Area News at 11 p.m.” on June 4<sup>th</sup> at 11:32 p.m.”<sup>25</sup>
- 21 (9) KGO-TV’s “ABC News at 11 p.m.” on June 4<sup>th</sup> at 11:33 p.m.”<sup>26</sup>

22  
23 Facebook Placements of the RM3 Engineer Thirty-Second Spot:

24 Respondent YES ON RM3 committee also placed this thirty-second spot on Facebook.  
25 See the YES ON RM3 committee page in the Facebook Political Ad Archive.<sup>27</sup> Exhibits 14A and  
26 14B are the top and bottom of the webpage in the Facebook Political Ad Archive concerning  
27 placement of the YES ON RM3 Engineer ad on Facebook. The ad made 200,000 to 500,000  
28

1 impressions. Facebook targeted 100 percent women. Money spent was \$1,000 to \$5,000. The  
2 video link is to the YES ON RM3 Engineer thirty-second spot.<sup>28</sup>

3 The three seconds of the rolling BART train video used in this Yes on RM3 Engineer  
4 television advertisement directly match seconds :06, :07 and :08 of MTC/BATA's  
5 "BART\_to\_San\_Jose" video posted to the MTC/BATA "Box" on January 23, 2018. MTC's  
6 video can be downloaded here.<sup>29</sup> All details match between the MTC/BATA video and the video  
7 used in the Yes on RM3 Engineer TV/internet spot, including the camera angle, the number on  
8 the top of the BART train (2526), and the parked cars on the street in the background (Liberty  
9 Street in El Cerrito). See the comparison of the MTC video and TV spot in Exhibit 15.

10 Complainants are especially troubled that a graphic asserting "**Strict fiscal safeguards**  
11 **ensure funds only spent relieving traffic**" in this Yes on RM3 campaign 30-second spot  
12 appears over a MTC/BATA-produced video clip. Narrator Respondent GARY HSUEH  
13 reinforced this point by speaking, "And Regional Measure 3's strict fiscal safeguards ensure  
14 funds are only spent relieving traffic." Ironically, Respondents' MTC/BATA's so-called "strict  
15 fiscal safeguards" did not prevent them from illegally spending funds to produce and distribute  
16 this "BART\_to\_San\_Jose.mov" video clip to Respondent YES ON RM3 campaign to boost  
17 passage of RM3. Agents of MTC/BATA engaged in criminal and/or civil misappropriation of  
18 funds (Penal Code § 426 and Government Code § 8314) and/or in express advocacy  
19 (Government Code § 54964), among other violations, if they are found to have co-produced or  
20 coordinated this campaign advertisement with the Yes on RM3 campaign.

21 **MTC, a public entity, cannot permissibly produce or co-produce material for**  
22 **television advertisements promoting its ballot measure, independently or in coordination**  
23 **with a campaign committee, yet the evidence presented *supra* in Charge 3 and *infra* in**  
24 **Charges 3, 4 and 5 proves this assertion.**

25 //

26 //

27 //

1 Yes on RM3 San Francisco TV Spot Used MTC/BATA “BART to San Jose.mov” Video Clip

2 The Yes on RM3 campaign also used MTC/BATA’s “BART\_to\_San\_Jose.mov” video  
3 clip (Exhibit 11A) in its 30-second San Francisco TV spot/internet advertisement, which may be  
4 viewed here on YouTube.<sup>30</sup>

5 The MTC/BATA “BART to San Jose” video clip appears at 0:05-0:07. See the video of  
6 the BART train rolling through a residential neighborhood at seconds :05, :06 and :07 of the Yes  
7 on RM3 San Francisco spot. “Funds Critical Projects” is the onscreen text over the MTC/BATA-  
8 originated video clip.

9  
10 **CHARGE 4: MTC/BATA Illegally Created Content for YES ON RM3 Campaign**  
11 **Committee Television Spots: “BART.mov” Video Clip.**

12  
13 On or about January 23, 2018, MTC/BATA placed a sixteen-second video clip titled  
14 “BART.mov” on its “Box” webpage. It depicts a Richmond-bound new-model BART train  
15 approaching a station platform as patrons await its arrival. The video has no narration. It has no  
16 intrinsic informative function. The MTC webpage that led directly to that video is Exhibit 11B.  
17 MTC’s video can be downloaded here.<sup>31</sup>

18 Respondent YES ON RM3 campaign committee used a two-second portion of this MTC/  
19 BATA “BART.mov” video in at least three 30-second television spots/internet video  
20 advertisements:

- 21  
22 (1) Yes on RM3 Alameda County 30-second spot at seconds 0:13 and 0:14 with the onscreen  
23 text “300 new BART cars”<sup>32</sup>
- 24  
25 (2) Yes on RM3 Contra Costa County 30-second spot at seconds 0:16 and 0:17 with the  
26 onscreen text “300 new BART cars”<sup>33</sup>
- 27  
28 (3) Yes on RM3 San Mateo County 30-second spot at seconds 0:17 and 0:18 with the  
onscreen text “300 new BART cars”<sup>34</sup>

1 Exhibit 16 is a comparison of MTC’s “BART.mov” video and the Yes on RM3 Alameda  
2 County 30-second spot. Exhibit 16 tends to prove that MTC/BATA illegally used public  
3 resources for campaign purposes and that MTC/BATA possibly coordinated campaign activity  
4 with the YES ON RM3 committee. As in Charge 3 *supra* and Charge 5 *infra*, Respondents  
5 MTC/BATA illegally used public resources to produce and distribute “B-roll” video to aid  
6 Respondent YES ON RM3 campaign committee in persuading voters to adopt RM3.  
7 Complainants ask the FPPC to investigate and undertake appropriate enforcement action.

