MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 v. CCSF
San Francisco County Superior Court Case No. CGC 16 551745

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SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
City and County of San Francisco; San Francisco Ethics Commission;
City and County of San Francisco Treasurer and Tax Collector
DOES 1 to 100, Inclusive
YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
Mark Farrell for District 2 Supervisor 2010; Mark Farrell

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ***¡AVISO!*** *Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (*www.sucorte.ca.gov*), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (*www.lawhelpcalifornia.org*), en el Centro de Ayuda de las Cortes de California, (*www.sucorte.ca.gov*) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.*

The name and address of the court is:
(El nombre y dirección de la corte es): San Francisco Superior Court
400 McAllister Street
San Francisco, CA 94102

CASE NUMBER:
(Número del Caso): CGC-16-551745

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
James R. Sutton, 150 Post Street, Suit 405, San Francisco, CA 94108, 415/732-7700

DATE: *(Fecha)* APR 29 2016 CLERK OF THE COURT Clerk, by *(Secretario)* Arlene Ramos ARLENE RAMOS , Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☑ on behalf of *(specify):*

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☑ other *(specify):* CCP 416.50 (public entity)

4. ☐ by personal delivery on *(date):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

0001

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
James R. Sutton
The Sutton Law Firm
150 Post St., Ste. 405
San Francisco, CA 94108
TELEPHONE NO.: 415/732-7700 FAX NO.: 415/732-7701
ATTORNEY FOR (Name): Petitioners Mark Farrell for District 2 Supervisor 2010

FOR COURT USE ONLY

FILED
Superior Court of California
County of San Francisco
APR 29 2016
CLERK OF THE COURT
BY: Adrienne Ramos Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS: 400 McAllister St.
MAILING ADDRESS:
CITY AND ZIP CODE: San Francisco, CA 94102
BRANCH NAME: Civic Center Courthouse

CASE NAME:
Mark Farrell for District 2 Supervisor 2010 v. City & County of San Francisco

CASE NUMBER: CGC-16-551745

JUDGE:
DEPT:

CIVIL CASE COVER SHEET

[X] **Unlimited** (Amount demanded exceeds $25,000) [ ] **Limited** (Amount demanded is $25,000 or less)

Complex Case Designation

[ ] **Counter** [ ] **Joinder**

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort
- [ ] Auto (22)
- [ ] Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- [ ] Asbestos (04)
- [ ] Product liability (24)
- [ ] Medical malpractice (45)
- [ ] Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- [ ] Business tort/unfair business practice (07)
- [ ] Civil rights (08)
- [ ] Defamation (13)
- [ ] Fraud (16)
- [ ] Intellectual property (19)
- [ ] Professional negligence (25)
- [ ] Other non-PI/PD/WD tort (35)

Employment
- [ ] Wrongful termination (36)
- [ ] Other employment (15)

Contract
- [ ] Breach of contract/warranty (06)
- [ ] Rule 3.740 collections (09)
- [ ] Other collections (09)
- [ ] Insurance coverage (18)
- [ ] Other contract (37)

Real Property
- [ ] Eminent domain/Inverse condemnation (14)
- [ ] Wrongful eviction (33)
- [ ] Other real property (26)

Unlawful Detainer
- [ ] Commercial (31)
- [ ] Residential (32)
- [ ] Drugs (38)

Judicial Review
- [ ] Asset forfeiture (05)
- [ ] Petition re: arbitration award (11)
- [ ] Writ of mandate (02)
- [ ] Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
- [ ] Antitrust/Trade regulation (03)
- [ ] Construction defect (10)
- [ ] Mass tort (40)
- [ ] Securities litigation (28)
- [ ] Environmental/Toxic tort (30)
- [ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- [ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
- [ ] RICO (27)
- [ ] Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
- [ ] Partnership and corporate governance (21)
- [X] Other petition *(not specified above)* (43)

2. This case [ ] is [X] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. [ ] Large number of separately represented parties
   b. [ ] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. [ ] Substantial amount of documentary evidence
   d. [ ] Large number of witnesses
   e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. [ ] Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. [ ] monetary b. [X] nonmonetary; declaratory or injunctive relief c. [ ] punitive
4. Number of causes of action *(specify)*: 5
5. This case [ ] is [X] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: April 29, 2016
James R. Sutton
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev. July 1, 2007]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400–3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

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SUPERVISOR 2010 and MARK FARRELL

FILED
Superior Court of California
County of San Francisco
APR 29 2016
CLERK OF THE COURT
BY: Adline Ramos
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 and MARK FARRELL,

Petitioners and Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO ETHICS COMMISSION; CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR; and DOES 1 to 100, inclusive,

Respondents and Defendants.

Case No. CGC-16-551745

VERIFIED PETITION FOR WRIT OF MANDATE TO COMPEL RESPONDENTS AND DEFENDANTS TO VACATE FORFEITURE DEMAND; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; COMPLAINT FOR VIOLATION OF EQUAL PROTECTION AND DUE PROCESS RIGHTS

[CAL. CODE OF CIVIL PROCEDURE SECTIONS 525, 1060, 1085 & 1094.5 et seq.; 42 U.S.C. SECTION 1983]

INTRODUCTION

Petitioners and Plaintiffs MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 and SAN FRANCISCO SUPERVISOR MARK FARRELL (collectively, "Petitioners") bring this action against Respondents and Defendants CITY AND COUNTY OF SAN FRANCISCO, SAN FRANCISCO ETHICS COMMISSION, CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR and DOES 1 to 100, inclusive (collectively, "Respondents" or "the City") to vacate and set

aside the Ethics Commission's demand that Petitioners "forfeit" approximately $191,000 to the City.

The City lacks any rational basis for making this outrageous demand. Supervisor Farrell is totally and completely innocent. Neither Supervisor Farrell nor the Farrell Committee broke any City, state or other laws - and, although this matter has been investigated and re-investigated for several years now, no governmental entity has ever made any findings to the contrary. Not once. During what can only be described as a witchhunt, the Ethics Commission has systematically and blatantly ignored City law, as well as its own procedures, and is guilty of a gross violation of Supervisor Farrell's rights. This miscarriage of justice must be stopped.

This matter arises out of the activities of Common Sense Voters, an independent political committee which spent approximately $191,000 on several mailers which supported Supervisor Farrell's candidacy for District 2 Supervisor in 2010. Chris Lee, the campaign manager for the Farrell Committee, had minor and unauthorized communications with the agents of Common Sense Voters before the committee was set up. Based solely on these limited interactions, the City believes that it can unilaterally demand that Petitioners now "forfeit" over $190,000 to the City - even though Petitioners never solicited, received, possessed or otherwise controlled the funds the City now seeks, and even though Supervisor Farrell in no way authorized and had absolutely no knowledge of his campaign manager's actions.

The City is pursuing the forfeiture demand even though the California Fair Political Practices Commission ("FPPC") – the state agency charged with interpreting and enforcing the state's campaign laws – conducted a thorough investigation over the course of multiple years of all of the relevant facts and law surrounding the interactions between Lee and Common Sense Voters. The FPPC concluded that Petitioners did nothing wrong and decided to fine only Lee and Common Sense Voters, and not Petitioners. The staff of

the Ethics Commission also reviewed the facts and law and, like the FPPC, decided not to take any action against Petitioners.

The Ethics Commission completely ignored the laws and rules governing its investigations and enforcement matters, thereby violating Petitioners' due process rights. It never provided Petitioners with a written description of the charges against them, never held a formal hearing on the matter, and never even interviewed Supervisor Farrell. Instead, Ethics Commissioner Peter Keane went on the record with inflammatory and unsubstantiated statements about Supervisor Farrell, equating him to Richard Nixon, calling him "corrupt," and jumping to the conclusion that Supervisor Farrell violated the law without hearing all of the facts. The Ethics Commission handled this forfeiture matter differently than it has administered every other prior forfeiture matter, thereby depriving Petitioners of their rights to equal protection under the law.

The City did not and cannot establish that Petitioners controlled or coordinated with Common Sense Voters. Neither Supervisor Farrell nor anyone else involved in his 2010 campaign authorized Lee to interact with Common Sense Voters, and Supervisor Farrell did not learn of these interactions until the FPPC told him about them years after the election. Respondents have failed to carry their burden of proving that Petitioners violated the City's campaign laws, thereby making the forfeiture demand utterly frivolous.

Perhaps most notably, the City has blatantly disregarded the express statute of limitations set out in the City's campaign law, repeated in the regulations adopted by the Ethics Commission, and confirmed in the Ethics Commission's own policies. This statute of limitations states clearly that the City must take action against an alleged violation of the City's campaign laws within four years of the date of the alleged violation. Common Sense Voters' campaign mailers were sent out in October 2010, so the City was required to act by October 2014. It failed to do so, and therefore can not demand almost $191,000 from Petitioners at this time.

PETITION FOR WRIT OF MANDATE

Petitioners bring this lawsuit after exhausting all other paths to resolve this matter, and accordingly seek a writ of mandate and injunctive relief and declaratory relief to overturn Respondents' forfeiture demand. The Court's issuance of the requested writ of mandate and declaratory and injunctive relief is necessary and appropriate for the enforcement of Petitioners' rights in that Petitioners are beneficially interested in this matter and have no plain, speedy, or adequate remedy in the ordinary course of law whereby their rights can be upheld or Respondents can be compelled to rescind and cease their forfeiture demand. Petitioners allege the following:

PARTIES

1. Petitioner MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 (the "Farrell Committee") was, at all relevant times, the campaign committee established up by Supervisor Mark Farrell for his 2010 election.

2. Petitioner MARK FARRELL ("Farrell") is an individual and a member of the Board of Supervisors of the City and County of San Francisco, representing District 2. Farrell was elected to the Board in November 2010 and re-elected in November 2014.

3. Respondent CITY AND COUNTY OF SAN FRANCISCO (the "City") is a subdivision of the State of California and has a duty to fairly and properly apply the laws of the City and the State to Petitioners and others.

4. The City acts, and at all relevant times acted, through its agents, including City Attorney Dennis Herrera. Herrera has a duty to fairly and properly apply the laws of the City and the State to Petitioners and others.

5. Respondent SAN FRANCISCO ETHICS COMMISSION (the "SFEC") is the City agency tasked with enforcing the City's campaign laws. The SFEC has a duty to fairly and properly apply the laws of the City and the State to Petitioners and others.

6. The SFEC acts, and at all relevant times acted, through its agents, including Chair Paul Renne, four other Commissioners, and former Executive Director John St.

Croix ("St. Croix"). The Commissioners and St. Croix have a duty to fairly and properly apply the laws of the City and the State to Petitioners and others.

7. Respondent CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR ("Treasurer" and "Tax Collector") is the City office tasked with collecting debts on behalf of the City. The Treasurer and Tax Collector have a duty to fairly and properly apply the laws of the City and the State to Petitioners and others.

8. The Treasurer and Tax Collector act, and at all relevant times acted, through their agents Treasurer Jose Cisneros and Tax Collector David Augustine. Cisneros and Augustine have a duty to fairly and properly apply the laws of the City and the State to Petitioners and others.

9. The true and correct capacities of Respondents and Defendants DOES 1 through 100, and each of them, are unknown to Petitioners at this time, and therefore Petitioners sue said DOE parties by such fictitious names. Petitioners will file amendments and/or seek leave of court to amend this Petition to assert the true names and capacities of these DOE parties when they have been ascertained. The DOE parties have a duty to fairly and properly apply the laws of the City and the State to Petitioners and others.

10. Petitioners are informed and believe, and based thereon allege, that each Respondent and Defendant is the agent of each other Respondent and Defendant and is in some manner responsible for the harm caused to Petitioners.

JURISDICTION AND VENUE

11. At all times relevant hereto, Petitioners, Respondents, and all DOE parties resided in the City and in the State of California, and the wrongful conduct alleged herein occurred in the City and in the State of California, and therefore the proper venue for this case is in the San Francisco County Superior Court.

FACTUAL AND PROCEDURAL BACKGROUND

2010 Board of Supervisors Election

12. In August 2009, Farrell formed the Farrell Committee in connection with his candidacy for the Board of Supervisors. The Farrell Committee filed public reports with the SFEC before and after the election, as required by state and City law, disclosing all of its contributions and all of its expenditures and vendors.

13. The Farrell Committee engaged Chris Lee ("Lee") of Townsquare Consulting as a campaign consultant.

14. Without Petitioners' authorization or knowledge, Lee sent e-mails in September 2010 to agents for a political committee in the process of being set up named "Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor" ("CSV"), regarding committee formation, potential fundraising, and initial campaign planning.

15. CSV was set up as an "independent expenditure" committee to support Farrell and oppose Janet Reilly ("Reilly"), one of the other candidates in the District 2 Supervisor race. It spent approximately $191,000 on mail pieces and door hangers in October 2010 which supported Farrell and opposed Reilly. CSV filed public reports with the SFEC before and after the election, as required by state and City law, disclosing all of its contributions and all of its expenditures and vendors.

16. Farrell won the election and became the Supervisor representing District 2 in January 2011.

17. The Farrell Committee spent all of its remaining funds and officially terminated in March 2013.

FPPC Investigation and Settlement

18. Following the election, Reilly filed identical complaints on December 23, 2010 with the SFEC and the California Fair Political Practices Commission ("FPPC"), the state agency tasked with enforcing the state's campaign laws, alleging, among other

things, that the Farrell Committee illegally coordinated with CSV to make expenditures in support of Farrell and in opposition to Reilly.

19. On January 10, 2011, the FPPC informed Reilly that it would investigate the matter.

20. On January 26, 2011, the SFEC informed Reilly that it would review the alleged violations of City law pursuant to its investigatory powers under City law, but would defer any action on alleged violations of state law until the FPPC completed its investigation.

21. Starting in 2012, the FPPC conducted a detailed investigation of potential coordination between CSV and the Farrell Committee. The FPPC interviewed numerous individuals from October 2012 through February 2013, including Farrell. SFEC staff was present for at least three of these interviews, which took place in SFEC offices, including the interview of Lee.

22. On August 20, 2014, the FPPC informed the SFEC that it had concluded its investigation and reached a settlement with CSV and Lee, and that it had decided not to proceed against Petitioners.

23. The FPPC invited the SFEC to join in the settlement and/or comment on the proposed stipulation with CSV and Lee, something that is often done between the FPPC and local enforcement agencies. The SFEC Executive Director declined to join in the settlement or comment on the proposed stipulation, and decided not to take action against Supervisor Farrell, Lee, CSV or anyone else, as the law specifically authorizes him to do. (SFEC Regulations for Investigations and Enforcement Proceedings ("SFEC Enforcement Regulations") section IV(B)(4) ["Executive Director may dismiss the complaint if . . . [t]he allegations contained in the complaint are already under investigation, or already have been resolved, by the Commission or another law enforcement agency."].)

24. On November 20, 2014, the FPPC approved a $14,500 settlement with

CSV and Lee, concluding that CSV violated certain reporting requirements triggered by Lee's interactions with CSV. The FPPC concluded that Farrell was not aware of, and did not authorize, Lee's interactions with CSV.

25. Neither Farrell nor the Farrell Committee were parties to the FPPC settlement.

SFEC Forfeiture Demand

26. On December 9, 2014, and more than four years after the alleged violations, the SFEC sent a letter to Petitioners stating that the SFEC considered the expenditures made by CSV to be "contributions" to Petitioners, and demanding that Petitioners "forfeit" $190,903.04 to the City (the "forfeiture demand").

27. The City's campaign law provides that committees which receive contributions which violate the $500 limit on contributions to candidates, the prohibition on contributions to candidates from corporations, or the requirement to identify the contributor's occupation and employer, must "forfeit" this money to the City. (S.F. Camp. & Govt. Conduct Code section 1.114.) The City has only demanded forfeiture in the past when the violation of City law was clear from the face of the campaign report filed by the committee, except in the present matter.

28. The City Attorney's office investigated Petitioners' alleged violations of City law from December 2014 through February 2015 pursuant to its investigatory powers under City law, including a review of the FPPC's entire investigatory file, and ultimately chose not to pursue the matter. Petitioners are informed and believe that the City Attorney's office chose not to pursue the matter based at least in part on the four-year statute of limitations in City law.

29. On March 15, 2015, Petitioners sent a letter to the SFEC objecting to the forfeiture demand and requesting that it be waived.

30. The forfeiture demand appeared on the SFEC's March 23, 2015 regularly scheduled meeting agenda and was discussed in open session, even though – as a

confidential enforcement matter – it should have been discussed only in closed session. Counsel for Petitioners spoke during the public comment period at this meeting, but the presentation was brief and informal.

31. On April 27, 2015, the SFEC held its regularly scheduled monthly meeting and again discussed the forfeiture demand in open session. Counsel for Petitioners also spoke during the public comment period at this meeting, but again the presentation was brief and informal.

32. On June 5, 2015, SFEC Executive Director St. Croix issued a letter granting Petitioners' request to waive the forfeiture demand on the grounds that: (1) the statute of limitations had expired; (2) the doctrine of "fraudulent concealment" did not apply and therefore the statute of limitations was not tolled; and (3) Petitioners were not named in the FPPC stipulation.

33. In an extremely unusual and unprecedented move, the SFEC's Commissioners overruled St. Croix's decision and re-issued a forfeiture demand on June 15, 2015, even though the Executive Director has sole discretion to grant or deny waiver requests.

