



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

PAUL A. RENNE  
CHAIRPERSON

BRETT ANDREWS  
VICE-CHAIRPERSON

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COMMISSIONER

BENEDICT Y. HUR  
COMMISSIONER

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COMMISSIONER

LEE ANN PELHAM  
EXECUTIVE DIRECTOR

Date: March 22, 2016

To: Members, Ethics Commission

From: LeeAnn Pelham, Executive Director

Re: **AGENDA ITEM 4** - Complaint Disposition Recommendation for Ethics Commission – Proposed Stipulation “In the Matter of Ethics Complaint No. 19-131115,” Lynette Sweet, Respondent

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**Summary** This memo provides the Ethics Commission with a recommendation for the disposition of a complaint by way of stipulation (attached), per SFEC Enforcement Regulations, section XIV.

**Action Requested** Staff recommends the Commission accept the proposed stipulation.

### Background

This item is being presented for action by the Commission in open session at its next regular meeting on March 28, 2016. The attached proposed stipulation resolves the legal and factual issues raised in the Accusation publicly issued by the Commission in this matter on February 5, 2015, following its determination of probable cause on January 26, 2015. The respondent was informed that this item will be considered for approval at the March 28, 2016, meeting.

Prior to a determination of probable cause, a stipulated agreement must be considered by the Commission in closed session. (SFEC Enforcement Reg. § XIV.C.) However, because the Commission made a determination of probable cause and issued a public accusation, any stipulation proposed in this matter must be considered in open session. (SF City Charter § C3.699-13; SFEC Enforcement Reg. § VIII.B.5.)

SFEC Enforcement Regulation XIV.A provides that at any time after the Commission takes jurisdiction over a complaint, the Executive Director may enter into negotiations with a respondent for the purpose of resolving the factual and legal allegations in a complaint by way of a stipulation, decision, and order.

The stipulated order shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under its authority pursuant to Charter section C3.699-13. (SFEC Enforcement Reg. § XIV.B.) Stipulated orders must be approved by the Commission and, upon approval, must be announced publicly. The stipulated order shall have the full force of an order of the Commission. (SFEC Enforcement Reg. § XIV.D.)

**Agenda Item 4  
Proposed Draft**

1 LeeAnn Pelham  
2 Executive Director  
3 San Francisco Ethics Commission  
4 25 Van Ness Avenue, Suite 220  
5 San Francisco, CA 94102  
6 (415) 252-3100 Telephone  
7 (415) 252-3112 Facsimile

8 BEFORE THE SAN FRANCISCO  
9 ETHICS COMMISSION

10 In the Matter of ) Complaint No. 19-131115  
11 )  
12 LYNETTE SWEET, SWEET FOR SUPERVISOR 2010, )  
13 )  
14 Respondents. ) **STIPULATION, DECISION**  
15 ) **AND ORDER**  
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21 THE PARTIES STIPULATE AS FOLLOWS:

22 1. This Stipulation, Decision and Order (“Stipulation”) is made and entered into by and  
23 between Lynette Sweet and Sweet for Supervisor 2010, (“Respondents”), and the San Francisco Ethics  
24 Commission (“the Commission”).

25 2. Respondents and the Commission agree to settle and resolve all factual and legal issues  
26 in this matter and to reach a final disposition without an administrative hearing. Upon approval of this  
27 Stipulation and full performance by Respondents on the terms outlined in this Stipulation, the  
28 Commission will take no future action against Respondents and this Stipulation shall constitute the  
complete resolution of all claims by the Commission against Respondents related to the violations  
described in Exhibit A. Respondents understand and knowingly and voluntarily waive all rights to judicial  
review of this Stipulation and any action taken by the Commission or its staff on this matter.

3. The attached Exhibit A is a true and accurate summary of the facts in this matter.

Respondents acknowledge having violated the California Government Code and San Francisco Campaign & Governmental Conduct Code ("SF C&GCC") as described in Exhibit A.