8  
9 **CHARGE 5: MTC/BATA Illegally Created Content for YES ON RM3 Campaign  
10 Committee Television Spots: “New\_Northbound\_101\_to\_580\_Ramp.mov” Video Clip.**

11 On or about January 23, 2018, MTC/BATA placed a seventeen-second video clip titled  
12 “New\_Northbound\_101\_to\_580\_Ramp.mov” on its “Box” webpage. It is a stationary aerial  
13 view of U.S 101 freeway in southern San Rafael. The video has no narration. It has no intrinsic  
14 informative function. The MTC webpage directly linking to that video is Exhibit 11C. MTC’s  
15 video can be downloaded here.<sup>35</sup>

16 Respondent YES ON RM3 campaign committee used a five-second portion of this MTC/  
17 BATA “New\_Northbound\_101\_to\_580\_Ramp.mov” video in at least two 30-second television  
18 spots/internet video advertisements:

19 (1) Yes on RM3 San Mateo County TV spot at seconds 0:20 through 0:25<sup>36</sup>

20  
21 (2) Yes on RM3 Solano County TV spot at seconds 0:20 through 0:25<sup>37</sup>

22 Exhibit 17 is a comparison of MTC’s “New\_Northbound\_101\_to\_580\_Ramp.mov” video  
23 and the Yes on RM3 Solano County 30-second spot. Exhibit 17 tends to prove that MTC/BATA  
24 illegally used public resources for campaign purposes and that MTC/BATA possibly coordinated  
25 campaign activity with the YES ON RM3 committee. As in Charges 3 and 4 *supra*, Respondents  
26 MTC/BATA illegally used public resources to produce and distribute “B-roll” video to aid  
27 Respondent YES ON RM3 campaign committee in persuading voters to adopt RM3.  
28 Complainants ask the FPPC to investigate and undertake appropriate enforcement action.

1 **CHARGE 6: MTC/BATA Illegally Created Video Content for Two Yes on RM3 Campaign**  
2 **Videos Paid for by HARMONIC INC. Featuring SILICON VALLEY LEADERSHIP**  
3 **GROUP President & CEO & California Transportation Commissioner CARL**  
4 **GUARDINO**

5 Respondent HARMONIC INC. is a Delaware corporation with headquarters in San Jose,  
6 California. Sometime in spring 2018, Respondent HARMONIC INC. and YES ON RM3  
7 campaign committee paid for two videos promoting RM3 that featured Respondent CARL  
8 GUARDINO, an appointed member of the California Transportation Commission and President  
9 & CEO of Respondent SILICON VALLEY LEADERSHIP GROUP (SVLG), which is a member  
10 of Respondent BAY AREA CIVIC LEADERSHIP ASSOCIATIONS. The identities of these  
11 respondents are disclosed in onscreen messages at the ends of the two videos. According to  
12 FPPC Form 460s filed by the YES ON RM3 committee, SVLG provided a reported \$35,799.89  
13 in nonmonetary contributions to the YES ON RM3 committee.

14 The two videos featuring Respondent CARL GUARDINO made very extensive use of  
15 MTC/BATA-produced video content:

16  
17 Three-Minute YES ON RM3 Campaign Video Featuring Respondent CARL GUARDINO:

18 The three-minute YES ON RM3 video featuring Respondent CARL GUARDINO is  
19 found on YouTube.<sup>38</sup> “RM3 Improvements described by CEO Carl Guardino (short video)” was  
20 published by Respondent SILICON VALLEY LEADERSHIP GROUP on May 7, 2018. The  
21 caption on YouTube reads, “Silicon Valley Leadership Group CEO and CTC Commissioner Carl  
22 Guardino explains how Regional Measure 3 will benefit commutes throughout the Bay Area.”  
23 The reference to “CTC Commissioner” is to Respondent CARL GUARDINO’s status as a  
24 gubernatorial appointee to the California Transportation Commission, which is responsible for  
25 programming and allocating funds for the construction of highway, passenger rail, transit and  
26 active transportation improvements throughout California. Respondent GUARDINO is one of  
27 eleven voting members. As CTC Commissioner, Respondent GUARDINO regularly coordinates  
28 transportation strategies with Respondents MTC/BATA and other Respondent public entities.

1 Five clips of MTC/BATA-produced video from the MTC “Box” described in Count 1  
2 appeared in the three-minute video narrated by Respondent CARL GUARDINO on behalf of  
3 Respondents SILICON VALLEY LEADERSHIP GROUP, BAY AREA CIVIC LEADERSHIP  
4 ASSOCIATIONS, HARMONIC INC., and YES ON RM3 campaign committee:

5  
6 (1) “Projects\_completed\_under\_RM2.mov” (Carquinez and Benicia-Martinez bridges):  
0:49-0:51

7 (2) “101\_&\_92\_Improvements\_(San\_Mateo).mov”: 1:07-1:13

8 (3) “Marin\_Sonoma\_Narrows.mov”: 1:22-1:38

9 (4) “More\_Bicycle\_Paths\_to\_Transit.mov”: 2:03-2:11

10 (5) “Projects\_completed\_under\_RM2.mov” (Dumbarton Bridge): 2:18-2:25

11  
12  
13 Five-Minute YES ON RM3 Campaign Video Featuring Respondent CARL GUARDINO:

14 The five-minute YES ON RM3 video featuring Respondent CARL GUARDINO is found  
15 on YouTube.<sup>39</sup> “Regional Measure 3 Improvements described by CEO Carl Guardino (five-  
16 minute video)” was published by Respondent SILICON VALLEY LEADERSHIP GROUP on  
17 May 8, 2018. The caption on YouTube reads, “Silicon Valley Leadership Group CEO and CTC  
18 Commissioner Carl Guardino explains how Regional Measure 3 will benefit commutes  
19 throughout the Bay Area.”