34. At these public meetings in March, April and June 2015, while the Commission was debating whether to grant Petitioners' request that the forfeiture demand be waived, SFEC Commissioner Peter Keane made several statements which evidence his bias against Petitioners.

35. On July 8, 2015, the SFEC forwarded the forfeiture demand to the Bureau of Delinquent Revenue (the "BDR") in the Office of the Treasurer and Tax Collector, which is responsible for the City's debt collection.

36. On September 30, 2015, the BDR sent a letter to Petitioners demanding payment.

37. On November 4, 2015, Petitioners sent a letter to BDR objecting to the forfeiture demand, but Petitioners' efforts to convince the City to close the matter without the need for litigation were unsuccessful.

38. The administrative portion of the dispute having come to an end, and Petitioners having exhausted their administrative remedies, Petitioners now seek equitable judicial relief to remedy the wrongs that Respondents have visited upon Petitioners.

First Cause of Action

(Petition for Writ of Mandate to Compel Respondents and Defendants to Vacate Forfeiture Demand- California Code of Civil Procedure ("CCP") sections 1085 et seq.; Against All Respondents and Defendants)

39. Petitioners hereby reallege and incorporate herein by this reference paragraphs 1 through 38 of this Petition as if fully set forth herein.

40. Petitioners are entitled to a writ of mandate on the grounds that: (a) forfeiture is barred by the statute of limitations; (b) forfeiture is improper because Petitioners' never possessed the money Respondents seek; (c) Respondent SFEC failed to follow the laws, regulations, policies and procedures applicable to the present matter; (d) forfeiture violates Petitioners' right to equal protection under the law; (e) forfeiture violates Petitioners' due process rights; (f) the FPPC stipulation does not serve as an adequate legal basis for forfeiture; (g) Petitioners did not "control" or "coordinate" with CSV regarding CSV's political activities, as those terms are defined in the law.

Forfeiture is Barred by the Statute of Limitations

41. The City's campaign law provides that the City has four years from the date of an alleged violation to take action against the alleged violator. (S.F. Camp. & Govt. Conduct Code section 1.168(c)(3).) Respondent SFEC Enforcement Regulation reiterate this four-year statute of limitations. (SFEC Enforcement Regulations section XIII(F).)

42. Respondent SFEC's Forfeiture Policy ("SFEC Forfeiture Policy") also

provides that the City has four years from the date of an alleged violation to demand that the alleged violator forfeit an amount to the City.

43. Because the alleged violations occurred in October 2010, Respondents were required to issue the forfeiture demand or take any other enforcement action by October 2014 – which they failed to do, as acknowledged by St. Croix in his June 15, 2015 letter to Petitioners.

44. Respondent SFEC began investigating the alleged violations in January 2011 and participated in interviews of witnesses and potential respondents in 2012, so had ample time to take action against Petitioners before the expiration of the statute of limitations in October 2014.

45. Respondent SFEC was put on notice of the alleged violation when CSV and Petitioner Farrell Committee filed reports in October 2010 disclosing their contributions, expenditures and vendors. It also received the complaint from Ms. Reilly in December 2010 and learned about the interactions between Lee and CSV during his interview in October 2012. Therefore, no relevant or material information about the potential coordination between CSV and Petitioner Farrell Committee was concealed from Respondent SFEC so that it could not act within the four year statute of limitations.

46. There are no grounds for tolling the four year statute of limitations. By waiting more than four years to send the forfeiture demand to Petitioners, Respondents violated the statute of limitations and are without legal authority to pursue this matter against Petitioners.

Forfeiture is Improper Because Petitioners Never Possessed the Money That Respondents Seek

47. The money Respondents seek was never possessed or controlled by Petitioners, and therefore Petitioners can not, and should not be ordered to, comply with the forfeiture demand. As the law never requires impossibilities (Cal. Civil Code section 3531), the forfeiture demand fails on this ground as well.

48. Demanding a political committee forfeit money to the City is only appropriate when the committee has received money which clearly does not comply with the City's campaign law – e.g., when it exceeds the $500 contribution limit, comes from a corporation, or when the committee's reports do not list the contributor's occupation or employer – and is not appropriate when there is a legal dispute over whether a contribution violates the law, as is present in this case.

49. If any committee accepted contributions in violation of City law which would require forfeiture, it was CSV – and yet Respondents have not pursued CSV or any of its agents.

50. The committee from which Respondents seek forfeiture is long defunct and has no funds.

51. Petitioner Farrell never received any money which he could now forfeit to the City; moreover, San Francisco Campaign and Governmental Conduct Code section 1.114 by its own terms applies only to committees, not individuals.

The Forfeiture Demand is Unlawful Because Respondent SFEC Failed to Follow the Law and Its Own Policies and Procedures

52. At all times relevant, Respondent SFEC had a clear, present and ministerial duty to follow the law, regulations, policies and procedures set forth in Charter section C3:699-13, the SFEC Enforcement Regulations, and the SFEC Forfeiture Policy, and to afford Petitioners the procedural rights included thereunder.

53. Respondent SFEC did not follow the policies and procedures governing the investigation of possible violations of the City's campaign laws required by the Charter and SFEC Enforcement Regulations: "The Commission shall conduct investigations in accordance with this subdivision of alleged violations of this Charter and City ordinances relating to campaign finance . . . ." (Charter section C3:G99-13; emphasis added.)

54. Respondent SFEC never issued a Probable Cause Report to Petitioners, never held a Probable Cause Hearing, never issued an Accusation to Petitioners, never

held a Hearing on the Merits, or followed any of the other procedural requirements set out in the Charter and SFEC Enforcement Regulations.

55. Respondent SFEC discussed the matter in open session at regularly scheduled monthly meetings, and publicly distributed the complaint and correspondence with Petitioners, despite the strict confidentiality provisions of City law. (Charter section C3.699-13 & SFEC Enforcement Regulations section XIII(B).)

56. Respondent SFEC did not follow the policies and procedures governing forfeitures required by the SFEC forfeiture policy.

57. Respondent SFEC's Commissioners overruled staff's decision to waive the forfeiture demand, despite the provision in Respondent SFEC's Forfeiture Policy giving sole authority over forfeiture decisions to staff.

The FPPC Stipulation Does Not Serve as an Adequate Legal Basis Upon Which to Demand Forfeiture

58. The FPPC stipulation serves as Respondents' sole basis for the forfeiture demand. Respondents, however, have failed to explain how the FPPC stipulation justifies the forfeiture demand or how it absolves Respondents' from proving their case against Petitioners, especially considering that it only details reporting violations by CSV and does not name Petitioners as respondents.

59. Petitioners were not parties to the FPPC stipulation and therefore can not be bound by the stipulation, which is a negotiated agreement between the FPPC, Lee and CSV.

60. The FPPC stipulation does not contain any Findings of Facts or Conclusions of Law, so can not be relied upon by Respondents as a purported justification for their forfeiture demand.

61. The FPPC stipulation addresses not only entirely different parties, but also completely different laws: the FPPC stipulation was based on Lee's violations of state law relating to the reporting requirements of candidate-controlled committees, while the

forfeiture demand is evidently based on an alleged violation of City law relating to illegal coordination between political committees.

62. Respondents used the FPPC stipulation in lieu of actually proving their case against Petitioners.

63. The FPPC and SFEC Executive Director St. Croix determined that Petitioners had not done anything wrong and should not be penalized in any way.

Petitioners Are Not Liable for the Acts or Debts of CSV Because Petitioners Did Not Control or Coordinate with CSV as a Matter of Law

64. Based on the undisputed facts, Lee's interactions with CSV did not rise to the level of influence necessary for CSV to be deemed controlled by Petitioners under California Government Code section 82016 or for CSV and Petitioners to be deemed to have coordinated under San Francisco Campaign & Governmental Conduct Code section 1.115.

The Forfeiture Demand Is Unlawful Because Respondent SFEC Violated Petitioners' Right to Equal Protection Under the Law

65. At all times relevant, Respondent SFEC had a clear, present and ministerial duty to provide Petitioners with their rights to equal protection under the law, as guaranteed by the 14th Amendment of the U.S. Constitution and Article I, Section 7(a) of the California Constitution.

66. In spite of this duty, and lacking any rationale basis for its decision, Respondent SFEC issued a forfeiture demand against Petitioners.

67. Respondent SFEC has never demanded forfeiture from a party when there is a genuine dispute about the facts and law which form the basis of the demand, yet issued a forfeiture demand against Petitioners when there is a genuine dispute over the facts and law which form the basis for this demand.

68. All previous forfeiture demands and waivers were decided solely by

Respondent SFEC's staff, yet Respondent SFEC's Commissioners took control of the forfeiture process in this matter and overruled the staff's decision to waive forfeiture.

69. Respondent SFEC's actions as described above violate not only their own laws, policies and procedures, but also those equal protection principles set forth in the United States and California Constitutions.

The Forfeiture Demand is Unlawful Because Respondent SFEC Violated Petitioners' Right to Due Process

70. At all time relevant, Respondent SFEC had a clear, present and ministerial duty to afford Petitioners with due process, as guaranteed by the 5th and 14th Amendments to the United States Constitution and Article I, Section 7(a) of the California Constitution.

71. In spite of the duty, Respondent SFEC summarily and without warning issued the forfeiture demand to Petitioners without providing Petitioners with meaningful notice or an opportunity to be heard before the issuance of the demand.

72. Respondent SFEC never responded to Petitioners' written objections to the forfeiture demand, either verbally or in writing, thus depriving Petitioners of their due process rights to meaningful notice of the charges against them.

73. Respondent SFEC never provided Petitioners with the charges against them or a written explanation for the forfeiture demand, thus depriving Petitioners of their due process rights to meaningful notice of the charges against them.

74. Respondent SFEC only allowed Petitioners' counsel to testify during the public comment period at Respondent SFEC meetings at which the matter was discussed, and had not provided Petitioners with the charges against them at or before the meetings, thus depriving Petitioners of their due process rights to a meaningful hearing.

75. Respondent SFEC discussed the forfeiture demand in open session on several occasions and publicly released the complaint and other documents about the matter, thus depriving Petitioners of their due process rights to have the matter handled confidentially.

76. SFEC Commissioner Keane was biased against Petitioners, thus denying Petitioners of their due process rights to a neutral and disinterested decision-maker.

77. Respondents' actions as described above violate not only their own laws, policies and procedures, but also those due process protections set forth in the United States and California Constitutions.

Second Cause of Action

(Declaratory Relief - CCP sections 1060 et seq.;

Against All Respondents and Defendants)

78. Petitioners reallege and incorporate herein by this reference paragraphs 1 through 38 and 40 through 77 of this Petition as if fully set forth herein.

79. An actual controversy now exists between the parties. Petitioners contend that Respondents: (a) acted outside the statute of limitations; (b) seek the forfeiture of property ($190,903.04) which never belonged to, and was never possessed by, Petitioners; (c) failed to follow their own laws, regulations, policies, and procedures; (d) violated Petitioners' right to equal protection of the law; (e) violated Petitioners' due process rights; and (f) acted on the basis of a FPPC settlement to which Petitioners were not a party. Moreover, Petitioners contend that they did not control or coordinate with CSV. Petitioners are informed and believe that Respondents contend that they: (a) acted within the statue of limitations; (b) are allowed to seek the forfeiture of property ($190,903.04) from Petitioners regardless of whether it ever belonged to, or was ever possessed by, Petitioners; (c) followed the law, regulations, policies, and procedures; (d) did not violate Petitioners' equal protection rights; (e) did not violate Petitioners' due process rights; and (f) are allowed to act solely on the basis of a FPPC settlement to which Petitioners were not a party. Moreover, Respondents contend that Petitioners controlled and coordinated with CSV.

80. Petitioners therefore seek this Court's declaration that: (a) Respondents

acted outside the statue of limitations; (b) Respondents seek forfeiture of property ($190,903.04) which never belonged to, and was never possessed by, Petitioners; (c) Respondents failed to follow their own laws, regulations, policies, and procedures; (d) Respondents violated Petitioners' right to equal protection of the law; (e) Respondents violated Petitioners' due process rights; and (f) Respondents impermissibly acted on the basis of a FPPC settlement to which Petitioners were not a party. Moreover, Petitioners seek a declaration that Respondents' forfeiture demand is without legal justification because they did not control or coordinate with CSV.

Third Cause of Action

(Injunctive Relief – CCP sections 525 et seq.;

Against All Respondents and Defendants)

81. Petitioners reallege and incorporate herein by this reference paragraphs 1 through 38 and 40 through 77 of this Petition as if fully set forth herein.

82. Unless the court grants the injunctive relief requested, Respondents will seek to enforce its forfeiture demand against Petitioners and to potentially assess additional penalties purportedly authorized by San Francisco Campaign and Government Conduct Code section 1.170.

83. Petitioners therefore seek a temporary restraining order, preliminary injunction, and permanent injunction prohibiting Respondents from enforcing the forfeiture demand, attempting to collect the amount demanded from Petitioners, or taking any other action against Petitioners with respect to the matters discussed herein.

Fourth Cause of Action

(*In the Alternative*, Petition for Writ of Administrative Mandamus to Compel Respondents and Defendants to Vacate Forfeiture Demand -

CCP sections 1094.5 et seq.;

Against All Respondents and Defendants)

84. Petitioners hereby reallege and incorporate herein by this reference

paragraphs 1 through 38 and 40 through 77 of this Petition as if fully set forth herein.

85. As part of this alternative cause of action, Petitioners allege that Respondents' actions constituted a final administrative order or decision, as contemplated in Code of Civil Procedure section 1094.5.

86. Petitioners further allege that the purported final administrative order or decision was the result of a purported proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in Respondents.

87. Petitioners further allege that: (a) Respondents have proceeded without, or in excess of, jurisdiction; (b) that there was not a fair proceeding; and (c) that there was a prejudicial abuse of discretion in that Respondents have not proceeded in the manner required by law, the order or decision is not supported by the findings, and/or the findings are not supported by the evidence.

88. Accordingly, as a further part of this an alternative cause of action, to the extent the Court determines that a final administrative order or decision, as contemplated in Code of Civil Procedure section 1094.5, has been made by any or all Respondents with regard to Petitioners, Petitioners request that this court issue a Writ of Administrative Mandamus compelling Respondents to vacate their forfeiture demand.

Fifth Cause of Action

(Deprivation of Constitutional Rights to Equal Protection – U.S.C. section 1983; Against All Respondents and Defendants)

89. Petitioners hereby reallege and incorporate herein by this reference paragraphs 1 through 38 and 40 through 77 of this Petition as if fully set forth herein.

90. The Ethics Commission handled this matter differently than it has administered every other prior forfeiture and enforcement matter, thereby depriving Petitioners of their rights to equal protection under the Fifth and Fourteenth Amendments to the U.S. Constitution.

91. Respondents, under color of statute, ordinance, regulation, custom, and/or usage, have subjected, or have caused to be subjected, Petitioners to the deprivation of rights, privileges, or immunities secured by the Constitution and laws – especially rights to equal protection – and therefore Respondents are liable to Petitioners pursuant to 42 U.S.C. section 1983.

Sixth Cause of Action

(Deprivation of Constitutional Rights to Due Process – U.S.C. section 1983; Against All Respondents and Defendants)

92. Petitioners hereby reallege and incorporate herein by this reference paragraphs 1 through 38 and 40 through 77 of this Petition as if fully set forth herein.

93. The Ethics Commission completely ignored the laws and rules governing its investigations and enforcement matters, thereby depriving Petitioners of their constitutional rights to due process under the Fifth and Fourteenth Amendments to the U.S. Constitution.

94. Respondents, under color of statute, ordinance, regulation, custom, and/or usage, have subjected, or have caused to be subjected, Petitioners to the deprivation of rights, privileges, or immunities secured by the Constitution and laws - especially rights to due process – and therefore Respondents are liable to Petitioners pursuant to 42 U.S.C. section 1983.

PRAYER

WHEREFORE, Petitioners pray:

On their First Cause of Action: That this court issue a Peremptory Writ of Mandate compelling Respondents to vacate their forfeiture demand.

On their Second Cause of Action: That this court issue a Declaration that: Respondents' forfeiture demand is barred by the statute of limitations; that Petitioners can not forfeit property which they never possessed; that Respondents violated the laws, regulations, policies, and procedures which govern the case at hand; that Respondents

violated Petitioners' equal protection rights; that Respondents violated Petitioners' due process rights; that the FPPC stipulation can not serve as the basis for the forfeiture demand; and that Petitioners did not control or coordinate with CSV.

On their Third Cause of Action: That this court issue a Preliminary and Permanent Injunction ordering Respondents to cease taking any further action against Petitioners related to the forfeiture demand or related to the matters discussed herein.

On their Fourth Cause of Action: In the alternative, to the extent the Court determines that a final administrative order or decision, as contemplated in Code of Civil Procedure section 1094.5, has been made by any or all Respondents with regard to Petitioners, that this court issue a Writ of Administrative Mandamus compelling Respondents to vacate their forfeiture demand.

On their Fifth Cause of Action: That this court find that Respondents, under color of statute, ordinance, regulation, custom, and/or usage, have subjected, or have caused to be subjected, Petitioners to the deprivation of rights, privileges, or immunities secured by the Constitution and laws - especially rights to equal protection – and therefore find Respondents liable to Petitioners pursuant to 42 U.S.C. section 1983.