4. Respondents agree to pay a settlement in the amount of Nine Thousand Two Hundred Fifty Dollars (\$9,250) for the following violations: seven violations of California Government Code, section 84200(a), as incorporated by SF C&GCC, section 1.106; one violation of California Government Code, section 84104, as incorporated by SF C&GCC, section 1.106; and two violations of SF C&GCC, section 1.118, as set forth in Exhibit A.

5. Within sixty (60) days after the Commission approves this Stipulation, Respondents shall deliver \$2,000 of the total penalty to the Commission. Respondents agree to pay and deliver the remaining penalty balance of \$7,250 in 12 monthly installments which the Commission must receive according to the delivery dates set forth in this paragraph. Respondents agree to deliver 11 monthly installments in the amount of \$604.16 and the 12th and last installment in the amount of \$604.24. Respondents agree to deliver the first installment of the remaining \$7,250 penalty by June 15, 2016. Respondents agree to deliver each subsequent installment by the 15th of day of each month until Respondents have paid the full balance and no later than May 15, 2017. Respondents agree that if the 15th day of the month falls on a day when the Commission is closed, then Respondents will pay the monthly installment on the next day following the 15th that the Commission is open for business. The settlement amount shall be paid by check or money order made payable to the "City and County of San Francisco." Respondents agree to deliver the check or money order to the following address:

San Francisco Ethics Commission  
Attn: Enforcement Division  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

1 6. If Respondents do not pay the \$9,250 penalty as set forth in Paragraphs 4 and 5, or if  
2 Respondents' payments do not clear the bank or cannot be negotiated in full by the Ethics Commission  
3 for any reason, or if Respondents otherwise fail to comply with the terms of this Stipulation, then the  
4 Commission reserves the right to reopen the matter and prosecute Respondents under Section C3.699-  
5 13 of the San Francisco Charter for any or all the violations set forth in Exhibit A hereto, including any  
6 violations stemming from the findings contained in the final Ethics Commission Audit Report: Sweet for  
7 Supervisor 2010, FPPC ID#1324331.

8 7. Respondents understand, and hereby knowingly and voluntarily waive, any and all  
9 procedural rights under Section C3.699-13 of the San Francisco Charter and the Commission's  
10 Regulations for Investigations and Enforcement Proceedings with respect to this matter. These include,  
11 but are not limited to, the right to appear personally at any administrative hearing held in this matter, to  
12 be represented by an attorney at Respondents' expense, to confront and cross-examine all witnesses  
13 testifying at the hearing and to subpoena witnesses to testify at the hearing.

14 8. Respondents understand and acknowledge that this Stipulation is not binding on any  
15 other government agency with the authority to enforce either California Government Code, section  
16 84200 *et seq.* or San Francisco Campaign & Governmental Conduct Code, section 1.100 *et seq.*, and does  
17 not preclude the Commission or its staff from cooperating with or assisting any other government  
18 agency with regard to the complaint, or any other matter related to it.

19 9. This Stipulation is subject to the Commission's approval. In the event the Commission  
20 declines to approve this Stipulation, the Stipulation shall become null and void, except Paragraph 10,  
21 which shall survive.

22 10. In the event the Commission rejects the Stipulation and further administrative  
23 proceedings before the Commission are necessary, Respondents agree that the Stipulation and all  
24 references to it are inadmissible, and that Respondents agree not to challenge, dispute, or object to the  
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1 participation of any member of the Commission or its staff because of his or her prior consideration of  
2 this Stipulation.

3 11. This Stipulation, along with the attached Exhibit A, reflects the entire agreement  
4 between the parties hereto and supersedes any and all prior negotiations, understandings, and  
5 agreements with respect to the transactions contemplated herein. This Stipulation may not be  
6 amended orally. Any amendment or modification to this Stipulation must be in writing duly executed by  
7 all parties and approved by the Commission at a regular or special meeting.

8 12. This Stipulation shall be construed under, and interpreted in accordance with, the laws  
9 of the State of California. If any provision of the Stipulation is found to be unenforceable, the remaining  
10 provisions shall remain valid and enforceable.