20 Thirteen clips of MTC/BATA-produced video from the MTC “Box” described in Count 1  
21 appeared in the five-minute video narrated by Respondent CARL GUARDINO on behalf of  
22 Respondents SILICON VALLEY LEADERSHIP GROUP, BAY AREA CIVIC LEADERSHIP  
23 ASSOCIATIONS, HARMONIC INC., and YES ON RM3 campaign committee:

24  
25 (1) “Projects\_completed\_under\_RM2.mov” (Carquinez and Benicia-Martinez bridges):  
0:49-0:51

26 (2) “101\_&\_92\_Improvements\_(San\_Mateo).mov”: 1:07-1:13

27 (3) “Marin\_Sonoma\_Narrows.mov”: 1:22-1:38  
28

- 1 (4) "Congestion\_Relief\_Richmond\_Bridge.mov": 1:57-2:00
- 2 (5) "Muni\_Expansion.mov": 2:00-2:04
- 3 (6) "101\_&\_92\_Improvements\_(San\_Mateo).mov": 2:15-2:21
- 4 (7) "I80\_&\_I680\_in\_Solano.mov": 2:22-2:26
- 5 (8) "Caltrain\_to\_Downtown\_SF.mov": 2:37-2:48
- 6 (9) "BART\_to\_San\_Jose.mov": 2:56-3:05
- 7 (10)"BART.mov": 3:06-3:11
- 8 (11)"Light\_Rail.mov": 3:24-3:31
- 9 (12)"More\_Bicycle\_Paths\_to\_Transit.mov": 3:43-3:51
- 10 (13)"Projects\_completed\_under\_RM2.mov" (Dumbarton Bridge): 3:56-4:04

11  
12  
13 Exhibit 18 is a comparison of MTC's "Marin\_Sonoma\_Narrows.mov" video clip and the  
14 GUARDINO/SILICON VALLEY LEADERSHIP GROUP five-minute video. Exhibit 18 tends  
15 to prove that MTC/BATA illegally used public resources for campaign purposes and that MTC/  
16 BATA coordinated campaign activity with the Respondents SILICON VALLEY LEADERSHIP  
17 GROUP and CARL GUARDINO, among others. Similar to Charges 3, 4 and 5 *supra*,  
18 Respondents MTC/BATA illegally used public resources to produce and distribute "B-roll" video  
19 to aid Respondents CARL GUARDINO, SILICON VALLEY LEADERSHIP GROUP, BAY  
20 AREA CIVIC LEADERSHIP ASSOCIATIONS, HARMONIC INC., and the YES ON RM3  
21 campaign committee in producing the two GUARDINO videos to persuade voters to adopt RM3.  
22 Complainants ask the FPPC to investigate and undertake appropriate enforcement action.

23  
24 **CHARGE 7: Government Code § 54964 Violation: WATER EMERGENCY**  
25 **TRANSPORTATION AUTHORITY's RM3 Green Checkmark Logo Was Express**  
26 **Advocacy for RM3; Possible Coordination With YES ON RM3 Campaign Committee**  
27 **Through WETA Board Vice Chair JAMES WUNDERMAN, Who Also Was CEO &**  
28 **President of BAY AREA COUNCIL, Which Shared Office With YES ON RM3**  
**COMMITTEE Headquarters.**

1 Respondent WATER EMERGENCY TRANSPORTATION AUTHORITY (hereinafter  
2 WETA), is a San Francisco-based public entity organized pursuant to Government Code §  
3 66540.4, et seq., with a five-member governing board that included Respondent Vice Chair  
4 JAMES WUNDERMAN and Nicholas Josefowitz, a major contributor (\$150,000) to the Yes on  
5 RM3 campaign. Respondent WETA is a major beneficiary of passage of RM3, including \$300  
6 million for a Ferry Enhancement Program and \$35 million per year in ferry operating subsidies.  
7 In violation of Government Code § 54964 and other legal authority, Respondent WETA engaged  
8 in express advocacy for RM3 by placing a logo stating “Regional Measure 3” with a green  
9 checkmark on its website homepage and other WETA webpages during the 60 days leading up to  
10 the June 2018 election.

11 These communications refer to a clearly identified ballot measure. When taken as a  
12 whole, they unambiguously suggest only one meaning, which is to urge a particular result in an  
13 election: to vote Yes on Regional Measure 3. The message is not susceptible to any reasonable  
14 interpretation other than as an appeal to vote for RM3. The Federal Election Commission found  
15 that checkmarks can be a form of express advocacy in 2006 in its landmark *Sierra Club* decision  
16 (MUR 5634).

17 The Internet Archive captured several WETA web pages bearing the RM3 Green  
18 Checkmark logo in May and June 2018, which can be accessed here.<sup>40</sup> In most of these  
19 webpages, the RM3 Green Checkmark logo appears prominently on the left side of each page,  
20 readily visible to the reader without scrolling down the page. The RM3 Green Checkmark logos  
21 appear directly below the ferry user search boxes on the Terminals, Schedule-Information and  
22 Rider Info pages, which is a prominent placement. They are the functional equivalent of web  
23 advertisements supporting RM3.

24 WETA’s internet homepage featured the RM3 Green Checkmark logo in the days leading  
25 up to the June 5, 2018 election. See Exhibits 19A and 19B. WETA also had a special webpage  
26 devoted to RM3, which also included the RM3 Green Checkmark logo.<sup>41</sup> See also Exhibits 20A  
27 and 20B, computer screenshots of that webpage.



1 WETA materials containing the RM3 Green Checkmark logo arguably constitute WETA  
2 independent expenditures to promote passage of RM3 or WETA contributions to the Yes on RM3  
3 campaign committee. Neither WETA nor the Yes on RM3 committee has disclosed such  
4 independent expenditures or contributions on Form 460 or otherwise.