On their Sixth Cause of Action: That this court find that Respondents, under color of statute, ordinance, regulation, custom, and/or usage, have subjected, or have caused to be subjected, Petitioners to the deprivation of rights, privileges, or immunities secured by the Constitution and laws - especially rights to due process – and therefore find Respondents liable to Petitioners pursuant to 42 U.S.C. section 1983.

On all Causes of Action:

1. For a stay of the forfeiture demand until final judgment is entered in this action.

2. For expungement of the forfeiture demand.

3. For costs of suit.

4. For attorneys' fees pursuant to CCP section 1021.5, 42 U.S.C. section 1988, or other applicable law.

5. For such other and further relief as may be just and proper.

Respectfully Submitted:

THE SUTTON LAW FIRM, PC
James R. Sutton, Esq.
Bradley W. Hertz, Esq.
Matthew C. Alvarez, Esq.

Dated: April 29, 2016

By: _____
James R. Sutton, Esq.
Attorneys for Petitioners and Plaintiffs
MARK FARRELL FOR DISTRICT 2
SUPERVISOR 2010 and MARK FARRELL

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I, MARK FARRELL, am a party to this action. I have read the foregoing Verified Petition for Writ of Mandate and Complaint and know its contents.

The matters stated in the foregoing document are true and correct of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on April 28, 2016 at San Francisco, California.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Mark E. Farrell

Mark Farrell

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Attorneys for Respondent
CITY AND COUNTY OF SAN FRANCISCO

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
05/31/2016
Clerk of the Court
BY: MAURA RAMIREZ
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 and MARK FARRELL,

Petitioners and Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO ETHICS COMMISSION; CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR; and DOES 1 to 100, inclusive,

Respondents and Defendants.

Case No. CGC-16-551745

RESPONDENT/DEFENDANT THE CITY AND COUNTY OF SAN FRANCISCO'S ANSWER TO PLAINTIFFS' VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT

Date Action Filed: April 29, 2016
Trial Date: Not set

Respondent/Defendant the City and County of San Francisco erroneously sued herein as the "San Francisco Ethics Commission" and "City and County of San Francisco Treasurer and Tax Collector" hereby responds to Petitioners' verified Petition for Writ of Mandate and Complaint as follows:

RESPONSE TO INTRODUCTION

The allegations set forth hereunder constitute Petitioners' legal conclusions, opinions and interpretation of the law, to which no response is required except as follows: Respondent admits that this action arises from Supervisor Farrell's campaign manager's contacts with the agents of Common Sense Voters before the committee was formally established. Respondent denies that Petitioners never solicited, received or possessed or otherwise controlled the funds the City now seeks, and, on information and belief, denies that Supervisor Farrell did not authorize or did not have knowledge of his campaign manager's actions.

RESPONSE TO PETITION FOR WRIT OF MANDATE

The allegations set forth hereunder constitute Petitioners' legal conclusions, opinions and interpretation of the law, to which no response is required.

PARTIES

1. Respondent admits that Mark Farrell for District 2 Supervisor 2010 was a campaign committee established by Mark Farrell for his 2010 election and denies the remaining allegations of paragraph 1 of the Petition.

2. Respondent admits the allegations of paragraph 2 of the Petition.

3. Respondent admits that the City and County of San Francisco is a subdivision of the State of California. The remaining allegations are legal conclusions to which no response is required.

4. Respondent admits that Dennis Herrera is the San Francisco City Attorney. The remaining allegations of paragraph 4 are legal conclusions to which no response is required.

5. Respondent admits that the San Francisco Ethics Commission is the City agency tasked with enforcing the City's campaign laws. The remaining allegations are legal conclusions to which no response is required.

6. Respondent admits that Paul Renne and four other Commissioners constitute the Ethics Commission, and that John St. Croix is the former Executive Director of the San Francisco Ethics Commission. The remaining allegations are legal conclusions to which no response is required.

7. Respondent admits that the City and County of San Francisco Treasurer and Tax Collector is the City office tasked with collecting debts on behalf of the City. The remaining allegations are legal conclusions to which no response is required.

8. Respondent admits that Jose Cisneros is the Treasurer and that David Augustine is the Tax Collector. The remaining allegations of paragraph 8 are legal conclusions to which no response is required.

9. The allegations of paragraph 9 are legal conclusions to which no response is required.

10. The allegations of paragraph 10 are legal conclusions to which no response is required.

JURISDICTION AND VENUE

11. The allegations of paragraph 11 are legal conclusions to which no response is required.

FACTUAL AND PROCEDURAL BACKGROUND

12. Respondent admits that Farrell formed the Farrell Committee in August 2009 in connection with his candidacy for the Board of Supervisors. Respondent admits that the Farrell Committee filed public reports with the Ethics Commission before and after the election, and that state and City law require such filings. Respondent denies the remaining allegations of paragraph 12 of the Petition.

13. Respondent admits the allegations of paragraph 13 of the Petition.

14. Respondent denies, on information and belief, that Petitioners did not authorize or have knowledge of Lee's September 2010 e-mails to agents for a political committee in the process of being set up named "Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor" ("CSV"), regarding committee formation, potential fundraising and initial campaign planning.

15. Respondent admits the allegations of paragraph 15 of the Petition.

16. Respondent admits the allegations of paragraph 16 of the Petition.

17. Respondent admits the allegations of paragraph 17 of the Petition.

FPPC Investigation and Settlement

18. Respondent admits the allegations of paragraph 18 of the Petition.

19. Respondent admits the allegations of paragraph 19 of the Petition.

20. Respondent admits the allegations of paragraph 20 of the Petition.

21. Respondent lacks sufficient information to admit or deny the allegations of paragraph 21 of the Petition.

22. Respondent lacks sufficient information to admit or deny the allegations of paragraph 22 of the Petition.

23. Respondent admits that the FPEC invited the SFEC to join in the settlement and/or comment on the proposed stipulation with CSV and Lee, and such is something that is often done between the FPPC and local enforcement agencies.

24. Respondent admits the allegations of paragraph 24 of the Petition.

25. Respondent admits the allegations of paragraph 25 of the Petition.

SFEC Forfeiture Demand

26. Respondent admits that the Ethics Commission sent a letter to Petitioners on December 9, 2014 stating that it considered the expenditures made by CSV to be contributions to Petitioners, and demanded that Petitioners forfeit $190,903.04 to the City. Respondent denies the remaining allegations of paragraph 26 of the Petition.

27. Respondent lacks sufficient information to admit or deny the allegation that forfeiture has only been demanded when the violation of City law was clear from the face of the campaign report filed by the committee. The remaining allegations of paragraph 27 are legal conclusions to which no response is required.

28. Respondent denies the allegations of paragraph 28 of the Petition.

29. Respondent admits the allegation of paragraph 29 of the Petition.

30. Respondent admits that the forfeiture demand appeared on the Ethics Commission's March 23, 2015 meeting agenda and was discussed in open session, and that counsel for Petitioners spoke during the public comment period at that meeting. Respondent denies the remaining allegations of paragraph 30 of the Petition.

31. Respondent admits that the SFEC held a regularly scheduled monthly meeting and again discussed the forfeiture demand in open session, and that counsel for Petitioners spoke during the public comment period at this meeting. Respondent denies the remaining allegations of paragraph 31 of the Petition.

32. Respondent denies that Executive Director St. Croix issued a letter granting Petitioners' request to waive the forfeiture demand.

33. Respondent denies the allegations of paragraph 33 of the Petition.

34. Respondent admits that the Ethics Commission held public meetings in March, April and June 2015, and that the forfeiture demand was discussed at such meetings, including by Ethics Commissioner Peter Keane. Respondent denies the remaining allegations of paragraph 34 of the Petition.

35. Respondent admits the allegations of paragraph 35 of the Petition.

36. Respondent admits the allegations of paragraph 36 of the Petition.

37. Respondent admits the allegations of paragraph 37 of the Petition.

38. The allegations of paragraph 38 are legal conclusions to which no response is required.

RESPONSE TO FIRST CAUSE OF ACTION

39. Respondent realleges and incorporates its responses to paragraphs 1 through 38.

40. The allegations of paragraph 40 are legal conclusions to which no response is required.

41. The allegations of paragraph 41 are legal conclusions to which no response is required.

42. The allegations of paragraph 42 are legal conclusions to which no response is required.

43. The allegations of paragraph 43 are legal conclusions to which no response is required.

44. Respondent admits that it participated in interviews of witnesses and potential respondents in 2012. Respondent denies the remaining allegations of paragraph 44 of the Petition.

45. Respondent admits that it received a complaint from Ms. Reilly in December 2010. Respondent denies the remaining allegations of paragraph 45 of the Petition.

46. The allegations of paragraph 46 are legal conclusions to which no response is required.

47. The allegations of paragraph 47 are legal conclusions to which no response is required.

48. The allegations of paragraph 48 are legal conclusions to which no response is required.

49. Respondent admits that it has not pursued CSV for the forfeiture demand. The remaining allegations of paragraph 49 are legal conclusions to which no response is required.

50. Respondent admits that CSV is no longer in existence. Respondent denies the remaining allegations of paragraph 50 of the Petition.

51. The allegations of paragraph 51 are legal conclusions to which no response is required.

52. The allegations of paragraph 52 are legal conclusions to which no response is required.

53. The allegations of paragraph 53 are legal conclusions to which no response is required.

54. Respondent admits that the Ethics Commission did not issue a Probable Cause Report to Petitioners or hold a Probable Cause Hearing, or issue an Accusation to Petitioners. Respondent denies the remaining allegations of paragraph 54 of the Petition.

55. Respondent admits that the matter was discussed in open session at regularly scheduled monthly meeting. The remaining allegations are either legal conclusions to which no response is required, or Respondent lacks sufficient information to admit or deny them.

56. The allegations of paragraph 56 are legal conclusions to which no response is required.

57. Respondent admits that the Ethics Commission did not accept its staff's recommendation to waive the forfeiture demand. The remaining allegations of paragraph 57 are legal conclusions to which no response is required.

58. Respondent admits that the FPPC stipulation does not name Petitioners as respondents. Respondent denies the remaining allegations of paragraph 58 of the Petition.

59. Respondent admits that Petitioners were not parties to the FPPC stipulation, and that the stipulation was negotiated between the FPPC, Lee and CSV. The remaining allegations of paragraph 59 are legal conclusions to which no response is required.

60. Respondent denies that the FPPC stipulation does not contain any findings of fact or conclusions of law. The remaining allegations of paragraph 60 are legal conclusions to which no response is required.

61. Respondent admits the allegations of paragraph 61 of the Petition.

62. The allegations of paragraph 62 are legal conclusions to which no response is required.

63. Respondent denies the allegations of paragraph 63 of the Petition.

64. The allegations of paragraph 64 are legal conclusions to which no response is required.

65. The allegations of paragraph 65 are legal conclusions to which no response is required.

66. Respondent admits that it issued a forfeiture demand to Petitioners. The remaining allegations of paragraph 66 are legal conclusions to which no response is required.

67. Respondent denies the allegations of paragraph 67 of the Petition.

68. Respondent lacks information sufficient to admit or deny the allegations of paragraph 68 of the Petition.

69. The allegations of paragraph 69 are legal conclusions to which no response is required.

70. The allegations of paragraph 70 are legal conclusions to which no response is required.

71. Respondent admits that there was no hearing prior to the Ethics Commission's issuance of the forfeiture demand to Petitioners. The remaining allegations are legal conclusions to which no response is required.

72. Respondent denies the allegations of paragraph 72 of the Petition.

73. Respondent denies the allegations of paragraph 73 of the Petition.

74. Respondent denies the allegations of paragraph 74 of the Petition.

75. Respondent admits that the forfeiture demand was discussed before the Ethics Commission in open session and denies the remaining allegations of paragraph 75 of the Petition.

76. The allegations of paragraph 76 are opinions to which no response is required.

77. The allegations of paragraph 77 are legal conclusions to which no response is required.

RESPONSE TO SECOND CAUSE OF ACTION

78. Respondent realleges and incorporates its responses to paragraphs 1 through 77.

79. The allegations of paragraph 79 are legal conclusions to which no response is required.

80. The allegations of paragraph 80 are legal conclusions to which no response is required.

RESPONSE TO THIRD CAUSE OF ACTION

81. Respondent realleges and incorporates its responses to paragraphs 1 through 80.

82. The allegations of paragraph 82 are legal conclusions to which no response is required.

83. The allegations of paragraph 83 are legal conclusions to which no response is required.

RESPONSE TO FOURTH CAUSE OF ACTION

84. Respondent realleges and incorporates its responses to paragraphs 1 through 83.

85. The allegations of paragraph 85 are legal conclusions to which no response is required.

86. The allegations of paragraph 86 are legal conclusions to which no response is required.

87. The allegations of paragraph 87 are legal conclusions to which no response is required.

88. The allegations of paragraph 88 are legal conclusions to which no response is required.

RESPONSE TO FIFTH CAUSE OF ACTION

89. Respondent realleges and incorporates its responses to paragraphs 1 through 88.

90. The allegations of paragraph 90 are legal conclusions to which no response is required.

91. The allegations of paragraph 91 are legal conclusions to which no response is required.

RESPONSE TO SIXTH CAUSE OF ACTION

92. Respondent realleges and incorporates its responses to paragraphs 1 through 91.

93. Respondent denies that it ignored the laws and rules governing its investigations and enforcement matters. The remaining allegations of paragraph 93 are legal conclusions to which no response is required.

94. The allegations of paragraph 94 are legal conclusions to which no response is required.

RESPONSE TO PRAYER FOR RELIEF

On all Causes of Action:

These paragraphs contain no factual allegations, but rather Petitioners' request for relief, a statement to which no response is required.

AFFIRMATIVE DEFENSES

First Affirmative Defense
(Failure to State a Claim)

The Petition for Writ of Mandate and Complaint fail to set forth a viable cause of action against any Respondent/Defendant in this case.

Second Affirmative Defense
(Statute of Limitations)

Each and every cause of action is barred by the statute of limitations as set forth in California Code of Civil Procedure § 335 *et seq.*, California Government Code § 945.6.

Third Affirmative Defense
(Standing)

The Petition for Writ of Mandate and Complaint are barred by Petitioners'/Plaintiffs' lack of standing to either bring or maintain this action or to obtain the relief sought.

Fourth Affirmative Defense
(Failure to Exhaust Administrative Remedies)

The Petition for Writ of Mandate/Complaint for Declaratory are barred by Petitioners'/Plaintiffs' failure to exhaust their administrative remedies.

Fifth Affirmative Defense
(Laches)

The Petition for Writ of Mandate/Complaint are barred by the doctrine of laches.

Sixth Affirmative Defense
(Good Faith)

At all times relevant to this action, Respondents/Defendants acted in good faith.

Seventh Affirmative Defense
(Due Care)

At all times relevant to this action, Respondents/Defendants exercised due care and acted only in the execution and enforcement of the law.

PRAYER FOR RELIEF

Wherefore, Respondents/Defendants pray for relief as follows:

1. That the Petition for Writ of Mandate and Complaint be dismissed with prejudice and Petitioners/Plaintiffs take nothing thereby;

2. That judgment be entered in favor of Respondents/Defendants, and each of them, and against Petitioners/Plaintiffs on every cause of action contained in the Petition for Writ of Mandate and Complaint;

3. That Respondents/Defendants recover their costs in this action; and

4. For such other and further relief as this Court may deem just and proper.

Dated: May 31, 2016

DENNIS J. HERRERA
City Attorney
CHERYL ADAMS
Chief Trial Deputy
DAVID W. AMMONS
Deputy City Attorney

By: */s/ David W. Ammons*
DAVID W. AMMONS

Attorneys for Respondent
CITY AND COUNTY OF SAN FRANCISCO

PROOF OF SERVICE

I, DEBORAH ROSAS declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On May 31, 2016, I served the following document(s):

RESPONDENT/DEFENDANT THE CITY AND COUNTY OF SAN FRANCISCO'S ANSWER TO PLAINTIFFS' VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT

on the following persons at the locations specified:

James R. Sutton, Esq.
Bradley W. Hertz, Esq.
Matthew C. Alvarez, Esq.
The Sutton Law Firm
150 Post Street, Suite 405
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Tel: 415 732 7700
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Email: jsutton@campaignlawyers.com
Attorneys for Petitioners and Plaintiffs
Mark Farrell for District 2 and
Mark Farrell

in the manner indicated below:

☒ **BY UNITED STATES MAIL**: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed May 31, 2016, at San Francisco, California.

DEBORAH ROSAS

DENNIS J. HERRERA, State Bar #139669
City Attorney
CHERYL ADAMS, State Bar #164194
Chief Trial Deputy
DAVID W. AMMONS, State Bar #187168
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Attorneys for Cross-Complainant
CITY AND COUNTY OF SAN FRANCISCO

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
05/31/2016
Clerk of the Court
BY: MAURA RAMIREZ
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 and MARK FARRELL,

Petitioners and Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO ETHICS COMMISSION; CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR; and DOES 1 to 100, inclusive,

Respondents and Defendants.

CITY AND COUNTY OF SAN FRANCISCO, by and through its Ethics Commission,
Cross-complainant,

vs.

MARK FARRELL, an individual, and ROES 1 to 25, inclusive,

Cross-defendants.