11 13. For the reasons set forth in Exhibit A, the parties agree that Nine Thousand Two  
12 Hundred Fifty Dollars (\$9,250) is an appropriate settlement for Respondents' violations of the provisions  
13 listed in Paragraph 4 of this Stipulation.

14 14. The parties hereto may sign different copies of this Stipulation, which will be deemed to  
15 have the same effect as though all parties had signed the same document.  
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20 Dated: \_\_\_\_\_

21 LEEANN PELHAM, EXECUTIVE DIRECTOR  
22 SAN FRANCISCO ETHICS COMMISSION  
23 COMPLAINANT

24 Dated: \_\_\_\_\_

25 LYNETTE SWEET, INDIVIDUALLY, AND ON BEHALF OF SWEET FOR  
26 SUPERVISOR 2010  
27 RESPONDENTS

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**DECISION AND ORDER**

The foregoing Stipulation of the parties in the matter of “Lynette Sweet, Sweet for Supervisor 2010; San Francisco Ethics Commission Complaint Number 19-131115,” including the attached exhibit, is hereby accepted as the final Decision and Order of the San Francisco Ethics Commission, effective upon execution below by the Chairperson.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

PAUL A. RENNE, CHAIRPERSON  
SAN FRANCISCO ETHICS COMMISSION

**EXHIBIT A**  
**INTRODUCTION**

Respondent Lynette Sweet was a candidate for the San Francisco Board of Supervisors District 10 seat in 2010. Respondent Sweet was unsuccessful in her bid to be District 10 Supervisor.

On January 27, 2010, Respondent Sweet formed the candidate controlled committee "Sweet for Supervisor 2010," FPPC #1324331 ("Committee"), by filing a Form 410 Statement of Organization Recipient Committee ("Form 410"). The Committee is also a named Respondent in this matter.

The Committee applied for and received public funding under the City of San Francisco's public financing program for candidates running for a seat on the Board of Supervisors. The Committee raised \$73,489 in contributions. The Committee also qualified to receive \$57,439 in public funds. As the Committee was publicly funded, the Ethics Commission conducted a mandatory audit of the Committee and issued its audit report to the Committee on July 17, 2014. The audit determined that there were three material findings, and those findings form the basis of the violations of law resolved by this Stipulation. During the course of the audit, Respondents did not provide the Commission's audit staff with all required documents after several requests, did not respond to audit staff communications, and did not provide a response to the audit.

The audit found that the Committee failed to file any of the required semiannual Form 460 campaign statements following the last filed Form 460 on January 28, 2011, which covered the reporting period of October 17 to December 31, 2010. The Committee did not terminate when it filed the October 17 to December 31, 2010, Form 460. Because the Committee had reported an outstanding cash balance and outstanding debts on the Form 460 filed on January 28, 2011, it was required to remain open until it ceased its activity, cleared its debts, and had no surplus funds.

The audit found that the Committee did not keep required documentation to substantiate \$61,791 in expenditures and \$8,750 in contributions. The Committee's total expenditures were \$135,847.

The audit also found that the Committee failed to pay for goods or services within 180 days to two separate vendors.

Respondents admit to and agree to pay a penalty for the following violations:

- COUNTS 1-7:** Respondents failed to file seven required semiannual Form 460s in violation of California Government Code, section 84200(a), as incorporated by San Francisco Campaign and Governmental Conduct Code ("SF C&GCC"), section 1.106.
- COUNT 8:** Respondents failed to maintain campaign records in violation of California Government Code, section 84104, as incorporated by SF C&GCC, section 1.106.
- COUNTS 9-10:** Respondents failed to pay two accrued expenses in full no later than 180 days after receipt of an invoice or within 180 days after the goods were delivered or the services were rendered in violation of SF C&GCC, section 1.118.