5 Complainants ask the FPPC to open an investigation into respondent WETA's advocacy  
6 supporting RM3. Such investigation could include how WETA came into possession of the RM3  
7 Green Checkmark logo, distributed it and otherwise used it on its webpages and possibly  
8 elsewhere. The FPPC investigation could include other express advocacy that WETA may have  
9 engaged in concerning the RM3 campaign, such any printed literature that it may have created  
10 and distributed that includes the RM3 Green Checkmark logo or other forms of RM3 advocacy.  
11 The shade of green in WETA's Green Checkmark logo bears a strong similarity to the shade of  
12 green used in the YES ON RM3 logo (see Exhibit 1).

13 Complainants also ask the FPPC to investigate coordination on RM3 campaign activity  
14 between Respondent WETA and Respondent YES ON 3 - KEEPING THE BAY AREA  
15 MOVING Committee, Respondent BAY AREA COUNCIL and Respondent JAMES  
16 WUNDERMAN. During the months leading up to the RM3 election, Respondent WETA Board  
17 Vice Chair JAMES WUNDERMAN also was President and CEO of Respondent BAY AREA  
18 COUNCIL, which served as the headquarters of the YES ON 3 – KEEPING THE BAY AREA  
19 MOVING Committee at 353 Sacramento Street, 10<sup>th</sup> Floor, San Francisco. Mass mailings by the  
20 Yes on 3 committee had “353 Sacramento Street, 10<sup>th</sup> Floor, San Francisco,” the office of  
21 Respondents JAMES WUNDERMAN and BAY AREA COUNCIL, as their return addresses.  
22 See Exhibit 1.

23 The minutes of the February 8, 2018 WETA board meeting state:  
24 Vice Chair Wunderman reported that as an individual and through his work at the  
25 Bay Area Council he is working diligently to assure that RM3 will pass in June.  
26 He asked that anyone wanting more information about the campaign or wanting to  
27 help in those efforts contact him directly or contact Bay Area Council Policy<sup>42</sup>  
28 Director Emily Loper. He said that assuring the measure passes is currently the  
Bay Area Council's highest priority.

1 Also at the February 8, 2018 WETA board meeting, Respondent WUNDERMAN  
2 seconded a motion for a WETA board resolution to endorse passage of RM3. The minutes  
3 further state:

4 [General Counsel] Madeline Chun of Hanson Bridgett LLP reminded Directors  
5 that while the WETA Board can approve this resolution to publicly support RM3  
6 formally, no public funds are to be utilized to campaign for RM3. Ms. Chun  
7 clarified that Directors and staff can communicate their own personal feelings  
8 about, and support for, the measure in their personal capacities. She further  
9 confirmed that Directors can also say they serve on the WETA Board when  
10 discussing support for the measure.<sup>43</sup>

11 The minutes of the April 5, 2018 WETA board meeting state:

12 Vice Chair Wunderman reported that his focus since the last meeting has been  
13 on Regional Measure 3 (RM3) advocacy in his role as CEO of the Bay Area  
14 Council (BAC). He said he was pleased to report recent endorsements of the  
15 measure from *The Mercury News*, the *San Francisco Chronicle*, and the *East  
16 Bay Times*, and he noted that additional endorsements were expected soon. Vice  
17 Chair Wunderman said absentee ballots for the measure will be mailed to voters  
18 in about a month. He added that the campaign was well organized, with most  
19 opposition driven by anti-taxation groups, and said that aggressive fundraising  
20 efforts continued.<sup>44</sup>

21 The minutes of the May 10, 2018 WETA board meeting state:

22 Vice Chair Wunderman thanked BAC Director Emily Loper for her tireless work  
23 on water transit in the Bay Area and noted that more than 625 entities and  
24 prominent individuals - from all different walks of life - have endorsed Regional  
25 Measure 3 (RM3) and that more endorsements were expected soon. He said wide  
26 and far reaching support for the measure continued, and that absentee voters  
27 likely already had their ballots in hand.<sup>45</sup>

28 According to the Yes on RM3 campaign committee's Form 460 for April 22 to May 19,  
2018, WETA board member Nicholas Josefowitz contributed \$150,000.00 to the Yes on RM3  
campaign on April 25, 2018. His name appeared in disclosure statements on many Yes on RM3  
campaign materials as a major contributor. Respondent BAY AREA COUNCIL, of which  
Respondent WETA vice chair JAMES WUNDERMAN is President and CEO, reported  
\$49,768.33 in nonmonetary contributions to the YES ON RM3 campaign.

1 With two of the five WETA board members engaging in express advocacy for RM3  
2 through comments on the WETA board dais and through major financial contributions to the  
3 campaign, WETA's misuse of public resources to engage in express advocacy for RM3 is not  
4 surprising. Complainants ask for an FPPC investigation of the scope of WETA's advocacy for  
5 RM3 and of any coordination with Respondents YES ON RM3 – KEEPING THE BAY AREA  
6 MOVING, BAY AREA COUNCIL and JAMES WUNDERMAN, including any unreported or  
7 improperly reported activity. Complainants contend that any WETA communication bearing the  
8 RM3 Green Checkmark logo should have included required FPPC disclosures as campaign  
9 materials.

10  
11 **CHARGE 8: BAY AREA COUNCIL and/or YES ON RM3 Committee Failed to Report**  
12 **Expenditures for BAY AREA COUNCIL March/April 2018 Poll by EMC Research**  
13 **Concerning RM3.**

14 Respondent BAY AREA COUNCIL conducted a poll in March 20 to April 3, 2018  
15 concerning Bay Area traffic problems. Respondent BAY AREA COUNCIL promoted poll  
16 results in two news releases issued on June 3<sup>rd</sup> and June 4<sup>th</sup>, during the 48 hours before RM3  
17 election day on June 5<sup>th</sup>.