Case No. CGC-16-551745

THE CITY AND COUNTY OF SAN FRANCISCO'S CROSS-COMPLAINT FOR VIOLATION OF CAMPAIGN AND GOVERNMENTAL CONDUCT CODE SECTION 1.114 AND CONCEALMENT

Cross-complainant the City and County of San Francisco ("the City or Respondent") acting by and through its Ethics Commission alleges as follows:

PARTIES

1. Plaintiff the City and County of San Francisco is a municipal corporation organized and existing under the laws of the State of California. The San Francisco Ethics Commission ("Ethics Commission") is a department of the City and County of San Francisco. The Ethics Commission serves the public, City officers and employees and candidates for public office through education through education and enforcement of campaign finance, conflict of interest, and ethics laws.

2. Defendant Mark Farrell is an individual, a resident of San Francisco, who was a candidate for the Board of Supervisors ("Board") in 2010 and a Supervisor serving on the Board since 2011.

3. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as ROES 1 through 25, inclusive ("Roes"), and therefore sues these Defendants by such fictitious names and will ask leave of the court to amend this Complaint to show their true names and capacities when the same are ascertained.

JURISDICTION

4. This suit is brought pursuant to San Francisco Campaign and Governmental Conduct Code section 1.168(b).

FACTS

5. The 2010 race for San Francisco's District 2 Supervisor was one of the closest in San Francisco's history. Supervisor Mark Farrell bested Janet Reilly by just 258 votes.

6. Former Supervisor Michela Alioto-Pier was the overwhelming favorite to win re-election to the seat until the California Court of Appeal ruled that she was ineligible to seek another term in office. Alioto-Pier's exit threw the District 2 race wide open to her challengers, primarily Farrell and Reilly. Once the Court of Appeal determined that Alioto-Pier could not seek another term, she endorsed Farrell for the District 2 seat.

7. While the Alioto-Pier endorsement gave needed momentum to the Farrell campaign, formed in August 2009, the race was nevertheless expected to be close between Farrell and Reilly.

8. Jack Helfand served on the campaign's fundraising committee. Prior to 2010, Helfand had been uninvolved in San Francisco campaigns. Helfand had previously worked with Farrell at a Bay Area law firm, Wilson Sonsini Goodrich & Rosati.

9. The Farrell campaign retained Chris Lee of Townsquare Consulting as its campaign consultant. On information and belief, Lee was acting within the course and scope of his retention at all times referenced herein.

10. In early September 2010, Helfand – even though he was a political novice – participated in the formation of an independent expenditure committee named Common Sense Voters, SF 2010, Vote for Mark Farrell for District 2 Supervisor ("CSV") to support Farrell's candidacy. CSV's campaign finance filings identified Helfand as the committee's principal officer.

11. By law, independent expenditure committees must operate, as their name states, independently from a candidate's own committee. Under state law, a candidate is generally prohibited from controlling, or exerting a significant influence over, more than one committee at a time. Further, campaign contributions made to independent expenditure committees are not subject to contribution limits that would otherwise apply to candidates, only if those independent expenditure committees are truly independent and separate from the candidate himself or the candidate's committee. Thus, while contributions made directly to the Farrell campaign would be subject to a $500 limit, contributions made to an independent expenditure committee that supports Farrell's campaign are not subject to any limit whatsoever – so long as the committee was actually independent.

12. The Farrell campaign, through its agent Lee, violated these contribution limits by coordinating with CSV, CSV's Principal Officer Helfand and CSV's campaign consultant Rich Schlackman.

13. On information and belief, the purpose of establishing CSV was to solicit campaign contributions well in excess of the $500 contribution limit. CSV received the following contributions:

Date of contribution	**Contributor**	**Contribution**
October 2, 2010	David Lamond	$2,000

October 2, 2010	Kamran Moghtaderi	$15,000
October 8, 2010	Sam W. Humphreys	$7,500
October 8, 2010	Mark R. Malcoun	$5,000
October 8, 2010	Raj Venkatesan	$1,000
October 18, 2010	Thomas J. Coates	$100,000
October 18, 2010	Diane B. Wilsey	$50,000
October 25, 2010	Thomas J. Coates	$41,000
TOTAL		**$221,500**

14. Lee was in contact with Helfand providing guidance to Helfand regarding CSV's formation.

15. CSV received $221,500 in donations, all in the month before the election. Several of CSV's donors also donated the maximum $500 amount to the Farrell campaign.

Date of contribution	**Contributor**	**Contribution**
August 10, 2009	Mark Malcoun	$500
August 12, 2009	Sam Humphreys	$500
December 20, 2009	Kamran Moghtaderi	$500
June 16, 2010	Raj Venkatesan	$500
September 15, 2010	David Lamond	$500

Notably, Helfand had no apparent connection or relationship to the two most significant contributors to CSV – Wilsey and Coates. During the FPPC's interview, Helfand could not even accurately recall their names.

16. On December 23, 2010, Charles Bell, an attorney representing Janet Reilly, filed a complaint against CSV and related supporters with the California Fair Political Practices Commission ("FPPC") and the Ethics Commission alleging that CSV had violated state and local law by making illegal independent expenditures. The complaint and accompanying documents requested that the

FPPC investigate Farrell's possible involvement, his controlled committee and his agents and supporters in coordinating with CSV.

17. This complaint was the first notice to the City and, on information and belief, the FPPC of any allegation of wrongdoing.

18. In late 2012 and early 2013, the FPPC conducted interviews as part of its investigation of CSV. The FPPC interviewed Lee on October 3, 2012, and questioned him about his communications with CSV during the 2010 campaign and whether Supervisor Farrell was aware of these communications.

19. After additional interviews and investigation, in November 2014, the FPPC adopted a Stipulation, Order and Decision ("the Stipulation"). The Stipulation identified Chris Lee as the Respondent, individually and on behalf of CSV. The Stipulation also concluded that Lee, as Farrell's campaign consultant and agent, was involved in "the setup, fundraising, and initial campaign planning of" CSV at the same time that he was working for Farrell as his campaign consultant. The Stipulation explained that, due to Lee's involvement, CSV became a "controlled committee of Mark Farrell" instead of an independent expenditure committee. As a controlled committee of Farrell, the contributions to CSV were the equivalent of contributions to Farrell's own campaign. Thus, all of the contributions to CSV were illegal contributions to Farrell, because they all exceeded the local $500 limit - by thousands or tens of thousands of dollars.

20. The Stipulation included five counts: (1) CSV's failure to file an amended statement of organization within 10 days to disclose the CSV was a Farrell-controlled committee; (2) CSV's failure to include Farrell's name on a October 17, 2010 mass mailer sent in support of Farrell and against Reilly; (3) CSV's failure to include Farrell's name on a October 19, 2010 mass mailer sent in support of Farrell and against Reilly; (4) CSV's failure to include Farrell's name on two October 20, 2010 mass mailers sent in support of Farrell and against Reilly; and (5) CSV's failure to include Farrell's name on a October 25, 2010 mass mailer sent in support of Farrell and against Reilly.

21. The Stipulation was not a joint settlement with the Ethics Commission, and it addressed only violations of state law, not local law.

22. On information and belief, defendant Farrell was personally involved in coordination with CSV, and was aware of Lee's activities in this regard.

23. Farrell not only failed to disclose his personal involvement, but has asserted, repeatedly, that he had no knowledge or involvement in the illegal coordinating activities. Farrell instead asserted that Lee was a "rogue" campaign consultant, acting without his authorization or knowledge. But Farrell has never explained Lee's motivation for acting in such an allegedly unauthorized manner. Most importantly, Farrell never explained why he - as the candidate - should not ultimately be held responsible for the actions of all persons working for his campaign. Defendant has denied any such knowledge or involvement notwithstanding the fact that hundreds of thousands of dollars poured into CSV just one month before the election from many of the same donors who contributed to his primary campaign committee.

24. On information and belief, these denials were made, and continue to made, with the intent to conceal the coordination activities.

25. As a candidate, Farrell had an affirmative duty to report any significant influence that he exerted on any political committees and accurately report the contributions received by any committees under his control.

26. On December 9, 2014, former Ethics Commission Executive Director John St. Croix sent a letter to Supervisor Farrell notifying him that based on the Stipulation, Supervisor Farrell was required to forfeit $190,903.04 to the City due to violations of the local $500 contribution limit. The letter explains that because CSV was a candidate-controlled committee (and not a truly "independent" expenditure committee), each contribution made to that committee was subject to the local $500 contribution limit.

27. Subsequently, Farrell, through his counsel in this matter, appeared at multiple Ethics Commission hearings regarding imposition of the forfeiture and has been provided multiple opportunities to address the basis for the December 9, 2014 letter sent by St. Croix. On several occasions, the Ethics Commission has invited Farrell - not just his counsel - to appear and respond to the allegations that he violated the City's local contribution limits. Farrell never appeared before the

Ethics Commission to answer questions or explain why he should not be held responsible for the actions he chose to employ for his campaign.

28. Given the unprecedented breadth of the violations here, the Ethics Commission voted to pursue the forfeiture demand.

FIRST CAUSE OF ACTION
(Violation Of SF C & GC Section 1.114(a)

29. Plaintiff hereby re-alleges and incorporates herein by reference paragraphs 1 through 28 of this Cross-Complaint as if fully set forth herein.

30. SF C & GC section 1.114(a) bar "candidate committees" from soliciting or accepting contributions that exceed $500. SF C & GC section 1.104, in turn, defines "candidate committee" as any committee "controlled by a candidate."

31. CSV was a "controlled committee" because defendant Farrell's agent Lee and, on information and belief, defendant Farrell himself exerted significant influence over that committee's fundraising activity.

32. Under local law, candidates are personally liable for the actions of their controlled committees. (*See* SF C & GC 1.170(g)) Hence, defendant Farrell is personally liable for all CSV violations, including the full $190,903.04 in illegal contributions to CSV.

33. These activities were actively concealed from plaintiff by Lee's denials into 2014 that he had any involvement with CSV. Lee finally admitted his illegal conduct in the November 2014 FPPC stipulation. Defendant Farrell's similar denials continue to this day.

34. Plaintiff had no reason to suspect or know of these violations until the Bell FPPC complaint filed on December 23, 2014.

SECOND CAUSE OF ACTION
(Fraudulent Concealment)

35. Plaintiff hereby re-alleges and incorporates herein by reference paragraphs 1 through 34 of this Cross-Complaint as if fully set forth herein.

36. Farrell and his agent Lee concealed the coordinating activities between his campaign and CSV.

37. Farrell had a duty to disclose all donations received by all committees under his control.

38. Farrell and Lee intended to prevent the City's enforcement of its campaign finance laws by concealing or suppressing the coordination between the Farrell campaign and CSV.

39. The City was unaware of the coordination and would have acted sooner had it known of the concealed facts.

40. The City sustained damage as a result of the concealment and suppression of these facts.

WHEREFORE, Plaintiff prays for judgment as follows:

1. For defendant Farrell's forfeiture to the City of illegal contributions to CSV in the amount of $190,903.04;

2. For prejudgment interest on that amount at the legal rate;

3. For costs of suit;

4. For such further relief as the Court deems just.

Dated: May 31, 2016

DENNIS J. HERRERA
City Attorney
CHERYL ADAMS
Chief Trial Deputy
DAVID W. AMMONS
Deputy City Attorney

By: */s/ David W. Ammons*
DAVID W. AMMONS

Attorneys for Cross-Complainant
CITY AND COUNTY OF SAN FRANCISCO

PROOF OF SERVICE

I, DEBORAH ROSAS declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On May 31, 2016, I served the following document(s):

THE CITY AND COUNTY OF SAN FRANCISCO'S CROSS-COMPLAINT FOR VIOLATION OF CAMPAIGN AND GOVERNMENTAL CONDUCT CODE SECTION 1.114 AND CONCEALMENT

on the following persons at the locations specified:

James R. Sutton, Esq.
Bradley W. Hertz, Esq.
Matthew C. Alvarez, Esq.
The Sutton Law Firm
150 Post Street, Suite 405
San Francisco, CA 94108
Tel: 415 732 7700
Fax: 415 732 7701
Email: jsutton@campaignlawyers.com
Attorneys for Petitioners and Plaintiffs
Mark Farrell for District 2 and
Mark Farrell

in the manner indicated below:

☒ **BY UNITED STATES MAIL**: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed May 31, 2016, at San Francisco, California.

DEBORAH ROSAS

James R. Sutton, Esq. (SBN 135930)
Bradley W. Hertz, Esq. (SBN 138564)
Matthew C. Alvarez, Esq. (SBN 301483)
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Attorneys for Cross-Defendant
MARK FARRELL

ELECTRONICALLY
FILED
Superior Court of California, County of San Francisco
07/06/2016
Clerk of the Court
BY: ROMY RISK
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 and MARK FARRELL,

Petitioners and Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO ETHICS COMMISSION; CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR; and DOES 1 to 100, inclusive,

Respondents and Defendants.

CITY AND COUNTY OF SAN FRANCISCO, by and through its Ethics Commission,
Cross-complainant,

vs.

MARK FARRELL, an individual, and ROES 1 to 25, inclusive,

Cross-defendants.

Case No. CGC-16-551745

CROSS-DEFENDANT MARK FARRELL'S ANSWER TO CROSS-COMPLAINANT CITY AND COUNTY OF SAN FRANCISCO'S CROSS-COMPLAINT

Date Action Filed: **April 29, 2016**
Trial Date: **Not Set**

Cross-defendant MARK FARRELL ("Cross-defendant") hereby responds to Cross-complainant CITY AND COUNTY OF SAN FRANCISCO's ("Cross-complainant") cross-complaint as follows:

PARTIES

1. Cross-defendant admits the allegations contained in paragraph 1 of the cross-complaint.

2. Cross-defendant admits the allegations contained in paragraph 2 of the cross-complaint.

3. The allegations contained in paragraph 3 of the cross-complaint are legal conclusions to which no response is required.

JURISDICTION

4. The allegations contained in paragraph 4 of the cross-complaint are legal conclusions to which no response is required.

FACTS

5. Cross-defendant lacks sufficient information to admit or deny the allegation contained in the first sentence of paragraph 5 of the cross-complaint. Cross-defendant admits the allegation contained in the second sentence of paragraph 5 of the cross-complaint.

6. Cross-defendant lacks sufficient information to admit or deny the allegations contained in the first and second sentences of paragraph 6 of the cross-complaint. Cross-defendant admits the allegation contained in the third sentence of paragraph 6 of the cross-complaint.

7. Cross-defendant lacks sufficient information to admit or deny the allegations contained in paragraph 7 of the cross-complaint.

8. Cross-defendant lacks sufficient information to admit or deny the allegations contained in the first sentence of paragraph 8 of the cross-complaint because the terms "the campaign" and "fundraising committee" are vague and ambiguous. Cross-defendant lacks sufficient information to admit or deny the allegations contained in the second sentence of

paragraph 8 of the cross-complaint. Cross-defendant admits the allegations contained in the third sentence of paragraph 8 of the cross-complaint.

9. Cross-defendant admits the allegations contained in the first sentence of paragraph 9 of the cross-complaint. Cross-defendant denies each of the allegations contained in the second sentence of paragraph 9 of the cross-complaint.

10. Cross-defendant lacks sufficient information to admit or deny the allegations contained in the first sentence of paragraph 10 of the cross-complaint. Cross-defendant admits the allegations contained in the second sentence of paragraph 10 of the cross-complaint.

11. The allegations contained in paragraph 11 of the cross-complaint are legal conclusions to which no response is required.

12. Cross-defendant denies each of the allegations contained in paragraph 12 of the cross-complaint.

13. Cross-defendant lacks sufficient information to admit or deny the allegations contained in paragraph 13 of the cross-complaint.

14. Cross-defendant lacks sufficient information to admit or deny the allegations contained in paragraph 14 of the cross-complaint.

15. Cross-defendant admits that the five individuals listed in paragraph 15 of the cross-complaint made contributions of $500 to the Mark Farrell for District 2 Supervisor 2010 committee, but lacks sufficient information to admit or deny the remaining allegations in paragraph 15 of the cross-complaint.

16. Cross-defendant admits the allegations contained in paragraph 16 of the cross-complaint.

17. Cross-defendant denies each of the allegations contained in paragraph 17 of the cross-complaint.

18. Cross-defendant admits the allegations contained in the first sentence of paragraph 18 of the cross-complaint. Cross-defendant lacks sufficient information to admit or deny the allegations contained in the second sentence of paragraph 18 of the cross-complaint.

19. Cross-defendant admits the allegations contained in the first sentence of paragraph 19 of the cross-complaint. The allegations contained in the second, third, and fourth sentences of paragraph 19 of the cross-complaint refer to a legal document that speaks for itself and to which no response is required. Cross-defendant denies the allegations contained in the fifth and sixth sentence of paragraph 19 of the cross-complaint.

20. The allegations contained in paragraph 20 of the cross-complaint refer to a legal document that speaks for itself and to which no response is required.

21. The allegations of paragraph 21 of the cross-complaint are legal conclusions to which no response is required.

22. Cross-defendant denies each of the allegations in paragraph 22 of the cross-complaint.

23. Cross-defendant denies the allegations of the first sentence of paragraph 23 of the cross-complaint. Cross-defendant admits the allegations of the second sentence of paragraph 23 of the cross-complaint. Cross-defendant admits the allegations contained in the third sentence of paragraph 23 of the cross-complaint. Cross-defendant denies the allegations contained in the fourth sentence of paragraph 23 of the cross-complaint. Cross-defendant admits the allegations contained in the fifth sentence of paragraph 23 of the cross-complaint.

