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BEFORE THE SAN FRANCISCO
ETHICS COMMISSION

In the Matter of	) Complaint No. 14-141202
GEORGE GASCÓN,	)
Respondent.	) **STIPULATION, DECISION AND ORDER**

THE PARTIES STIPULATE AS FOLLOWS:

1. This Stipulation, Decision and Order ("Stipulation") is made and entered into by and between George Gascón, ("Respondent"), and the San Francisco Ethics Commission ("the Commission").

2. Respondent and the Commission agree to settle and resolve all factual and legal issues in this matter and to reach a final disposition without an administrative hearing. Upon approval of this Stipulation and full performance by Respondent on the terms outlined in this Stipulation, the Commission will take no future action against Respondent and this Stipulation shall constitute the complete resolution of all claims by the Commission against Respondent related to the violations described in Exhibit A. Respondent understands and knowingly and voluntarily waives 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. Respondent acknowledges responsibility for having violated the San Francisco Campaign & Governmental Conduct Code ("SF C&GCC") as described in Exhibit A.

4. Respondent acknowledges and agrees to pay a settlement in the amount of Four Thousand Dollars ($4,000) for the following violation: one violation of SF C&GCC, section 3.230(a), as set forth in Exhibit A.

5. Within ten (10) business days after the Commission approves this Stipulation, Respondent shall deliver the $4,00 settlement amount to the Commission. The settlement amount shall be paid by check or money order made payable to the "City and County of San Francisco." Respondent agrees 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

6. If Respondent does not pay the $4,000 settlement amount as set forth in Paragraphs 4 and 5, or if Respondent's payments do not clear the bank or cannot be negotiated in full by the Ethics Commission for any reason, or if Respondent otherwise fails to comply with the terms of this Stipulation, then the Commission reserves the right to reopen the matter and prosecute Respondent under Section C3.699-13 of the San Francisco Charter for any or all the violations set forth in Exhibit A.

7. Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural rights under Section C3.699-13 of the San Francisco Charter and the Commission's Regulations for Investigations and Enforcement Proceedings with respect to this matter. These include, but are not limited to, the right to appear personally at any administrative hearing held in this matter, to

be represented by an attorney at Respondent's expense, to confront and cross-examine all witnesses testifying at the hearing and to subpoena witnesses to testify at the hearing.

8. Respondent understands and acknowledges that this Stipulation is not binding on any other government agency with the authority to enforce San Francisco Campaign & Governmental Conduct Code, section 3.200 *et seq.*, and does not preclude the Commission or its staff from cooperating with or assisting any other government agency with regard to the complaint, or any other matter related to it.

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

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

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

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

13. For the reasons set forth in Exhibit A, the parties agree that Four Thousand Dollars ($4,000) is an appropriate settlement for Respondent's violations of the provisions listed in Paragraph 4 of this Stipulation.

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

Dated: 5/23/2016

[redacted]

LEEANN PELHAM, EXECUTIVE DIRECTOR
SAN FRANCISCO ETHICS COMMISSION
COMPLAINANT

Dated: 5-13-16

[redacted]

GEORGE GASCÓN, DISTRICT ATTORNEY
RESPONDENT

DECISION AND ORDER

The foregoing Stipulation of the parties in the matter of "George Gascón; San Francisco Ethics Commission Complaint Number 14-141202," 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: May 23, 2016

[redacted]

PAUL A. RENNE, CHAIRPERSON
SAN FRANCISCO ETHICS COMMISSION

EXHIBIT A

INTRODUCTION

George Gascón is the San Francisco District Attorney. He was appointed to the position in January 2011 and was elected to office in November 2011. Mr. Gascón ran for re-election to a second term on the November 3, 2015 ballot, and was successfully re-elected.

On November 13, 2014, Mr. Gascón attended a fundraising event to benefit his re-election campaign at Ted's Sports Bar & Grill. The event was organized by Assistant District Attorneys in Mr. Gascón's office at the request of Mr. Gascón's Chief of Staff. Mr. Gascón was made aware of the fundraising event the day before because his assistant put the event in his office calendar so he would attend. Mr. Gascón did not organize the fundraising event and did not coordinate the event with department staff.

Approximately 50-75 people attended the fundraising event. Although Ted's remained open to the public, the attendees were primarily employees of the San Francisco District Attorneys' Office. Mr. Gascón was aware when he arrived that the purpose of the event was to fundraise for his re-election committee. During the event, Assistant District Attorney Michael Swart introduced Mr. Gascón in comments in which Mr. Swart made a direct solicitation to the attendees for campaign support of Mr. Gascón's re-election, including a solicitation for campaign contributions. Immediately following Mr. Swart's comments, Mr. Gascón addressed the assembled group. He thanked attendees for their service and for welcoming him into the office, but did not directly ask for campaign contributions.