18  
19 Bay Area Council June 3<sup>rd</sup> News Release: A news release dated June 3, 2018 was posted  
20 to the Bay Area Council website.<sup>46</sup> The news release is titled “BACPoll: More People Looking  
21 to Leave Bay Area as Housing, Traffic Problems Mount.” The news release began, “Growing  
22 pessimism among voters about the overall direction the Bay Area is heading has more and more  
23 people thinking about heading for the doors. Bay Area Council Poll results released today (June  
24 3) found that 46 percent of voters are ready to leave in the next few years, up from 40 percent  
25 last year and 34 percent in 2016.” The news release quoted Respondent JAMES  
26 WUNDERMAN, Bay Area Council President and CEO, “These results are tough to report, but  
27 we can't let this growing pessimism become a self-fulfilling prophecy ... There's still time to get  
28 a handle on our housing and transportation problems, but it will require strong leadership and

1 partnership across the region to do it combined with bold thinking and decisive action. We can't  
2 wait until our economy tanks to fix these problems and letting our economy tank is not a  
3 solution." The news release also stated, "The 2018 Bay Area Council Poll, which was conducted  
4 online by Oakland-based public opinion research firm EMC Research from March 20 through  
5 April 3, surveyed 1,000 registered voters from around the nine-county Bay Area."

6  
7 Bay Area Council June 4<sup>th</sup> News Release: A news release dated June 4, 2018 was posted  
8 to the Bay Area Council website.<sup>47</sup> The June 4<sup>th</sup> news release directly addressed RM3. Its title  
9 was "BACPoll: Voters Say They'd Pay to End Awful Traffic." It began, "Bay Area voters are so  
10 frustrated with the region's horrific traffic that they are willing to dig deep—really deep—into  
11 their pockets to solve the problem, according to 2018 Bay Area Council Poll released today (June  
12 4)." The news release quoted Respondent JAMES WUNDERMAN, Bay Area Council President  
13 and CEO, "Traffic is taking a huge toll on our quality of life, our economy, our environment, and  
14 voters are fed up ... Voters want solutions and they are willing to pay for it, to get back valuable  
15 time to spend with their families, in their careers and doing other activities that is being stolen  
16 from them as they sit in stop-and-go congestion.." The news release directly refers to RM3,  
17 saying, "The poll results will be tested on June 5, when voters will decide on Regional Measure  
18 3 ... The Bay Area Council is helping lead the campaign with the Silicon Valley Leadership  
19 Group and SPUR to pass RM3 and advocated for the state legislation that authorized putting it  
20 on the ballot."

21 Given the timing (in the two days before the June 5, 2018 RM3 election) and the  
22 conclusions (that the Bay Area economy would suffer damage if traffic congestion were not  
23 addressed), these two polls were widely reported by Bay Area news media in the context of the  
24 RM3 election. Complainants believe that these polls should be considered independent  
25 expenditures by Respondent BAY AREA COUNCIL to promote passage of RM3 or  
26 contributions by Respondent BAY AREA COUNCIL to the YES ON RM3 campaign committee.  
27 Neither Respondent BAY AREA COUNCIL nor Respondent YES ON RM3 campaign committee  
28 has disclosed such expenditures or contributions on a Form 460 or otherwise. As stated *supra*,

1 Respondent YES ON RM3 campaign committee was based at the same San Francisco address as  
2 Respondents BAY AREA COUNCIL and JAMES WUNDERMAN, suggesting coordination  
3 between these Respondents to promote passage of RM3. Note that while the news releases by  
4 Respondent BAY AREA COUNCIL say that EMC Research conducted the poll in the pre-  
5 election period of March-April 2018, no expenditure to EMC Research is disclosed in any FPPC  
6 filing associated with the RM3 election by Respondent BAY AREA COUNCIL or Respondent  
7 YES ON RM3 campaign committee.

8  
9 **CHARGE 9: MTC/BATA and/or YES ON RM3 Committee Failed to Report MTC's**  
10 **“Keeping the Bay Area Moving” Slogan/Tagline As An In-Kind Expenditure or**  
11 **Contribution to the “Yes on RM 3 – Keeping the Bay Area Moving” Campaign Committee.**

12 Respondent YES ON RM 3 – KEEPING THE BAY AREA MOVING Committee  
13 capitalized on MTC/BATA's own “Keeping the Bay Area Moving” slogan/tagline and created  
14 voter confusion by adopting MTC/BATA's “Keeping the Bay Area Moving” tagline/slogan as its  
15 campaign committee name. This FPPC should investigate this "coincidence" as it suggests  
16 possible coordination between Respondents MTC/BATA and YES ON RM3 committee. The  
17 FPPC also should determine if use of MTC/BATA's “Keeping the Bay Area Moving” tagline/  
18 slogan by the YES ON RM3 committee constitutes a reportable in-kind expenditure or  
19 contribution.

20 For many years, Respondent MTC/BATA used the “Keeping the Bay Area Moving” as  
21 the slogan for its FasTrak program, its electronic toll payment system. Bay Area motorists  
22 became familiar with the “FASTRAK Keeping the Bay Area Moving” logo on FasTrak mailings,  
23 including invoices and toll evasion notices. See Exhibit 21. Visitors to the FasTrak Customer  
24 Service Center were greeted for many years by a large sign that said, “FASTRAK KEEPING  
25 THE BAY AREA MOVING.” See Exhibit 22. A Google search on Monday, June 4, 2018 (eve  
26 of RM3 Election Day) on the term “keeping the bay area moving” yielded links to  
27 [www.bayareatrastrak.org](http://www.bayareatrastrak.org) (“FasTrak® - Keeping the Bay Area Moving”) as its top responses. It  
28

1 did not return a link to the “Yes on RM3 – Keeping the Bay Area Moving” campaign committee  
2 website. See Exhibit 23.