24. Cross-defendant denies each of the allegations in paragraph 24 of the cross-complaint.

25. The allegations in paragraph 25 of the cross-complaint are legal conclusions to which no response is required.

26. Cross-defendant admits the allegations contained in the first portion of in paragraph 26 of the cross-complaint – that a letter was sent to him. The allegations contained in the second sentence of paragraph 26 of the cross-complaint refer to a legal document that speaks for itself and to which no response is required.

27. Cross-defendant admits the allegations contained in the first sentence of paragraph 27 of the cross-complaint, but denies that the opportunities to address the Ethics Commission

have been sufficient. Cross-defendant denies the allegations contained in the second sentence of paragraph 27 of the cross-complaint. Cross-defendant denies the allegations contained in the third sentence of paragraph 27 of the cross-complaint, in that he appeared through his counsel, and in that he did not employ or otherwise take the specified actions for his campaign as alleged in the cross-complaint.

28. Cross-defendant denies each of the allegations contained in the first clause of paragraph 28 of the cross-complaint. Cross-defendant lacks sufficient information to admit or deny the allegations contained in the second clause of paragraph 28 of the cross-complaint.

RESPONSE TO FIRST CAUSE OF ACTION

29. Cross-defendant realleges and incorporates herein by this reference his responses to paragraphs 1 through 28 of the cross-complaint as if fully set forth herein.

30. The allegations contained in paragraph 30 are legal conclusions to which no response is required.

31. Cross-defendant denies each of the allegations contained in paragraph 31 of the cross-complaint.

32. The allegations contained in the first sentence of paragraph 32 of the cross-complaint are legal conclusions to which no response is required. Cross-defendant denies each of the allegations contained in the second sentence of paragraph 32 of the cross-complaint.

33. Cross-defendant denies each of the allegations contained in the first and third sentences of paragraph 33 of the cross-complaint. The allegations contained in the second sentence of paragraph 33 of the cross-complaint refer to a legal document that speaks for itself and to which no response is required.

34. Cross-defendant denies each of the allegations contained in paragraph 34 of the cross-complaint.

RESPONSE TO SECOND CAUSE OF ACTION

35. Cross-defendant realleges and incorporates herein by this reference his responses to paragraphs 1 through 34 of the cross-complaint as if fully set forth herein.

36. Cross-defendant denies each of the allegations contained in paragraph 36 of the cross-complaint.

37. The allegations contained in paragraph 37 of the cross-complaint are legal conclusions to which no response is required.

38. Cross-defendant denies each of the allegations contained in paragraph 38 of the cross-complaint.

39. Cross-defendant lacks sufficient information to admit or deny the allegations contained in paragraph 39 of the cross-complaint. Notwithstanding the foregoing, Cross-defendant denies that there was coordination and denies that he concealed any facts.

40. Cross-defendant denies each of the allegations contained in paragraph 40 of the cross-complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense

(Failure to State a Claim Upon Which Relief Can Be Granted)

41. The cross-complaint, and each of its causes of action, fail to set forth sufficient facts upon which relief can be granted and fail to set forth a viable cause of action against cross-defendant.

Second Affirmative Defense

(Statute of Limitations)

42. The cross-complaint, and each of its causes of action, are barred by the applicable statutes of limitation, including, but not limited to, those set forth in San Francisco Campaign and Government Conduct Code section 1.168(c) and California Code of Civil Procedure section 335 et seq.

Third Affirmative Defense

(Standing)

43. The cross-complaint, and each of its causes of action, are barred by cross-complainant's lack of standing to bring and/or maintain this action or to obtain the relief sought.

Fourth Affirmative Defense

(Failure to Exhaust Administrative Remedies)

44. The cross-complaint, and each of its causes of action, are barred by cross-complainant's failure to exhaust their administrative remedies.

Fifth Affirmative Defense

(Laches, Waiver, and Estoppel)

45. The cross-complaint, and each of its causes of action, are barred by the doctrines of laches, waiver, and estoppel.

Sixth Affirmative Defense

(Failure to Plead Fraud with Particularity)

46. The cross-complaint, and its second cause of action, fail to plead with particularity the circumstances constituting the alleged fraud.

Seventh Affirmative Defense

(Unclean Hands)

47. The cross-complaint, and each of its causes of action, are barred by the doctrine of unclean hands.

Eighth Affirmative Defense

(Deprivation of Constitutional Rights to Due Process)

48. Cross-complainant has deprived cross-defendant of his constitutional rights to due process.

Ninth Affirmative Defense

(Deprivation of Constitutional Rights to Equal Protection)

49. Cross-complainant has deprived cross-defendant of his constitutional rights to equal protection of the laws.

Tenth Affirmative Defense

(Factual and Legal Innocence)

50. Cross-defendant is factually and legally innocent of the charges that cross-

complainant has leveled against him.

Eleventh Affirmative Defense

(Ethics Commission Complaint Dismissed)

51. Cross-complainant previously dismissed the complaint filed with the Ethics Commission against cross-defendant, and having done so, is barred from pursuing this cross-complaint.

Twelfth Affirmative Defense

(Actions of Others)

52. Any wrongs or violations that may have been committed were done so by parties other than cross-defendant or parties who were not acting in the course or scope of their agency or other legal relationship with cross-defendant.

Thirteenth Affirmative Defense

(Impossibility of Forfeiture)

53. The law does not support impossibilities or absurd results. Given that neither cross-defendant nor his agents were ever in possession of the allegedly improper funds, cross-defendant cannot forfeit such funds.

Fourteenth Affirmative Defense

(Forfeiture Demand Rescinded)

54. Cross-complainant previously rescinded its forfeiture demand, and having done so, is barred from rescinding such rescission.

Fifteenth Affirmative Defense

(Cross-Complainants' Failure to Follow the Law)

55. Cross-complainant has failed to follow its own laws and procedures and thus is barred from pursuing this cross-complaint.

RESERVATION OF RIGHTS

The cross-defendant reserves the right, upon completion of its investigation and discovery, to file such additional affirmative defenses as many be appropriate.

PRAYER

WHEREFORE, cross-defendant prays for relief as follows:

1. That the cross-complaint be dismissed with prejudice and that cross-complainant takes nothing thereby;

2. That judgment be entered in favor of cross-defendant and against cross-complainant on every cause of action contained in the cross-complaint;

3. That cross-defendant recovers his costs in this action; and

4. For such other and further relief as this Court may deem just and proper.

Respectfully Submitted:

THE SUTTON LAW FIRM, PC
James R. Sutton, Esq.
Bradley W. Hertz, Esq.
Matthew C. Alvarez, Esq.

Dated: July 3, 2016

By: _____
James R. Sutton, Esq.
Attorneys for Cross-Defendant MARK FARRELL

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I, MARK FARRELL, am a party to this action. I have read the foregoing "Answer to Cross-Complainant City and County of San Francisco's Cross-Complaint" and know its contents.

The matters stated in the foregoing document are true and correct of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 3, 2016 at San Francisco, California.

Mark E. Farrell

Mark Farrell

I, Matthew C. Alvarez, declare:

I am over 18 years of age, not a party to the within action, am an associate at the Sutton Law Firm, PC, have personal knowledge of the facts recited herein, and, if asked to do so, could and would competently testify as to the service of the document listed below:

CROSS-DEFENDANT MARK FARRELL'S ANSWER TO CROSS-COMPLAINANT CITY AND COUNTY OF SAN FRANCISCO'S CROSS-COMPLAINT

On July 5, 2016, I served the above-described document as follows:

David W. Ammons, Esq. Deputy City Attorney Fox Plaza 1390 Market Street, Sixth Floor San Francisco, CA 94102-5408 david.ammons@sfgov.org	Counsel for Cross-Complainant City and County of San Francisco

_____ (VIA OVERNIGHT DELIVERY) By enclosing the document in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

___X___ (VIA THIRD-PARTY) By electronically submitting the document through the third-party filing service "File & Serve Xpress" based on an agreement of the parties to accept service via "File & Serve Xpress." After serving the document, I received an email acknowledgment from "File & Serve Xpress" informing me that the document had been successfully transmitted.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 5, 2016

Matthew C. Alvarez

James R. Sutton, Esq. (SBN 135930)
Bradley W. Hertz, Esq. (SBN 138564)
Matthew C. Alvarez, Esq. (SBN 301483)
THE SUTTON LAW FIRM, PC
150 Post Street, Suite 405
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Email: jsutton@campaignlawyers.com

Attorneys for Cross-Defendant
MARK FARRELL

ELECTRONICALLY
FILED
Superior Court of California, County of San Francisco
07/18/2016
Clerk of the Court
BY:CAROL BALISTRERI
Deputy Clerk

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FOR THE COUNTY OF SAN FRANCISCO
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MARK FARRELL, an individual, and ROES 1 to 25, inclusive,

Cross-defendants.

Case No. CGC-16-551745

CROSS-DEFENDANT MARK FARRELL'S NOTICE OF SPECIAL MOTION AND SPECIAL MOTION TO STRIKE THE CITY AND COUNTY OF SAN FRANCISCO'S CROSS-COMPLAINT

[CODE OF CIVIL PROCEDURE SECTION 425.16; "ANTI-SLAPP" STATUTE]

Judge: Hon. Harold E. Kahn
Date: August 11, 2016
Reservation #: 07180811-01
Time: 9:30am
Dept: 302

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on Thursday, August 11, 2016, at 9:30 a.m., or as soon thereafter as the matter may be heard, in Department 302 of the San Francisco County Superior Court, located at 400 McAllister St., San Francisco, CA, cross-defendant Mark Farrell will, and hereby does, specially move, pursuant to California Code of Civil Procedure section 425.16, to strike the City's cross-complaint in its entirety.

Supervisor Farrell's motion is made on the grounds that the cross-complaint's causes of action arise out of his rights of free speech under the Federal and State Constitutions, including his right to run and campaign for elective public office, and the City will not be able to demonstrate a probability of prevailing on its causes of action.

Supervisor Farrell's motion is based upon this Notice, the accompanying Memorandum of Points and Authorities, the pleadings, declarations, exhibits and other documents on file in this action, and such argument as may be presented at the hearing of this motion.

Dated: July 18, 2016

Respectfully Submitted:

By: _____

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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
07/18/2016
Clerk of the Court
BY:CAROL BALISTRERI
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 and MARK FARRELL,

Petitioners and Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO ETHICS COMMISSION; CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR; and DOES 1 to 100, inclusive,

Respondents and Defendants.

CITY AND COUNTY OF SAN FRANCISCO, by and through its Ethics Commission,

Cross-complainant,

vs.

MARK FARRELL, an individual, and ROES 1 to 25, inclusive,

Cross-defendants.

Case No. CGC-16-551745

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CROSS-DEFENDANT MARK FARRELL'S SPECIAL MOTION TO STRIKE THE CITY AND COUNTY OF SAN FRANCISCO'S CROSS-COMPLAINT

[CODE OF CIVIL PROCEDURE SECTION 425.16; "ANTI-SLAPP" STATUTE]

Judge: Hon. Harold E. Kahn
Date: August 11, 2016
Reservation #: 07180811-01
Time: 9:30am
Dept: 302

MEMORANDUM OF POINTS AND AUTHORITIES

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I. INTRODUCTION

The City's cross-complaint against Supervisor Farrell is a "Strategic Lawsuit Against Public Participation" (a "SLAPP"): "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue." (Cal. Code of Civil Proc. ("CCP") § 425.16, the "anti-SLAPP" statute.) In this case, the City's cross-complaint arises from Supervisor Farrell's acts or alleged acts during his 2010 election campaign in furtherance of his free speech rights.

The City filed this cross-complaint in an attempt to extract $190,903.04 from Supervisor Farrell, even though: (1) he has done nothing wrong; (2) the California Fair Political Practices Commission ("FPPC") cleared him of any wrongdoing; (3) the City's Ethics Commission ("SFEC") has never issued any findings, held any hearings, or otherwise followed City law or its own policies for enforcement matters; and (4) the SFEC did not make this demand until the applicable statute of limitations had run. The Legislature has directed the courts to construe the anti-SLAPP statute broadly to prevent the judicial process from being used to hinder participation in matters of public significance – such as Supervisor Farrell's First Amendment rights to run and campaign for elective public office, legally raise and spend campaign funds, and communicate with voters. (CCP § 425.16(a); see also Colton v. Singletary (2012) 206 Cal.App.4th 751 [SLAPP motion successfully brought against city based on city's cross-complaint against plaintiff for suing city to enforce contract].)

CCP section 425.16 provides that causes of action arising out of the exercise of First Amendment rights must be stricken unless the plaintiff or cross-complainant can demonstrate a probability of prevailing. Here, the City cannot demonstrate a probability that it will prevail in requiring Supervisor Farrell to forfeit $190,903.04 to the City – so the Court should grant this motion and dismiss the cross-complaint.

II. FACTUAL BACKGROUND

The amount the City is demanding that Supervisor Farrell "forfeit" to the City was actually never received or spent by him or by Mark Farrell for District 2 Supervisor 2010, the political committee set up for his election in 2010 ("Farrell Committee"). Instead, this amount was raised and

spent by a political committee named "Common Sense Voters" ("CSV"), which produced mailers and door hangers in October 2010 which supported Farrell's candidacy for District 2 Supervisor.[1]

Immediately following the election, Janet Reilly, one of Supervisor Farrell's opponents in the race, sent a complaint to the SFEC, the City agency charged with enforcing the City's campaign laws, and the FPPC, the state agency charged with enforcing the state's campaign laws. The complaint alleged that CSV had improperly coordinated its activities with the Farrell Committee. (See 12/23/10 letter from Charles Bell to SFEC Executive Director John St. Croix et. al.; Exh. A attached to Declaration of Matthew C. Alvarez.) The SFEC and FPPC opened an investigation immediately thereafter, focusing on whether CSV had coordinated with the Farrell Committee's campaign manager, Chris Lee. (See 1/26/11 letter from St. Croix to Bell; Alvarez Dec., Exh. B.) The investigation spanned more than three years, and included interviews of Supervisor Farrell, Mr. Lee, others who worked on the Farrell campaign, and several people involved with CSV, and also included the review of hundreds of emails produced by Supervisor Farrell and others.

The investigation focused on interactions which Mr. Lee evidently had with CSV before the committee was established, in which he apparently provided CSV with a copy of the Farrell Committee's contributor list (which was already a public document) and referred CSV to a political consultant. The FPPC summarized that Mr. Lee "assisted the Principal Officer with the formation of CSV" by providing him with information "regarding the set-up, fundraising and initial campaign planning" of CSV. (See In the Matter of Common Sense Voters and Chris Lee (11/20/14) FPPC No. 10/973 ("FPPC Stip."); Alvarez Dec., Exh. C.)

The FPPC ultimately found that CSV and Mr. Lee had violated the law and levied a $14,500 fine against them – though it completely exonerated Supervisor Farrell of any wrongdoing. The FPPC stipulation explicitly found that "The evidence supports the finding that Mark Farrell did not authorize Respondent Lee, as an agent of the Farrell Committee, to coordinate with Respondent CSV." (FPPC Stip.; Alvarez Dec., Exh. C.) There is a reason why the FPPC went out of its way to exonerate

[1] CSV spent these funds during the 2010 election cycle, when Supervisor Farrell first ran for office. The SFEC began its action against Supervisor Farrell over four years later, after his re-election in 2014.

Supervisor Farrell: because he did nothing wrong. He had no idea what CSV was doing until its mailers and door hangers appeared in the District, and had no idea that Mr. Lee had unauthorized interactions with the people behind CSV. (Declaration of Mark Farrell at ¶ ¶ 6, 10.)

Although the FPPC took the lead in the investigation, SFEC staff was involved at every step. They participated in interviews (some of which were held in the SFEC's office), had full access to all emails and other information produced by Supervisor Farrell, Mr. Lee and other witnesses, and communicated regularly with the FPPC about its findings. After being apprised of the FPPC's decision to charge only Mr. Lee and CSV and not Supervisor Farrell, the SFEC's Executive Director informed the FPPC in July or August 2014 that the SFEC would not take any action against Supervisor Farrell or any other party. (See Declaration of James R. Sutton, ¶ ¶ 8, 9.)[2]

Despite this decision, and even though the statute of limitations had clearly lapsed (as discussed below), the Executive Director inexplicably sent Supervisor Farrell a letter on December 9, 2014 demanding that he personally "forfeit" to the City the money that CSV had raised and spent on its mailers and door hangers. (Alvarez Dec., Exh. E.) Supervisor Farrell then sent a letter to the Executive Director asking that he waive this outrageous forfeiture demand for numerous factual, legal and equitable reasons. (See 3/15/15 letter to St. Croix; Alvarez Dec., Exh. F.)