## SUMMARY OF APPLICABLE LAW

### **CALIFORNIA GOVERNMENT CODE AND CALIFORNIA FAIR POLITICAL PRACTICES REGULATION**

California Government Code, section 84104, states that it shall be the duty of each candidate and treasurer to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements and to establish that campaign statements were properly filed.

California Government Code, section 84200(a), provides that elected officers, candidates, and committees shall file semiannual statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31.

California Government Code, section 84214, provides that committees and candidates must terminate their filing obligations by addressing any outstanding cash balance and/or debts and by filing a separate termination statement Form 410.

FPPC Regulation 18404(b), states that a committee may terminate only by completing the termination section on the Form 410 declaring, under penalty of perjury, that the committee: (1) has ceased to receive contributions and make expenditures and does not anticipate receiving contributions or making expenditures in the future; (2) has eliminated or has declared that it has no intention or ability to discharge all of its debts, loans received and other obligations; (3) has no surplus funds; and (4) has filed all required campaign statements disclosing all reportable transactions.

### **SAN FRANCISCO CAMPAIGN & GOVERNMENTAL CONDUCT CODE**

SF C&GCC, section 1.118, provides that a candidate committee shall pay unpaid debts within 180 days, unless it is clear from the circumstances that the failure to pay is reasonably based on a good faith dispute.

## VIOLATIONS OF LAW

### COUNTS 1 - 7

#### **FAILURE TO FILE CAMPAIGN STATEMENTS**

California Government Code, section 84200(a), provides that elected officers, candidates, and committees shall file semiannual Form 460 campaign statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31. Form 460s must be filed until the Committee is able to terminate by ceasing its activity, clearing its debts, has no surplus funds, and files a termination statement Form 410.

On January 28, 2011, Respondents filed a Form 460 reporting that the Committee had a cash balance of \$1,991.89, and outstanding debts in amount of \$2,150. Respondents did not formally terminate the Committee with that filing. Given its outstanding cash balance and reported debts, the Committee was required to file a Form 460 until it had no activity and no cash balance, and formally terminated. Respondents did not file any required Form 460 for any reporting period following the Committee's filing of January 28, 2011. Because the Committee did not formally terminate, a Form 460 was required to be filed for the following periods: January through June 2011; July through December



2011; January through June 2012; July through December 2012; January through June 2013; July through December 2013; January through June 2014.<sup>1</sup>

Because Respondents failed to file seven Form 460s, they committed seven separate violations of California Government Code, 84200(a).

### **COUNT 8**

#### **FAILURE TO MAINTAIN REQUIRED COMMITTEE RECORDS**

California Government Code, section 84104, requires all candidates and committees that file campaign statements to maintain detailed accounts, records, bills, and receipts as necessary to prepare those campaign statements and to establish that campaign statements were properly filed. Each candidate or committee must retain the detailed information and original source information supporting the campaign statements for a period of four years.

In this matter, at the time the audit concluded, the Committee failed to maintain, or provide to staff, supporting documentation for \$61,791 out of \$135,847 in reported expenditures, resulting in 45% of expenditures having no documentation as of the time of the audit. The Committee also failed to maintain, or provide staff, supporting documentation for \$8,750 out of \$73,489 in reported contributions, resulting in 12% of total contributions having no documentation as of the time of the audit.

Because Respondent failed to maintain required records in order to establish that the campaign statements were properly filed, they committed one violation of California Government Code, section 84104.

### **COUNTS 9 – 10**

#### **FAILING TO PAY ACCRUED EXPENSES**

SF C&GCC, section 1.118, provides that a candidate committee shall pay unpaid debts within 180 days, unless it is clear from the circumstances that the failure to pay is reasonably based on a good faith dispute.

As of the issuance of the audit report, no documentation was provided to the Ethics Commission showing that two debts totaling \$4,650 were paid within 180 days of the date of the invoices or when the services were performed as required. The two unpaid debts were to Clear Channel for posters and advertisements in the amount of \$2,500; and to David Binder Research for a telephone survey in the amount of \$2,150. The expense to Clear Channel was incurred on September 21, 2010. The expense to David Binder Research, incurred on March 2, 2010, was only partially paid.