3 Respondents MTC/BATA paraphrased their “Keeping the Bay Area Moving” slogan at  
4 least twice in MTC/BATA’s so-called informational materials concerning RM3. First, as  
5 discussed *supra* in Charge 1, the narrator in the MTC/BATA/Jones video about RM3 speaks in  
6 its opening line of “new transportation projects needed to **keep a growing Bay Area on the**  
7 **move.**” (emphasis added). Second, MTC/BATA issued or re-issued a “Fact Sheet Regional  
8 Measure 2” during the RM3 campaign period, showing what the 2004 measure had  
9 accomplished: "As shown at right, RM2 dollars have delivered congestion relief throughout the  
10 region."<sup>48</sup> The lead line is “**Regional Measure 2 keeps the Bay Area moving.**” (Emphasis  
11 added.) The fact that this line echoes the name of Respondent YES ON RM3 – KEEPING THE  
12 BAY AREA MOVING committee suggests coordination between the campaign committee and  
13 MTC/BATA, possibly through common consultant TBWB Strategies. This RM2 Fact Sheet is  
14 believed to have been produced and distributed during the RM3 campaign in April or May 2018  
15 because one line says, “As of April 2018, 94 percent of RM 2 funds had been allocated.”

16 Respondent YES ON RM 3 – KEEPING THE BAY AREA MOVING committee used  
17 the “Keeping the Bay Area Moving” slogan in the return address and in the disclaimer on its  
18 campaign mass mailings (Exhibit 1). Many of the hundreds of thousands of MTC FasTrak  
19 customers likely recall the association of “Keeping the Bay Area Moving” with official  
20 government mailings through the FasTrak program (Exhibits 21 and 22). If recipients of Yes on  
21 RM3 campaign committee communications searched on “keeping the bay area moving” in  
22 Google, they would have received links to MTC/BATA’s FasTrak – Keeping the Bay Area  
23 Moving program, not to the Yes on RM3 – Keeping the Bay Area Moving campaign committee  
24 (Exhibit 23). Some recipients of the “Keeping the Bay Area Moving” campaign mailings likely  
25 paid special attention to them and believed their contents to be objective truth under the mistaken  
26 belief that they were official government communications or PSA’s/public service  
27 announcements from the FasTrak program.

1 MTC/BATA's "Keeping the Bay Area Moving" slogan/tagline presumably has "business  
2 goodwill" and/or other value as intellectual property (e.g., trademark) and/or an asset of some  
3 other form. Respondent YES ON RM3 – KEEPING THE BAY AREA MOVING committee's  
4 misappropriation of this MTC/BATA intellectual property or asset arguably constitutes an MTC/  
5 BATA contribution to the Yes on 3 campaign. Alternatively, MTC/BATA's non-enforcement of  
6 its intellectual property or asset rights to the "Keeping the Bay Area Moving" slogan constitutes  
7 an independent expenditure by MTC/BATA benefiting the YES ON RM3 – KEEPING THE  
8 BAY AREA MOVING committee. No such independent expenditure or contribution has been  
9 disclosed on FPPC Form 460 filings or otherwise.

10  
11 **CHARGE 10: AC Transit Bus Advertisement Was Not Fair Presentation of Facts of RM3**

12  
13 Respondent ALAMEDA-CONTRA COSTA TRANSIT DISTRICT (a.k.a. AC Transit), a  
14 public entity, is a beneficiary of least \$100 million in the RM3 expenditure plan. During the  
15 weeks leading up to the RM3 election, it promoted RM3 to bus passengers through a bus  
16 advertisement, displayed above passenger seats in bus interiors. This RM3 advertisement was in  
17 three languages: English, Spanish and Chinese. Exhibit 24 is a photograph of AC Transit's RM3  
18 advertisement taken inside of an AC Transit bus in mid-2018.

19 When considering the style, tenor, and timing of the AC Transit RM3 bus advertisement,  
20 it can be reasonably characterized as campaign material and is not a fair presentation of facts of  
21 RM3 serving only an informational purpose. "But a fair presentation of the facts will necessarily  
22 include all consequences, good and bad, of the proposal, not only the anticipated improvement  
23 ..., but also the increased tax rate and such other less desirable consequences as may be  
24 foreseen." *Stanson v. Mott* (1976), 17 Cal.3d 206 (emphasis added). The AC Transit bus  
25 advertisement is not a fair presentation of the facts of RM3 because it fails to disclose "all  
26 consequences" of RM3. The AC Transit bus advertisement omits discussion of any "bad" or  
27 "less desirable" consequences of RM3, such as the bridge toll increase. It only includes "good"  
28 consequences, "Regional traffic relief plan helping fund bus service and infrastructure".

1 Furthermore, the terms “relief” and “helping” could be interpreted as “inflammatory” or  
2 “argumentative.” In the English version of the AC Transit ad, the word “helping” could be  
3 replaced with a neutral word such as “that.” There is no dispute that RM3 “funds bus service and  
4 infrastructure,” so the word “helping” is unnecessary and argumentative. Complainants believe  
5 that “helping” and “para ayudar” (“in order to help” in Spanish) intentionally were used because  
6 of their positive connotations. Bus passengers who glance quickly at the RM3 ad in English  
7 might just see the last words of each line “BALLOT ... helping ... infrastructure”.