The Executive Director granted this request. Specifically, he concluded that: (1) the City was legally barred by the statute of limitations from taking any action after October 2014; (2) Supervisor Farrell was "not named as a respondent in the [FPPC] stipulation"; and (3) "the Commission does not have any evidence before it that [Farrell] committed an act of fraud." (6/5/15 letter from St. Croix to Supervisor Farrell; Alvarez Dec., Exh. G.) This letter is the only written document which the City

[2]Although the SFEC Executive Director did not send Supervisor Farrell a letter formally dismissing the complaint, his decision is effectively a dismissal. City law specifically empowers the Executive Director to dismiss complaints when the FPPC takes action against an alleged violator of the City's campaign law: "[T]he Executive Director may dismiss the complaint if the allegations do not warrant further action for reasons that may include, but are not limited to . . . [t]he allegations contained in the complaint are already under investigation, or already have been resolved, by the Commission or another law enforcement agency." (See SFEC Regulations for Investigations and Enforcement Proceedings ("SFEC Enf. Regs.") § IV(B); Alvarez Dec., Exh. D.) City law also specifically states that the Executive Director "shall take no further action" on a complaint once it is dismissed. (See SFEC Enf. Regs. § IV(B); Alvarez Dec., Exh. D.)

ever provided about the merits of this matter. Nevertheless, and even though City law gives the Executive Director sole discretion to determine whether to grant or deny forfeiture waiver requests (SFCGCC § 1.168(c)(4)), the Commissioners later instructed the Executive Director to withdraw the waiver. (6/15/15 letter from St. Croix to Supervisor Farrell; Alvarez Dec., Exh. H.)

Supervisor Farrell, through counsel, submitted letters to the Commission on March 15 and June 4, 2015 (Alvarez Dec., Exhs. F & I), and made presentations at the SFEC's March 23 and April 27, 2015 meetings (Alvarez Dec., Exhs. K & L) in an attempt to explain why forfeiture was inappropriate and not allowed. The Commissioners never responded – and to date have never explained why they overturned the Executive Director's waiver; why the statute of limitations does not bar their action; how they could ask someone who had never received funds to forfeit them to the City; and why they did not issue any findings of fact or conclusions of law.

III. THE ANTI-SLAPP STATUTE APPLIES TO THIS CASE

A. The Anti-SLAPP Statute Protects First Amendment Rights.

The Legislature enacted the anti-SLAPP statute as a means to prevent the improper burdening of First Amendment rights. CCP § 425.16 "provides a mechanism through which . . . complaints can be evaluated at an early stage of the litigation process" to address and dismiss non-meritorious actions. (Lafayette Morehouse, Inc. v. Chronicle Publ. (1995) 37 Cal.App.4th 855, 865.) "The point of the anti-SLAPP statute is that you have a right *not* to be dragged through the courts because you exercised your constitutional rights." (People ex rel. Lockyer v. Brar (2004) 115 Cal.App.4th 1315, 1317.) Because the Legislature found that it was "in the public interest to encourage participation in matters of public significance," courts have interpreted CCP section 425.16 in a manner "favorable to the exercise of freedom of speech, and not its curtailment." (Briggs v. Eden Council for Hope (1999) 19 Cal.4th 1106, 1119, citing Bradbury v. Superior Court (1996) 49 Cal.App.4th 1108, 1114 n3.)

Courts apply a two-part analysis in evaluating anti-SLAPP motions. In the context of a cross-complaint: (1) the cross-defendant must show that the cross-complaint arises from acts in furtherance of his or her constitutionally protected rights of free speech; and (2) once the cross-defendant makes this showing, the burden shifts to the cross-complainant to demonstrate a probability of prevailing on

its causes of action. If the cross-complainant cannot carry its burden, then the motion is granted and the cross-action is dismissed. (See Equilon Enterprises v. Consumer Cause (2002) 29 Cal. 4th 53.)

B. The City's Causes of Action Arise From Acts in Furtherance of Supervisor Farrell's Constitutionally Protected First Amendment Rights.

The City's cross-complaint is subject to an anti-SLAPP motion because its causes of action arise from acts which Supervisor Farrell took, or is alleged to have taken, in furtherance of his constitutionally protected rights to run and campaign for public office. Courts have consistently held that lawsuits arising out of political campaigns, political contributions and expenditures, and political speech – like the City's cross-complaint – are within the purview of the anti-SLAPP statute. For example, the Court in Major v. Silna (2005) 134 Cal.App.4th 1485 held that the anti-SLAPP statute applied to a case alleging that an independent committee's campaign mailers were coordinated with the candidate whom they supported. (Id. at 1490-1491 [finding that anti-SLAPP statute applies because "the right to speak on political matters is the quintessential subject of our constitutional protections of the right of free speech"]; see also Matson v. Dvorak (1995) 40 Cal.App.4th 539 [campaign flyers]; The Governor Gray Davis Committee v. Amer. Taxpayers Alliance (2002) 102 Cal.App.4th 449 [campaign reports]; Rosenaur v. Scherer (2001) 88 Cal.App.4th 260 [campaign literature]; and Macias v. Hartwell (1997) 55 Cal.App.4th 669 [union elections].) As one court put it, the anti-SLAPP statute applies to lawsuits brought against candidates for public office and their supporters because "the constitutional guarantee [of free speech] has its fullest and most urgent application precisely to the conduct of campaigns for political office." (Beilenson v. Superior Court (1996) 44 Cal.App.4th 944, 949, quoting Buckley v. Valeo (1976) 424 U.S. 1.)

In this case, the City has cross-complained against Supervisor Farrell because he exercised his Constitutional rights to run and campaign for public office and to communicate with voters. Stated differently, there would be no action before the Court had Supervisor Farrell not exercised his free speech rights and had the City not made the accusation that he, "through agent [Chris] Lee, violated [San Francisco's] contribution limits by coordinating with CSV . . .". (Cross-complaint at ¶ 12.)

C. The "Prosecutorial Exception" Does Not Apply Because The City Did Not Bring Its Cross-Complaint in the Name of the People of the State of California.

The Court should reject any effort by the City to invoke CCP § 425.16(d)'s "prosecutorial exception." While the anti-SLAPP statute does not apply to enforcement actions "brought in the name of the people of the State of California," the cross-complaint clearly does not fall within that category. As the Court of Appeal stated in Colton, 206 Cal.App.4th at 775, and as is the case here, "[t]he cross-complaint was brought in the name of the City. The cross-complaint was not 'brought in the name of the people of the State of California.' Since the suit was not brought in the name of the People, we conclude the prosecutorial exception does not apply to the cross-complaint." Although another court had interpreted the exception years earlier well beyond the clear statutory language (Long Beach v. Cal. Citizens for N'hood Empowerment (2003) 111 Cal.App.4th 302), the Colton Court did not find this earlier case to be persuasive authority, and neither should this Court.

IV. HAVING DEMONSTRATED THAT THE CASE IS A SLAPP, THE BURDEN SHIFTS TO THE CITY TO PROVE A PROBABILITY OF PREVAILING -- WHICH IT CAN NOT DO

Because the City's causes of action arise from Supervisor Farrell's protected First Amendment activity, the burden shifts to the City to demonstrate a probability of prevailing. (See Wilcox v. Superior Court (1994) 27 Cal.App.4th 809, overruled on other grounds in Equilon (2002) 29 Cal.4th 53.) If the City does not meet its burden, the causes of action must be stricken (see Church of Scientology v. Wollersheim (1996) 42 Cal.App.4th 628, overruled on other grounds in Equilon, supra), and the City is precluded from continuing with its case (see Simmons v. Allstate Insurance Co. (2001) 92 Cal.App.4th 1068).

As established below, the City does not have a probability of prevailing on its cross-complaint for several reasons: the $190,903.04 forfeiture demand is barred by the statute of limitations; the doctrine of fraudulent concealment does not apply; the SFEC did not follow City law or its own policies; forfeiture is not an appropriate remedy; the forfeiture demand violates Supervisor Farrell's due process and equal protection rights; and CSV's mailers and door hangers were not coordinated with Supervisor Farrell or his campaign.

A. The City Will Not Prevail Because the Action is Barred by the Statute of Limitations.

The City's action is unsustainable, as a matter of law, because it violates the four-year statute of limitations. (See SFCGCC § 1.168(c)(3) ["No administrative action alleging a violation of this Chapter and brought under Charter § C3.699-13 shall be commenced more than four years after the date on which the violation occurred."]; see also 3/4/08 SFEC staff memorandum ("SFEC Forfeiture Policy"); Alvarez Dec., Exh. M ["Statute of limitations regarding late fines and forfeitures – the legal limitations period is four years."].) The alleged violations -- the mailers and door hangers produced and distributed by CSV -- occurred in October 2010 (FPPC Stip., Alvarez Dec., Exh. C), more than four years before the SFEC sent the forfeiture demand in December 2014. If the City wanted to pursue Supervisor Farrell, it was therefore legally required to do so by October 2014.

The relevant question is whether the City had sufficient time to open an investigation, research the facts, and decide whether to file charges by October 2014. It clearly did. The complaint letter submitted in December 2010 made the City aware of possible violations by specifically alleging an "overlap between the Farrell candidate-controlled committee and [CSV]" and "possible involvement of Mark Farrell . . . in coordinating with [CSV] in the making of independent expenditures." (Alvarez Dec., Exh. A.) SFEC staff then investigated this allegation for three and a half years, participating in interviews of witnesses and potential respondents, hosting interviews in its offices, reviewing emails and other evidence, and interacting with the FPPC. The City had ample time to reach a conclusion and decide whether to pursue Supervisor Farrell before October 2014.[3]

Furthermore, even before receiving the complaint in December 2010, campaign reports filed by CSV and the Farrell Committee on the SFEC's own website in October 2010 revealed possible connections between the two committees: sharing the same Treasurer, receiving contributions from some of the same people, and using at least one of the same vendors. (See copies of applicable pages of CSV and Farrell Committee campaign reports; Alvarez Dec., Exhs. N & O.) The complaint in fact relied on these October 2010 campaign reports – if the complainant could find the potential violation on the SFEC's website, the City can not feign ignorance of the same information. Although

[3] In fact, the City did reach its own conclusions and did decide whether to pursue an enforcement action against Supervisor Farrell within four years – deciding in July or August 2014 to not pursue its own action and instead to let the FPPC stipulation be the final action in the matter.

Supervisor Farrell denies that these connections rise to the level of "coordination" as that term is defined in the law (as discussed below), the law says that common officers, vendors and/or contributors create the presumption of coordination. (SFCGCC § 1.115(b); 2 Cal. Code of Regs. § 18225.7.) The City certainly can not claim that it was not aware of information in its possession. The City therefore had actual, or at least constructive, knowledge, as a matter of law, of possible violations as early as October 13, 2010, when these campaign reports were first filed with the SFEC.

B. The City Will Not Prevail Because It Can Not Use the Doctrine of Delayed Discovery and Fraudulent Concealment to Toll the Statute of Limitations.

The City absurdly claims that Supervisor Farrell and others "fraudulently concealed" information which prevented the City from taking action within the required four years. (Cross-complaint at ¶ 35-40.) This assertion wholly misapplies and misinterprets when the doctrine of "delayed discovery" and "fraudulent concealment" can toll a statute of limitations.

The United States Supreme Court has explicitly held that governmental agencies cannot use this doctrine to attempt to toll the statutory period in an enforcement case, even if a defendant fraudulently conceals illicit activity. (Gabelli v. SEC (2013) 133 S.Ct. 1216.) In Gabelli, the Securities and Exchange Commission ("SEC") brought an enforcement action against two individuals for alleged fraud after the statutory period had lapsed. The Court emphatically rejected the SEC's claim that the statutory period should be tolled until the government had "reason to know" of the alleged violation, ruling instead that delayed discovery and fraudulent concealment do not apply to governmental agencies which have a duty to investigate and enforce particular statutory schemes. (Id. at 1221-22.) The Court distinguished between private plaintiffs – who are not required to spend time seeking out evidence of fraud – and government agencies which have a duty to investigate possible wrongdoing and the power and resources to do so. (Id. at 1222.)

The Court found numerous legal, policy and equitable problems with governmental entities trying to use the doctrine, all of which apply in the current case:

> [G]rafting the discovery rule onto [enforcement actions brought by Governmental agencies] would . . . leave defendants exposed to Government enforcement action not only for five years after their misdeeds, but for an additional uncertain period into the future. Repose would hinge on speculation about what the Government knew, when it knew it, and when it should have known it. Determining when the Government, as opposed to an individual, knew or reasonably should have known of a fraud presents particular challenges for the

> courts. Agencies often have hundreds of employees, dozens of offices, and several levels of leadership. In such a case, when does "the Government" know of a violation? Who is the relevant actor? Different agencies often have overlapping responsibilities; is the knowledge of one attributed to all? (Id. at 1223.)

All of the Court's concerns are present in this case. The SFEC has a statutory duty to investigate and prosecute potential violations of the City's campaign law and is given the investigatory tools necessary to do so on a timely basis. (See Charter § C3.699-13; SFCGCC § 1.164(g); SFEC Enf. Regs. § V; Alvarez Dec., Exh. D.) Extending the statute of limitations until the SFEC receives a complaint about a potential violation would effectively eliminate any time constraints on its investigations, and would leave open the question of which actor at the agency – its Executive Director? other staff? the Commissioners? – must have knowledge of the potential violation. Gabelli is therefore a bar to the City's second cause of action.

Not only does fraudulent concealment not apply to enforcement actions brought by the government, but the facts in this matter do not support the doctrine even if it did apply. Most notably, because the SFEC investigated the complaint throughout 2011, 2012 and 2013, before deciding not to pursue an enforcement action in 2014, there is no way for the City to argue that the case "grew stale" due to any action of Supervisor Farrell or anyone else. The California Supreme Court has clearly stated that "[i]n articulating the doctrine [of fraudulent concealment], the courts have had as their purpose to disarm a defendant who, by his own deception, has caused a claim to become stale and a plaintiff dilatory." (Regents of Univ. of Cal. v. Superior Court (1999) 20 Cal.4th 509, 533 [emphasis added].) Neither Supervisor Farrell nor anyone else did anything which hindered the ability of the City to file charges within the four years provided for in City law and SFEC policy.

Furthermore, the doctrine only applies when a defendant intentionally hides information in such a way that the plaintiff does not have sufficient time to complete an investigation within the statute of limitations period. (See, e.g., Pashley v. Pacific Elec. Railway Co. (1944) 25 Cal.2d 226, 231 [fraudulent concealment only applies if defendant's acts "hindered the plaintiff from bringing an action within the statutory period"].) Supervisor Farrell did not intentionally hide any information about Mr. Lee's interactions with CSV from the City because he had no information to hide. Instead, invoking fraudulent concealment is nothing more than the City grasping at straws to justify the tardy

actions of the SFEC staff and Commissioners. The City has only itself to blame for the expiration of the statute of limitations.

Finally, the cases in which courts have extended the statute of limitations because of fraudulent concealment differ markedly from our facts, not simply because a government agency acting in its investigatory and prosecutorial capacity filed the action. Unlike these cases, Supervisor Farrell did not do anything which made it impossible (or even difficult) for the SFEC to act by October 2014 – to the contrary, Supervisor Farrell cooperated fully with the investigation. Moreover, the plaintiffs in these cases did not learn about the underlying factual issue until after the applicable statute of limitations had run. (See, e.g. Community Cause v. Boatwright (1981) 124 Cal.App.3d 888 [Court allowed plaintiff to file lawsuit against public official who had wrongfully omitted financial holding from required public filing, even though applicable statute of limitations had run, because financial holding was only revealed in unrelated lawsuit filed years later]; Baker v. Beech Aircraft Corp. (1974) 39 Cal.App.3d 315 [Court allowed family of passenger killed in plane crash to sue airplane company after statute had run because family could not have learned of company's defect until it was revealed in newspaper expose published years after crash].) Whereas these plaintiffs could not have brought an action against the alleged wrongdoers unless the statute of limitations was extended, the City in this case clearly could have brought an action before October 2014.

C. The City Will Not Prevail Because It Did Not Follow Required Enforcement Procedures Under City Law and SFEC Policies.

Neither the SFEC nor any other City agency has followed the procedures required before the government may seek a monetary penalty from a citizen. The SFEC never presented Supervisor Farrell with a Probable Cause Report or other written explanation of the purported evidence and law (as required by Charter § 3.699-13(b) and SFEC Enf. Regs. § VII; Alvarez Dec., Exh. D) and never held a hearing to review the facts and evidence (as required by Charter § 3.699-13(c) and SFEC Enf. Regs. §§ VIII-XII; Alvarez Dec., Exh. D). The forfeiture demand and the City's cross-complaint therefore violate the City's rules and regulations, as well as every concept of due process and fairness.

Forfeiture is also unwarranted because it does not comply with the official policy which the SFEC adopted to regulate such demands. (SFEC's Forfeiture Policy; Alvarez Dec., Exh. M.) This

Forfeiture Policy explicitly states that the SFEC will not pursue forfeiture unless it delivers a notice to the political committee within one year from the date that the applicable campaign report is due: "If the Commission fails to send a [forfeiture assessment notice] to a committee assessing a forfeiture within one year of the filing deadline or the date that the defective report was received by the Commission, the Commission will not seek forfeiture." (8/12/08 SFEC staff memorandum [emphasis added]; Alvarez Dec., Exh. P.) The Forfeiture Policy underscores the importance of the City acting in a timely manner when seeking forfeiture, stating "the Commission has an obligation to let candidates and committees know that 'the clock is ticking' at the earliest possible occasion." (SFEC Forfeiture Policy; Alvarez Dec., Exh. M.) The City's forfeiture demand, issued several years later, violates and is barred by this one-year rule.