Because the expenses to Clear Channel and David Binder Research were not paid in full within 180 days of the date of the invoice or when the services were performed as required, Respondents committed two violations of San Francisco Campaign and Governmental Conduct Code, section 1.118.

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<sup>1</sup> The Ethics Commission made a determination of probable cause in this matter on January 26, 2015, after which date no additional counts could be added.

## PENALTY DISCUSSION

This matter consists of ten counts carrying a maximum administrative penalty of \$5,000 per violation for a total possible penalty of \$50,000. (See SF City Charter, § C3.699-13(c).)

Pursuant to San Francisco Ethics Commission Regulations for Investigations and Enforcement Proceedings, section XII.C.2, when determining penalties, the Ethics Commission considers all of the relevant circumstances surrounding the case, including but not limited to: (a) the severity of the violation; (b) the presence or absence of any intention to conceal, deceive, or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d) whether the violation was an isolated incident or part of a pattern; (e) whether the respondent has a prior record of violations of law; and (f) the degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations.

The Political Reform Act was enacted in part to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that the voters may be fully informed and improper activities may be inhibited. The Political Reform Act was also enacted to assist voters in making informed electoral decisions and ensure compliance with campaign contribution limits through the required filing of campaign statements detailing the sources of campaign contributions and how those contributions have been expended.

Prior stipulations approved by the Ethics Commission for similar violations have included the following:

- *Ethics Complaint No. 24-101021*, among four total violations, included one violation of California Government Code, section 84104, for failing to account for 16% of the committee's total expenditures. The respondent was publicly funded and had no prior enforcement history with the Commission. The committee filed all required campaign statements and provided additional documentation during the audit process. The \$2,500 stipulation was approved by the Commission on May 27, 2015.
- *Ethics Complaint No. 26-101021*, among four total violations, included one violation of California Government Code, section 84104, for failing to account for 74% of the total expenditures. The respondent was not publicly financed. The \$2,575 stipulation was approved by the Commission on September 28, 2015.
- *Ethics Complaint 13-100730*, among two violations, included one violation of California Government Code, section 84104, for failing to account for 67% of the total expenditures. The respondent was not publicly financed. The \$2,000 stipulation was approved by the Commission on September 28, 2015.
- *Ethics Complaints Nos. 20-131115, 18-131115, 17-131115, 16-131114*, all involved one violation of California Government Code, section 84200(a), for failing to file semiannual campaign statements. None of the respondents were publicly funded. Each respondent agreed to pay a penalty of \$500 per violation, and all were approved by the Commission.

In this matter, the violations of law were significant because the Committee received public

funds. The failure to provide documentation for a substantial percentage of expenditures and contributions prevented audit staff from concluding that the Committee complied with all applicable requirements of the law. This failure resulted in a substantial lack of accounting for the Committee's activities. Factors in aggravation include that Respondent Sweet did not respond to audit staff, and only responded to enforcement staff after being noticed of the issued accusation. In addition, while Respondent Sweet stated that she believed her treasurer had submitted all required documentation, as the candidate, she is responsible to ensure all required documentation was submitted for the audit. Respondent Sweet provided additional documentation only in response to the enforcement matter. While Respondent Sweet demonstrated that an additional \$41,588 in expenditures and \$4,150 in contributions complied with the requirements of the law, \$20,203 in expenditures and \$4,600 in contributions remain unaccounted for. In mitigation, Respondent Sweet has no prior enforcement history with the Ethics Commission.

### **CONCLUSION**

After consideration of the facts of this case, the Executive Director of the Ethics Commission recommends the imposition of the agreed upon penalty of \$750 for each of Counts 1 – 7, for a total of \$5,250; \$3,500 for Count 8; and \$250 for each of Counts 9 – 10, for a total of \$500. **The total agreed upon penalty for all counts is \$9,250.**