8           If this AC Transit bus advertisement were found to be in violation of FPPC Regulation  
9 18420.1, then some imputed value of the advertising space could be calculated for the basis of  
10 any AC Transit campaign finance disclosure that the agency would file belatedly. The telephone  
11 numbers listed in the advertisement apparently led to recorded audio messages about RM3 in  
12 English (x7296), Spanish (x7297) and Chinese (x7298). These apparently were dedicated phone  
13 lines dedicated solely to providing information about RM3 and had no other purpose during the  
14 RM3 campaign. Complainants request the FPPC investigate AC Transit to determine the content  
15 of these recorded phone messages to determine if they were fair presentations of the facts of  
16 RM3. If the phone messages were not fair presentations of the facts of RM3, then the value of  
17 these dedicated phone lines presumably would be a reportable independent expenditure or  
18 contribution.

## 19 20 **CONCLUSION**

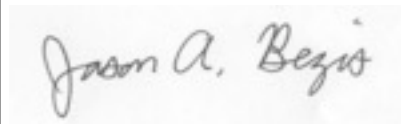
21           Complainants TRANSDEF and BATWG request that the FPPC investigate the ten  
22 charges detailed above and undertake all appropriate enforcement action. Under the FPPC’s 43  
23 year-old *In the Matter of Fontana* precedent, 2 FPPC Ops. 25 (1976), public entities that engage  
24 in campaign activity must report all election activity, including election activity engaged in  
25 before a ballot measure qualifies. Footnote 5 of *Fontana* says in part, “IVCC’s initial campaign  
26 statement must include contributions received and expenditures made in anticipation of the  
27 measure being placed on the ballot, even if such contributions and expenditures were made  
28 before the Board of Supervisors actually placed the proposal on the ballot.” Therefore, work



1 performed for MTC/BATA concerning RM3 by TBWB Strategies and other political consultants  
2 in anticipation of MTC/BATA's January 24, 2018 placement of RM3 on the ballot (especially  
3 concerning external political strategy/stakeholder engagement) should be reported as a  
4 contribution to the Yes on RM3 campaign or as an independent expenditure supporting RM3.

5 I declare under penalty of perjury under the laws of the State of California that the  
6 foregoing is true and correct, to the best of my personal knowledge, information and/or belief.

7 Respectfully submitted,

8   
9

10  
11 JASON A. BEZIS, June 5, 2019

12 Law Offices of Jason A. Bezis  
13 representing Complainants Transportation Solutions Defense and Education Fund (TRANSDEF)  
14 and Bay Area Transportation Working Group (BATWG)

15 Attachments: Exhibits 1 through 24.

16  
17 ENDNOTES:  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<sup>1</sup> See also: <https://web.archive.org/web/20180107024413/http://www.tbwb.com/approach> and its sub-pages.

<sup>2</sup> <https://www.linkedin.com/in/mark-jones-5ba3a38>

<sup>3</sup> <https://www.youtube.com/watch?v=Y0IY6aiv1f4>

<sup>4</sup> <https://web.archive.org/web/20180605020513/https://mtc.ca.gov/our-work/advocate-lead/regional-measure-3>

<sup>5</sup> The video link was to <https://www.youtube.com/watch?v=Y0IY6aiv1f4>, the MTC/BATA/Mark Jones video.

<sup>6</sup> <https://web.archive.org/web/20180605034402/http://www.actransit.org/rm3/>

<sup>7</sup> <https://web.archive.org/web/20180605035721/https://www.sfcta.org/revenue/RM3> Note that the video Y0IY6aiv1f4, while not captured in this archive, exists as FN3.

<sup>8</sup><https://web.archive.org/web/20180605040214/http://www.sta.ca.gov/Content/10162/preview.html>

<sup>9</sup><https://web.archive.org/web/20180605040214/https://www.youtube.com/watch?v=Y0IY6aiv1f4&feature=youtu.be>

<sup>10</sup><https://web.archive.org/web/20190528213313/https://www.facebook.com/MTCBATA/videos/1854945944526738/> and <https://web.archive.org/web/20180605051009/https://www.facebook.com/MTCBATA/videos/vb.113973981957285/1854945944526738/?type=2&theater>

<sup>11</sup> <https://www.facebook.com/pg/MTCBATA/videos/>

<sup>12</sup> <https://web.archive.org/web/20180422055350/https://www.prnewswire.com/news-releases/coalition-supporting-regional-measure-3-assembles-to-bring-infrastructure-improvements-and-increased-transportation-capacity-to-the-bay-area-300584846.html>.

<sup>13</sup> [https://oag.ca.gov/system/files/opinions/pdfs/13-304\\_1.pdf](https://oag.ca.gov/system/files/opinions/pdfs/13-304_1.pdf)

<sup>14</sup> <https://mtcdrive.app.box.com/s/bd0761nw2prl71mt7c4n63k6mwyj14z/file/268887204506>

<sup>15</sup> *Id.*

<sup>16</sup> <https://vimeo.com/325940256>

<sup>17</sup> *Id.*

<sup>18</sup> [https://archive.org/details/KTVU\\_20180601\\_230000\\_KTVU\\_Fox\\_2\\_News\\_at\\_4pm/start/2280/end/2340](https://archive.org/details/KTVU_20180601_230000_KTVU_Fox_2_News_at_4pm/start/2280/end/2340) (starts at 00:08)

<sup>19</sup> [https://archive.org/details/KGO\\_20180604\\_130000\\_ABC7\\_News\\_600AM/start/1320/end/1380](https://archive.org/details/KGO_20180604_130000_ABC7_News_600AM/start/1320/end/1380) (starts at 00:45)

<sup>20</sup> [https://archive.org/details/KPIX\\_20180605\\_010000\\_KPIX\\_5\\_News\\_at\\_600PM/start/1380/end/1440](https://archive.org/details/KPIX_20180605_010000_KPIX_5_News_at_600PM/start/1380/end/1440) (starts at 00:45)