D. The City Will Not Prevail Because Forfeiture Does Not Apply In This Case.

Inherent in the legal concept of "forfeiture" is the notion that the person being asked to forfeit the property has, at some point, actually obtained possession of the property. (See, e.g., U.S. v. Bajakajian (1998) 524 U.S. 321.) In fact, the forfeiture provision in City law, by its own wording, only applies to situations in which a political committee actually receives money that does not comply with the law. (SFCGCC § 1.114(e) ["each committee that receives a contribution which exceeds the limits imposed by this Section . . . shall pay promptly the amount received or deposited in excess of the amount permitted by this Section to the City . . ."]; emphasis added.) Nothing in this provision supports the City's position that forfeiture can apply to money spent by one political committee which is never received by the other committee. In fact, every one of the approximately 100 committees from which the SFEC has sought forfeiture actually received and deposited the funds in question.

The Farrell Committee was closed in March 2013 and has no funds to forfeit. While in existence, it never received any of the money that the City is now attempting to seize. Suggesting that a political committee must, or even could, "forfeit" money to the City which it did not raise, receive, spend, or in any way control, defies all logic.

Moreover, the City inexplicably seeks money from Supervisor Farrell, not from CSV, the political committee which actually raised and spent the money in question. If the City really believes

that the $190,903.04 was raised or spent improperly and that those who did so should pay this amount to the City, then it should go after those parties.

Demanding that Supervisor Farrell use his personal funds to satisfy the City's forfeiture request is even more absurd. It is also patently inequitable, especially in light of the fact that the City has never held a hearing or issued any written findings of fact or law. Moreover, the forfeiture provision, by its own terms, only applies to "committees" which receive campaign funds.

Finally, demanding that a political committee forfeit funds to the City is only appropriate when there is a prima facie violation of the law. In fact, in all prior forfeiture matters, the violation was obvious, indisputable and did not require any investigation – accepting a contribution from a corporation; failing to list a contributor's occupation or employer; accepting an over-the-limit contribution; etc.

This matter could not be more different. Here, the City is interpreting a settlement document negotiated in private between parties (but not Supervisor Farrell) as a binding legal conclusion on someone who was not a party to the agreement. Although the City's forfeiture demand and cross-complaint claim that the expenditures by CSV "have been treated as contributions to [Supervisor Farrell]" (Alvarez Dec., Exh. E), this claim is not stated in the FPPC stipulation or any other document. The FPPC stipulation only found that CSV made errors on its campaign reports and did not include the proper identification on its mailers or door hangers, and does not conclude that the mailers and door hangers constituted contributions to the Farrell Committee. In fact, the stipulation does not make any findings about Supervisor Farrell or the Farrell Committee at all – other than fully exonerating him from any wrongdoing. (Alvarez Dec., Exh. C.)

E. The City Will Not Prevail Because the Forfeiture Demand Violates Supervisor Farrell's Due Process and Equal Protection Rights.

The way in which the City has handled this matter – not following enforcement procedures set out in City law and SFEC policies, seeking forfeiture from a committee which did not receive the funds in question, etc. – also constitutes a violation of Supervisor Farrell's due process and equal protection rights under the Federal and State Constitutions. Before reaching the conclusion that someone has violated the law and must pay a monetary penalty, as big as $190,903.04 or otherwise,

the City must follow generally-accepted rules about notice, the opportunity to be heard, the opportunity to confront witnesses, written findings of fact and conclusions of law, etc. (See U. S. Const. 5th Amend. & 14th Amend.; Cal Const. Art. I, sec. 7.) Not only did the City not follow the most basic concepts of due process in this matter, it also completely disregarded the due process protections set out in City law and the SFEC's enforcement procedures and Forfeiture Policy.

The City demanded that Supervisor Farrell pay $190,903.04 to the City in letters barely over one page long. (Alvarez Dec., Exhs. E & H.) The SFEC Commissioners then overruled the Executive Director's decision to waive the demand even though City law gives the Executive Director sole discretion to accept or reject forfeiture waiver requests. (SFCGCC § 1.168(c)(4).) The Commissioners acted without issuing any written findings of fact, summary of evidence, or conclusions of law, and without holding any type of formal hearing at which Supervisor Farrell could call witnesses, cross examine the City's witnesses, or have a neutral arbiter[4] respond to his factual, legal and equitable arguments. Although the matter appeared on Ethics Commission agendas, no formal notice was given to Supervisor Farrell about these meetings, and Supervisor Farrell's counsel was only allowed to make short, informal comments like any other member of the public. (Sutton Dec.) Moreover, all of the correspondence between the City and Supervisor Farrell in this matter was made public by the City, and the Commissioners discussed the matter in open session, even though the City's Charter and City law state explicitly that SFEC enforcement matters must remain strictly confidential. (See Charter § C3.699-13(a); SFEC Enf. Regs. § XIII(B); Alvarez Dec., Exh. D.) These due process violations give the Court an independent basis to dismiss the City's cross-complaint.[5]

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[4]Although due process clearly requires a neutral arbiter (see Clark v. Hermosa Beach (1996) 48 Cal. App. 4th 1152 [due process violated if public official unable to exercise "disinterested skill, zeal and diligence"]; Burrell v. Los Angeles (1989) 209 Cal.App.3d 568, 582 [due process violated "if the official or officials who take part in the proceedings are demonstrably biased"]), one of the Commissioners revealed his bias against Supervisor Farrell in several public comments made while the Commission was considering the forfeiture demand, at one point comparing Supervisor Farrell to Richard Nixon and Watergate. (Minutes of 6/5/15 SFEC Meeting; see also S. F. Examiner (1/25/16) & S.F. Weekly (2/2/16) Alvarez Dec., Exh. Q, R & S.)

[5]Equal protection is also a basis to dismiss the cross-complaint. The SFEC has issued forfeiture demands approximately 100 times, but the forfeiture demand here is the only time when the alleged violation was obvious and did not require investigation and the only time when the City is demanding

F. The City Will Not Prevail Because Supervisor Farrell Did Not "Control" or "Coordinate With" CSV.

Supervisor Farrell was unaware that the committee was producing materials related to the District 2 election until he and his supporters received mailers and door hangers at their homes which were identified as being paid for by CSV. (Farrell Dec. at ¶ 6.) He also had no idea that Mr. Lee had inappropriate communications with CSV's Principal Officer Jack Helfand. (Farrell Dec. at ¶ 10.)

According to the FPPC stipulation, Mr. Lee and Mr. Helfand actually had very minimal interactions, all of which took place several weeks before CSV was established. Mr. Lee evidently sent Mr. Helfand emails about a contributor list and a political consultant. Both Mr. Lee and Mr. Helfand told the SFEC and FPPC, under oath during their interviews, that they never spoke about CSV's mailers or door hangers, and that they did not talk or email at all once CSV filed its organizational document with the SFEC and once CSV began raising money. (10/3/12 interview of Chris Lee; Alvarez Dec., Exh. T; 10/4/12 interview of Jack Helfand; Alvarez Dec., Exh. U.)

Although the FPPC stipulation stated that Supervisor Farrell "controlled" CSV (see Cal. Govt. Code § 82016 [candidates are deemed to "control" a committee if they have "significant influence" over its actions]), the stipulation is simply an agreement between the FPPC, CSV and Mr. Lee (and not including Supervisor Farrell), drafted by FPPC staff based on confidential settlement negotiations with the respondents, not a formal opinion or an adjudicated order by the Commission. (See Cal. Evid. Code § 1152; Isaacson v. Cal. Ins., (1988) 44 Cal.3d 775, 794 n14 [expressing general rule that settlement does not act as admission of liability].) Moreover, Supervisor Farrell vehemently denies that he exerted "significant influence," or any influence, over CSV. (Farrell Dec. at ¶ 11.)[6]

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payment from a candidate personally rather than from a political committee (See U. S. Const. 14th Amend.; Cal Const. Art. I, sec. 7.)

[6]Compare FPPC Pirayou Advice Letter (12/13/10) No. I-10-159 ["extensive involvement" with committee's fundraising constitutes control] & FPPC Brainerd Advice Letter (12/27/90) No. I-90-413 [sitting on committee's board of directors constitutes control] with FPPC Coolidge Advice Letter (12/8/09) No. I-09-243 [candidate who was "honorary member" of committee's steering committee does not control committee].

The City has taken the statement in the FPPC stipulation that Supervisor Farrell "controlled" CSV and extrapolated that into a conclusion that he also "coordinated" with CSV regarding its mailers and door hangers. This conclusion is not supported by the facts or the law.

Based on the evidence referenced in the FPPC stipulation and contained in the FPPC's enforcement file, CSV's mailers and door hangers do not meet the legal standards for coordination. (SFCGCC § 1.115(a); 2 Cal. Code of Regs. § 18225.7.) Neither Supervisor Farrell nor Mr. Lee requested that CSV create or distribute the mailers or door hangers, and were not involved in any way in decisions about their content or distribution. CSV did not base the mailings on information which it received from Mr. Lee about the Farrell campaign's needs or plans, and the people involved with CSV did not serve in executive or policy-making roles with the Farrell campaign (or vice versa). Neither Supervisor Farrell nor Mr. Lee ever told CSV what types of campaign communications would help the campaign, never made suggestions about what messages should be included in CSV's mailers or door hangers, never saw the mailers or door hangers until they reached people's mailboxes and front doors, and had absolutely no idea that they were going out. (Alvarez Dec., Exh. I; Farrell Dec. at ¶¶ 6 ,11.) In sum, the information which Mr. Lee provided CSV was very general and preliminary, and not the type of "insider information" about a candidate's strategy which the law seeks to prevent. (See legal standards and presumptions for coordination in SFCGCC § 1.115 & 2 Cal. Code of Regs. § 18225.7.)

Simply put, the very limited interactions between Mr. Lee and CSV do not rise to the level of coordination which would render CSV's mailers and door hangers to be in-kind contributions to the Farrell campaign (rather than independent expenditures), and certainly do not justify demanding that Supervisor Farrell "forfeit" $190,903.04 to the City.

V. CONCLUSION

The City's cross-complaint arises out of Supervisor Farrell's constitutional right to campaign for office and communicate with voters about issues of public importance. As a SLAPP, the City must demonstrate a probability of prevailing, which it can not do, for all of the reasons outlined above. Supervisor Farrell therefore respectfully requests that the Court grant this special motion to strike the City's cross-complaint in its entirety.

Dated: July 18, 2016

Respectfully Submitted:

By: _____

James R. Sutton
Bradley W. Hertz
Matthew C. Alvarez
The Sutton Law Firm, PC
Attorneys for Cross-Defendant
MARK FARRELL

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MARK FARRELL

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07/18/2016
Clerk of the Court
BY:CAROL BALISTRERI
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 and MARK FARRELL,

Petitioners and Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO ETHICS COMMISSION; CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR; and DOES 1 to 100, inclusive,

Respondents and Defendants.

CITY AND COUNTY OF SAN FRANCISCO, by and through its Ethics Commission,
Cross-complainant,

vs.

MARK FARRELL, an individual, and ROES 1 to 25, inclusive,

Cross-defendants.

Case No. CGC-16-551745

DECLARATION OF MARK FARRELL IN SUPPORT OF SPECIAL MOTION TO STRIKE THE CITY AND COUNTY OF SAN FRANCISCO'S CROSS-COMPLAINT

Judge: Hon. Harold E. Kahn
Date: August 11, 2016
Reservation #: 07180811-01
Time: 9:30am
Dept: 302

I, Mark Farrell, declare based on my personal knowledge and under penalty of perjury that:

1. I am a member of the San Francisco Board of Supervisors representing District 2. I was originally elected to this office at the November 2010 election, and was re-elected at the November 2014 election.

2. When I ran for Supervisor in 2010, I had never before run for public office. I retained Chris Lee as one of my campaign's consultants, along with other consultants and campaign staff.

3. I instructed Mr. Lee and all other consultants and campaign staff to abide by the highest ethical and legal standards, and to comply with all campaign laws. Because Mr. Lee was a campaign professional, I trusted him to comply with these ethical and legal standards.

4. My campaign staff routinely reviewed campaign reports posted on the San Francisco Ethics Commission ("SFEC") website in order to determine how much money the other candidates in the race were raising and spending, and whether any "independent committees" were supporting or opposing any candidates in the race. I would also review the reports on the SFEC's website from time to time during the campaign.

5. During October 2010, my campaign staff informed me that they had found on the SFEC's website that an independent committee called "Common Sense Voters" ("CSV") had been established to support my candidacy, and other independent committees had been formed to support the candidacy of one of my opponents, Janet Reilly. My staff periodically checked the website to see who was contributing to these committees and how much they had raised.

6. During October 2010, supporters of my candidacy in District 2 informed me they had received mailers and door hangers at their homes in District 2 supporting my candidacy and opposing the candidacy of Janet Reilly, which identified that they were

paid for by CSV. They also informed me they had received mailers and door hangers at their homes in District 2 opposing my candidacy and supporting the candidacy of Janet Reilly. As a resident of District 2, my family and I also received these mailers at my home, in each instance it being the first time I had ever seen these mailers.

7. I was not aware that an independent committee called CSV had been set up until my staff and I noticed CSV's filings on the SFEC's website and until its mailers and door hangers were delivered to households in the District. I was not aware of who had contributed to CSV until my staff and I saw CSV's filings on the SFEC's website.

8. I was subpoenaed by the California Fair Political Practices Commission ("FPPC") in May, 2012 to produce emails and other documents relating to CSV and other parties and to be interviewed. I learned through my counsel, James R. Sutton of the Sutton Law Firm, that the subpoena was part of an investigation being conducted by the SFEC and FPPC into alleged coordination between my campaign and CSV.

9. I was interviewed in person by the FPPC in Sacramento in September 2012, and then had a follow-up interview by telephone in February, 2013. During the September interview, the FPPC informed me that it had copies of emails sent by Mr. Lee in September 2010 to Jack Helfand, CSV's Principal Officer. The FPPC showed me these emails, which related to my campaign's contributor list and a political consultant.

10. I was not aware of, and did not authorize, the emails between Mr. Lee and Mr. Helfand. I was very upset when the FPPC informed me of these emails, and I expressed to the FPPC during the interview my anger towards Mr. Lee.

11. Even with these emails, I do not believe that I can be deemed to have "controlled" or "coordinated" with CSV.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 14, 2016, at San Francisco, California.

Mark Farrell

James R. Sutton, Esq. (SBN 135930)
Bradley W. Hertz, Esq. (SBN 138564)
Matthew C. Alvarez, Esq. (SBN 301483)
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Attorneys for Cross-Defendant
MARK FARRELL

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Cross-complainant,

vs.

MARK FARRELL, an individual, and ROES 1 to 25, inclusive,

Cross-defendants.

Case No. CGC-16-551745

DECLARATION OF JAMES R. SUTTON IN SUPPORT OF SPECIAL MOTION TO STRIKE THE CITY AND COUNTY OF SAN FRANCISCO'S CROSS-COMPLAINT; EXHIBITS

Judge: Hon. Harold E. Kahn
Date: August 11, 2016
Reservation #: 07180811-01
Time: 9:30am
Dept: 302

I, James R. Sutton, declare based on my personal knowledge and under penalty of perjury that:

1. I am an attorney licensed to practice law in the State of California and am a partner at the Sutton Law Firm, which represents San Francisco Supervisor Mark Farrell in his lawsuit against the City and County of San Francisco.

2. I represented Supervisor Farrell and the Mark Farrell For District 2 Supervisor 2010 committee ("Farrell Committee") when he was interviewed during the investigations conducted by the San Francisco Ethics Commission ("SFEC") and the California Fair Political Practices Commission ("FPPC") into alleged coordination between the Farrell Committee and Common Sense Voters ("CSV").

3. I also represented Supervisor Farrell in connection with the forfeiture demand issue by the SFEC in December 2014, including before the Bureau of Delinquent Revenue in the San Francisco Treasurer and Tax Collector's office.

4. On March 15, 2015, I sent a letter on behalf of Supervisor Farrell to SFEC Executive Director John St. Croix requesting that he waive the $190,903.04 forfeiture demand against Supervisor Farrell.

5. On June 4, 2015, I sent a letter to the SFEC Commissioners outlining the legal, factual and equitable reasons why the forfeiture demand was unwarranted.

6. On March 23, 2015 and April 27, 2015, I testified briefly at public SFEC meetings about the forfeiture matter. My comments were brief and informal, and made at the same time as members of the public were allowed to make public comments on the matter. At the June 5, 2015 meeting, I did not testify but responded briefly to questions raised by the Commissioners. I never received formal notice from the SFEC that the forfeiture matter was on these meeting agendas, but rather simply saw the items when the agendas were posted publically.

7. Although one or more Commissioners may have asked during one of more of these meetings why Supervisor Farrell did not attend the meetings in person, the SFEC never sent a letter or otherwise formally "invited" Supervisor Farrell to attend the

meetings.

8. As part of our representation of Supervisor Farrell during the SFEC and FPPC investigations, I spoke on many occasions with Galena West, the FPPC enforcement attorney assigned to the matter. Ms. West told me in or about July or August 2014 that she had informed SFEC staff of the FPPC's pending settlement with Mr. Lee and CSV; she also told me that she had informed the SFEC that the FPPC had decided not to pursue Supervisor Farrell or the Farrell Committee.