Approximately 56 employees of the District Attorney's Office contributed roughly $8,800 to Mr. Gascón's re-election committee in connection with this event. Mr. Gascon stated that he learned for the first time that the law prohibited him and other City employees from soliciting contributions from City employees when the campaign was contacted about a news article regarding the employee fundraising event; Mr. Gascon's campaign committee thereafter immediately returned contributions it had received in connection with the event.

Mr. Gascón admits to having knowingly participated in a fundraising event involving other City employees in a manner that constitutes an indirect solicitation of campaign contributions from those employees, and agrees to pay a penalty for the following violation:

COUNT 1: The knowing, indirect solicitation of political contributions from other City employees in violation of SF C&GCC, section 3.230(a).

SUMMARY OF APPLICABLE LAW

SAN FRANCISCO CAMPAIGN & GOVERNMENTAL CONDUCT CODE

SF C&GCC, section 3.230(a), states: "No City officer or employee shall knowingly, directly or indirectly, solicit political contributions from other City officers or employees or from persons on employment lists of the City. Nothing in this Section shall prohibit a City officer or employee from communicating through the mail or by other means requests for political contributions to a significant segment of the public which may include City officers or employees."

SF C&GCC, section 3.202, requires that the conflict of interest laws contained in SF C&GCC, section 3.200 et eq. shall be liberally construed.

VIOLATIONS OF LAW

COUNT 1

SOLICITATION OF POLITICAL CONTRIBUTIONS FROM OTHER CITY EMPLOYEES

SF C&GCC, section 3.230(a), prohibits any City officer or employee from knowingly soliciting political contributions from any other City officer or employee, either directly or indirectly, unless the solicitation occurs as a result of a communication targeted to a significant segment of the public which may include City officers or employees.

Mr. Gascón knowingly participated in a fundraising event in connection with his re-election campaign for District Attorney. He knew that the purpose of the event was to raise money for his re-election campaign and that the event was primarily attended by employees of the District Attorney's Office. Although Mr. Gascón's comments to the assembled group at the event did not include a direct appeal for campaign contributions, he was present when Mr. Swart made a direct solicitation to attendees for political contributions to support Mr. Gascón's re-election. Mr. Gascón then addressed attendees immediately following Mr. Swart's speech, thanking them for their attendance at the event and for their support. Taken together, these facts constitute an indirect solicitation of campaign contributions by a candidate for office from other City employees.

As a City officer, Mr. Gascón is prohibited from knowingly, directly *or indirectly*, soliciting contributions from other City officers and employees. Mr. Gascón admits to knowingly participating in a fundraising event in a manner that constitutes an indirect solicitation of campaign contributions from other City employees. Because the knowing, direct or indirect solicitation of campaign contributions from other City employees is not permitted under City law, Mr. Gascón is responsible for having committed one violation of SF C&GCC, section 3.230(a).

PENALTY DISCUSSION

This matter consists of one count carrying a maximum administrative penalty of $5,000. (*See* SF City Charter, § C3.699-13(c).) The Commission has no history with regard to levying penalties for violations of SF C&GCC, section 3.230(a).

Framing appropriate penalties requires all relevant circumstances surrounding the case to be considered, 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. (SFEC Enforcement Regs. § XII.C.2.)

In proposing the penalty in this case, the Commission notes the following factors.

A violation of Sec. 3.230 is severe. That law is based on a fundamental public service principle that governmental actions and decisions should be based only on the performance of public duties and

not based on political performance. It is designed to advance the integrity of governmental actions and decisions by protecting City employees from being or feeling pressured into making political contributions to City candidates or officials, or from pressure to seek contributions from their colleagues. By eliminating these pressures, the law helps ensure that employment and advancement in government service, are, and are perceived to be, based only on performance of public duties and not on political fundraising acumen or on one's participation or non-participation in political campaigns.

As the head of the District Attorney's Office, Mr. Gascón completed ethics training required of City officers in December 2011 and March 2013, and was informed about state and City ethics laws, including section 3.230, through information and materials made available by the Office of the City Attorney in connection with that training. Mr. Gascón stated during interviews, however, that he was unaware of this prohibition, and did not think the practice of soliciting contributions from other City officers or employees was impermissible, partially because he had been asked to make political contributions by City officers and employees in the past

In mitigation, Commission investigators found no evidence of any intention to conceal, deceive, or mislead. Mr. Gascón has no prior violations of any laws within the Commission's jurisdiction, took responsibility for his actions, and cooperated fully and willingly with Commission investigators. In addition, Mr. Gascón's re-election committee returned the roughly $8,800 in contributions raised in connection with the event to donors immediately after learning of the legal issue, and prior to the funds being deposited by the committee.

CONCLUSION

After considering the facts of this case, the seriousness of the violation, and the factors described above, the Executive Director of the Ethics Commission recommends the imposition of the agreed upon penalty of $4,000.