<sup>21</sup> [https://archive.org/details/KGO\\_20180605\\_010000\\_ABC7\\_News\\_600PM/start/2520/end/2580](https://archive.org/details/KGO_20180605_010000_ABC7_News_600PM/start/2520/end/2580) (starts midway into spot)

<sup>22</sup> [https://archive.org/details/KTVU\\_20180605\\_050000\\_The\\_Ten\\_OClock\\_News\\_on\\_KTVU\\_Fox\\_2/start/2340/end/2400](https://archive.org/details/KTVU_20180605_050000_The_Ten_OClock_News_on_KTVU_Fox_2/start/2340/end/2400)

<sup>23</sup> [https://archive.org/details/KRON\\_20180605\\_050000\\_KRON\\_4\\_News\\_at\\_10/start/3240/end/3300](https://archive.org/details/KRON_20180605_050000_KRON_4_News_at_10/start/3240/end/3300) (starts at 00:25)

<sup>24</sup> [https://archive.org/details/KPIX\\_20180605\\_060000\\_KPIX\\_5\\_News\\_at\\_11PM/start/1320/end/1380](https://archive.org/details/KPIX_20180605_060000_KPIX_5_News_at_11PM/start/1320/end/1380) (starts at 00:36)

<sup>25</sup> [https://archive.org/details/KNTV\\_20180605\\_060000\\_NBC\\_Bay\\_Area\\_News\\_at\\_11/start/1920/end/1980](https://archive.org/details/KNTV_20180605_060000_NBC_Bay_Area_News_at_11/start/1920/end/1980) (starts at 00:51)

<sup>26</sup> [https://archive.org/details/KGO\\_20180605\\_060000\\_ABC7\\_News\\_1100PM/start/1980/end/2040](https://archive.org/details/KGO_20180605_060000_ABC7_News_1100PM/start/1980/end/2040) (starts at 00:25)

<sup>27</sup>[https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=US&q=Yes%20on%20Regional%20Measure%203&view\\_all\\_page\\_id=1920776378240544](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=US&q=Yes%20on%20Regional%20Measure%203&view_all_page_id=1920776378240544)

<sup>28</sup> [https://video-sjc3-1.xx.fbcdn.net/v/t42.9040-2/33156404\\_211649856285712\\_7249749240522473472\\_n.mp4?\\_\\_nc\\_cat=101&\\_\\_nc\\_ht=video-sjc3-1.xx&oh=406e88c820d6a52a4cddbda105eceb&oe=5CF5E854](https://video-sjc3-1.xx.fbcdn.net/v/t42.9040-2/33156404_211649856285712_7249749240522473472_n.mp4?__nc_cat=101&__nc_ht=video-sjc3-1.xx&oh=406e88c820d6a52a4cddbda105eceb&oe=5CF5E854)

<sup>29</sup> <https://mtcdrive.app.box.com/s/bd0761nw2prl71mt7c4n63k6mwyj14z/file/268887204506>

<sup>30</sup> <https://youtu.be/AhLIVdV1zzk>

<sup>31</sup> <https://mtcdrive.app.box.com/s/bd0761nw2prl71mt7c4n63k6mwyj14z/file/268887292370>

<sup>32</sup> <https://youtu.be/67YhyuGZhWc>

<sup>33</sup> <https://youtu.be/bO98lcqks4M>

<sup>34</sup> <https://youtu.be/QPPjbdTG9-Q>

<sup>35</sup> <https://mtcdrive.app.box.com/s/bd0761nw2prl71mt7c4n63k6mwyj14z/file/268887287124>

<sup>36</sup> <https://youtu.be/QPPjbdTG9-Q>

<sup>37</sup> <https://youtu.be/yHCDfEPUdYg>

<sup>38</sup> <https://www.youtube.com/watch?v=7cNrWhsojBw>

<sup>39</sup> <https://www.youtube.com/watch?v=U4w2fd62MSE>

<sup>39</sup> <https://web.archive.org/web/20180605035402/http://sanfranciscobayferry.com/> (RM3 Green Checkmark logo directly adjacent to schedule search)

<https://web.archive.org/web/20180611045800/http://sanfranciscobayferry.com/terminals>

(RM3 Green Checkmark logo directly below schedule search.)

<https://web.archive.org/web/20180616104943/http://sanfranciscobayferry.com/schedule->

[information](#)

<https://web.archive.org/web/20180520195705/http://sanfranciscobayferry.com/fares-and-tickets>

(RM3 Green Checkmark logo near the bottom of the page.)

<https://web.archive.org/web/20180616112453/http://sanfranciscobayferry.com/sfbf-rider-info>

<sup>41</sup> <https://web.archive.org/web/20180605035204/sanfranciscobayferry.com/voters-decide-rm3-june-5>

<sup>42</sup> <https://weta.sanfranciscobayferry.com/filebrowser/download/157>

<sup>43</sup> <https://weta.sanfranciscobayferry.com/filebrowser/download/157>

<sup>44</sup> <https://weta.sanfranciscobayferry.com/filebrowser/download/159>

<sup>45</sup> <https://weta.sanfranciscobayferry.com/filebrowser/download/161>

<sup>46</sup> <https://web.archive.org/web/20180608105402/https://www.bayareacouncil.org/economy/bacpoll-more-people-looking-to-leave-bay-area-as-housing-traffic-problems-mount/>

<sup>47</sup> <https://web.archive.org/web/20190101005145/http://www.bayareacouncil.org/news/bacpoll-voters-say-theyd-pay-to-end-awful-traffic/>

<sup>48</sup> [https://web.archive.org/web/20180605040734/https://mtc.ca.gov/sites/default/files/RM2\\_fact\\_sheet.pdf](https://web.archive.org/web/20180605040734/https://mtc.ca.gov/sites/default/files/RM2_fact_sheet.pdf)