9. Ms. West also informed me at that time that the SFEC Executive Director had decided, based on the FPPC's stipulation, to dismiss the complaint and not pursue an enforcement action against Supervisor Farrell, the Farrell Committee, or any other party.

10. I asked Ms. West if the SFEC Executive Director had put this decision in writing. She informed me that he had not, but that she had email correspondence with SFEC staff in July and August 2014 about the FPPC's stipulation and the Executive Director's decision. Attached to this declaration is a true and correct copy of the email correspondence provided to me by the FPPC in response to a Public Records Act request.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 13, 2016

James R. Sutton

Attachment

Matthew Alvarez

From: Galena West <GWest@fppc.ca.gov>
Sent: Friday, February 20, 2015 4:22 PM
To: James Sutton
Subject: FW: conversation re: CSV

Attached is an email that hadn't been filed into the master file at the time of the original request. Gary said that you submitted an additional CPRA request for it. There will be a second email as well.

From: Argumedo, Catherine (ETH) [mailto:catherine.argumedo@sfgov.org]
Sent: Tuesday, July 22, 2014 4:20 PM
To: Galena West
Subject: RE: conversation re: CSV

Hello Galena,

No problem if you need more time. Thanks for letting me know.

Thanks,

Catherine Argumedo
Ethics Commission
City and County of San Francisco
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102-6053
415-252-3100 (t)
415-252-3124 (f)
www.sfethics.org

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From: Galena West [mailto:GWest@fppc.ca.gov]
Sent: Tuesday, July 22, 2014 4:00 PM
To: Argumedo, Catherine (ETH)
Subject: conversation re: CSV

Hello Catherine,

It was good to talk to you today. I was anticipating sending you the draft of our exhibit this afternoon, but I want to give it one more look over now that Gary and I are on the same page before I send it out. Expect to see it Friday or Monday. Please respond so I know this is a good email address for you. Thanks!

Sincerely,

GWest

Galena West

Commission Counsel IV
Enforcement Division, FPPC
916-322-5796

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Matthew Alvarez

From: Galena West <GWest@fppc.ca.gov>
Sent: Friday, February 20, 2015 4:23 PM
To: James Sutton
Subject: FW: CSV
Attachments: Exhibit - CSV 8-20-14.doc; Stip - csv.doc

Here is the second email regarding your CPRA request to Gary.

From: Galena West
Sent: Wednesday, August 20, 2014 3:30 PM
To: catherine.argumedo@sfgov.org
Subject: CSV

Hey Catherine,

Sorry for the delay. There were some issues to iron out. Attached are the proposed stipulation and exhibit. I won't send it out to the respondents until I hear back from you regarding if you want to add anything to make it a joint settlement. The link below is the most recent joint settlement our offices have done together for you to have at your fingertips. Talk to you soon!

http://fppc.ca.gov/agendas/2014/01-14/Ellis%20-%20Stip%20and%20Exh.pdf

Sincerely,

GWest

Galena West
Commission Counsel IV
Enforcement Division, FPPC
916-322-5796

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Matthew C. Alvarez, Esq. (SBN 301483)
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Email: jsutton@campaignlawyers.com

Attorneys for Cross-Defendant
MARK FARRELL

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Cross-defendants.

Case No. CGC-16-551745

DECLARATION OF MATTHEW C. ALVAREZ IN SUPPORT OF SPECIAL MOTION TO STRIKE THE CITY AND COUNTY OF SAN FRANCISCO'S CROSS-COMPLAINT; EXHIBITS

PART 1 OF 4

Judge: Hon. Harold E. Kahn
Date: August 11, 2016
Reservation #: 07180811-01
Time: 9:30am
Dept: 302

I, Matthew C. Alvarez, declare based on my personal knowledge and under penalty of perjury that:

1. I am an attorney licensed to practice law in the State of California and am an associate at the Sutton Law Firm, which represents San Francisco Supervisor Mark Farrell in his lawsuit against the City and County of San Francisco.

2. I represented Supervisor Farrell in connection with the forfeiture demand issued by the San Francisco Ethics Commission ("SFEC") in December 2014, including before the Bureau of Delinquent Revenue in the San Francisco Treasurer and Tax Collector's Office.

3. Attached hereto as Exhibit A is a true and correct copy of the original complaint filed by Charles Bell on December 23, 2010 with the SFEC and the California Fair Political Practices Commission ("FPPC"). Catherine Argumedo, Investigator/Legal Analyst for the SFEC, provided me with a copy of this document, which is date-stamped as received by the SFEC, via email on March 25, 2016.

4. Attached hereto as Exhibit B is a true and correct copy of January 26, 2011 letter from the SFEC to Charles Bell informing Mr. Bell of the SFEC's receipt of the complaint. I obtained this document via a Public Records Act request to the FPPC.

5. Attached hereto as Exhibit C is a true and correct copy of the stipulation between the FPPC, Chris Lee, and "Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor." I obtained this document by printing it from the FPPC's website at http://www.fppc.ca.gov/content/dam/fppc/documents/Stipulations/2014/November/09%20Common%20Sense%20Voters%20-%20Stip%20and%20Exh.pdf on July 13, 2016.

6. Attached hereto as Exhibit D is a true and correct copy of the SFEC's "Regulations for Investigations and Enforcement Proceedings." I obtained this document by printing it from the SFEC's website at http://www.fppc.ca.gov/content/dam/fppc/documents/Stipulations/2014/November/09%20Common%20Sense%20Voters%20-%20Stip%20and%20Exh.pdf on July 13, 2016.

7. Attached hereto as Exhibit E is a true and correct copy of the forfeiture demand letter sent to Supervisor Mark Farrell by the SFEC on December 9, 2014. I obtained this document by printing it from the SFEC's website at http://www.sfethics.org/files/ed.letter.farrell-1.pdf on July 13, 2106.

8. Attached hereto as Exhibit F is a true and correct copy of the March 15, 2015 letter sent by James R. Sutton to SFEC Executive Director John St. Croix. I obtained this document by printing it from the SFEC's website at http://www.sfethics.org/files/combined-sutton-letters.pdf on July 12, 2016.

9. Attached hereto as Exhibit G is a true and correct copy of the June 5, 2015 letter sent by St. Croix to Supervisor Farrell. I obtained this document by printing it from the SFEC's website at http://www.sfethics.org/files/farrell_packet_060515meeting.pdf on July 13, 2016.

10. Attached hereto as Exhibit H is a true and correct copy of the June 15, 2015 letter sent by St. Croix to Supervisor Farrell. I obtained this document by printing it out from the SFEC's website at http://www.sfethics.org/files/item-7----farrell-referral-and-response-letter-final.pdf on July 13, 2016.

11. Attached hereto as Exhibit I is a true and correct copy of the June 4, 2015 letter sent by James R. Sutton to the SFEC. I obtained this document from the Sutton Law Firm's files.

12. Attached hereto as Exhibit J is a true and correct copy of the November 4, 2015 letter sent by James R. Sutton to the Office of the Treasurer and Tax Collector. I obtained this document by printing it from the SFEC's website at http://www.sfethics.org/files/item-7----farrell-referral-and-response-letter-final.pdf on July 13, 2016.

13. Attached hereto as Exhibit K is a true and correct copy of the meeting minutes from the SFEC's March 23, 2015 monthly meeting. I obtained this document by printing it from the SFEC's website at

http://www.sfethics.org/ethics/2015/04/minutes-march-23-2015.html on July 13, 2016.

14. Attached hereto as Exhibit L is a true and correct copy of the meeting minutes from the SFEC's April 27, 2015 monthly meeting. I obtained this document by printing it from the SFEC's website at http://www.sfethics.org/ethics/2015/05/minutes-april-27-2015.html on July 13, 2016.

15. Attached hereto as Exhibit M is a true and correct copy of the March 4, 2008 memorandum from St. Croix to the SFEC Commissioners. I obtained this document by printing it from the SFEC's website at http://www.sfethics.org/files/combined-sutton-letters.pdf on July 13, 2016.

16. Attached hereto as Exhibit N is a true and correct copy of the relevant pages of Common Sense Voters' campaign reports from 2010 and 2011. I obtained these documents from the SFEC's office and by printing them from the SFEC's website.

17. Attached hereto as Exhibit O is a true and correct copy of the relevant pages of the Mark Farrell for District 2 Supervisor 2010 committee's campaign reports from 2010 and 2011. I obtained these documents by printing them from the SFEC's website.

18. Attached hereto as Exhibit P is a true and correct copy of the August 8, 2008 Memorandum from the St. Croix to SFEC staff. I obtained this document by printing it out from the SFEC's website at http://www.sfethics.org/files/combined-sutton-letters.pdf on July 13, 2016.

19. Attached hereto as Exhibit Q is a true and correct copy of the meeting minutes from the SFEC's June 5, 2015 monthly meeting. I obtained this document by printing it from the SFEC's website at http://www.sfethics.org/ethics/2015/06/minutes-june-5-2015.html on July 13, 2016.

20. Attached hereto as Exhibit R is a true and correct copy of a 1/25/16 article from the San Francisco Examiner titled "Supervisor Mark Farrell Requests Dismissal of Past-due $191K Ethics Fine." I obtained this document by printing it from the Examiner's website at http://www.sfexaminer.com/supervisor-mark-farrell-requests-dismissal-of-past-due-191k-

ethics-fine/ on July 13, 2016.

21. Attached hereto as Exhibit S is a true and correct copy of a 2/2/16 article from the San Francisco Weekly titled "Supervisor Farrell Won't Pay His Ethics Fine – Or Talk About it." I obtained this document by printing it from the Weekly's website at http://www.sfweekly.com/sanfrancisco/news-san-francisco-mark-farrell-ethics-commission-fine-campaign-politics-chris-lee-election-money-law-common-sense-voters-larry-bu/Content?oid=4448414 on July 13, 2016.

22. Attached hereto as Exhibit T is a true and correct copy of the FPPC's October 3, 2012 interview summary of Chris Lee. I obtained this document via a Public Records Act request to the FPPC.

23. Attached hereto as Exhibit U is a true and correct copy of the FPPC's October 4, 2012 interview summary of Jack Helfand. I obtained this document via a Public Records Act request to the FPPC.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 14, 2016

Matthew C. Alvarez

Exhibit A

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2011 JAN -5 PM 2:26

December 23, 2010

BY FIRST CLASS MAIL

Mr. John St. Croix
San Francisco Ethics Commission
30 Van Ness Avenue, Suite 3900
San Francisco, California 94102

Mr. Roman Porter
Executive Director
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Mr. Gary Winuk
Chief, Enforcement Division
Fair Political Practices Commission
Enforcement Division
428 J Street, Suite 620
Sacramento, California 95814

Re: **Formal Complaint Against Common Sense Voters, SF 2010, Vote for Mark Farrell for District 2 Supervisor; ID #1332919 and related supporters**

Dear Mr. St. Croix, Mr. Porter, and Mr. Winuk:

This firm represents Janet Reilly.

We are writing to lodge a formal complaint against the committee called "Common Sense Voters, SF 2010, Vote for Mark Farrell for District 2 Supervisor," ("the Committee") and related supporters. The Committee has been engaged in raising and expending funds for the purpose of massively opposing Janet Reilly for San Francisco District 2 Supervisor and thereby supporting her opponent Mark Farrell for the same office. This is a new complaint being lodged with the San Francisco Ethics Commission. This complaint also supplements a prior complaint

that was filed with the Fair Political Practices Commission on behalf of the Janet Reilly for District 2 Supervisor 2010 committee by Thomas A. Willis of the Remcho, Johansen & Purcell law firm. A copy of the complaint and attachments sent by Mr. Willis to the Fair Political Practices Commission is included herewith and incorporated into this complaint. We request that the Fair Political Practices Commission treat the complainants for both complaints as being Janet Reilly. Janet Reilly was a candidate for District 2 Supervisor in 2010. With the consent of Mr. Willis, this is to advise you that this firm will serve as primary legal counsel for the complainants with respect to both complaints.

We are writing to request that each of you investigate, as applicable, possible violations of the California Political Reform Act and of the San Francisco Campaign Finance Reform Act. These violations relate generally to the unlawful making of independent expenditures by the Committee and failure of the Committee to properly disclose complete and timely information about the Committee in its campaign mass mailing disclaimers and on other advertisements and on committee reports. This letter is sent as a formal complaint pursuant to Government Code section 83115, FPPC Regulation 18360, and San Francisco Campaign Finance Reform Ordinance section 1.168.

The election on November 2, 2010 was vital to the future of the City of San Francisco. That election involved important races for County Supervisor. The Committee made independent expenditures for candidate Mark Farrell and against Janet Reilly, both of whom were competing for the District 2 Supervisor seat. Janet Reilly won the first-place vote in the election by 198 votes. Through the city's Ranked Choice Voting algorithm, however, Mark Farrell was elected Supervisor thanks to a substantial shift of second and third place votes.

The Committee failed to comply with key and important provisions of the Political Reform Act ("PRA") and regulations promulgated by the Fair Political Practices Commission ("FPPC"). The Committee also failed to comply with provisions of the San Francisco Campaign Finance Reform Act ("SFCFRO"). It is critical that full compliance with the reporting requirements of the applicable laws was assured so that the voters of San Francisco would have full knowledge of all information pertinent to their decision on how to vote. The public must rely on your agencies to make sure that the laws have been fully followed for the benefit of the citizens in the public interest. It is not enough that the perpetrators in this situation be given a slap on the wrist through insubstantial warnings or even fines. It is important that an example be set for future elections so that persons otherwise inclined to risk receive affordable fines or penalties in trade for achieving much more desirable election results are deterred from such action. We respectfully request that your agencies investigate the allegations and facts in this complaint and take the maximum action possible for the substantiated transgressions.

Here are the pertinent facts.

1. The Committee filed an initial Form 410 Statement of Organization with the San Francisco Ethics Commission on October 13, 2010. The Committee described itself as a "primarily formed committee" in support of Mark Farrell for District 2 Supervisor. The

Form 410 showed Jack Helfand as the only other principal officer of the committee who is primarily responsible for approving the Committee's political activity.

2. The Committee filed a Form 460 for the period October 1, 2010, through October 16, 2010, with the San Francisco Ethics Commission that was dated October 21, 2010. The Form 460 disclosed $30,500 in contributions from 5 different contributors in amounts ranging from $1,000 to $15,000.

3. The Committee filed a Form 496 on October 20, 2010, disclosing that expenditures for mailers and a website "in opposition to Janet Reilly for Supervisor" were made on October 19, 2010. The Form also disclosed substantial receipts in the form of contributions by Thomas Coates totaling approximately $100,000 on October 18, 2010, and from another contributor in the amount of $50,000 on October 18, 2010.

4. The Committee filed a Form 496 on October 26, 2010, disclosing an independent expenditure of $35,000 for a doorhanger "in support of Mark Farrell for Supervisor." The Form also disclosed receipt of an additional contribution of $41,000 from Thomas Coates on October 25, 2010. Doorhangers were in fact distributed by the Committee to households in San Francisco prior to election day. A copy of the doorhanger is included herewith.

5. The Committee distributed the "Man Behind the Curtain" mass mailing on or about October 22, 2010 and distributed the "Prop H" mass mailing on or about October 25, 2010, and distributed the "Captain Mysterious" mass mailing on or about October 27, 2010. These mailings mainly attacked Janet Reilly as a candidate for Supervisor and only nominally supported Mark Farrell by including a tagline supporting him in the name of the Committee shown on the mailing. Copies of those mass mailings are included herewith.

6. The Committee distributed the "Comparative" mass mailing on or about October 22, 2010. This mailing falsely states that Janet Reilly was endorsed by Supervisor Chris Daly. A copy of the mailer is included herewith.

7. A copy of an article published on October 29, 2010, in the San Francisco Bay Guardian, in which Supervisor Chris Daly emphasized his opposition to Janet Reilly for Supervisor is included herewith.

8. The treasurer of the Mark Farrell for District 2 Supervisor 2010 committee (ID #1320480), which is Mark Farrell's candidate-controlled committee, is Stacy Owens. Stacy Owens is the same treasurer for the Committee.

9. Michaela Alioto-Pier is the current Supervisor of District 2 and, due to court actions interpreting San Francisco laws, was not permitted to run for another term on the Board of Supervisors. Supervisor Alioto-Pier played a substantial role, as reported in the press,

in coordinating with the Committee and its IES, which lead to Janet Reilly's defeat. A copy of an article from the San Francisco Chronicle, dated October 27, 2010, which ties the Supervisor closely to the Committee and directly implies her direction of the committee's activities, is included herewith.

10. The Committee distributed the doorhanger, as described in section 4 above, which included a letter directly from Supervisor Alioto-Pier supporting Mark Farrell and opposing Janet Reilly as Mark Farrell's main opponent. The doorhanger included a photograph of Michaela Alioto-Pier. Supervisor Alioto-Pier coordinated with the committee for purposes of including her photograph and personalized letter.

11. The Committee and Michaela Alioto-Pier's various campaign committees (i.e., 2006 Supervisorial reelection campaign committee and 2010 State Insurance Commissioner campaign committee) have both used Rich Schlackman's company, MSHC Partners, for preparing and producing campaign literature. A presumption exists that Supervisor Alioto-Pier, in coordinating, communicating, cooperating, and acting in concert with the Committee, recommended the use of Rich Schlackman's company. Attached is an article from the San Francisco Examiner, dated July 23, 2009, indicating that Rich Schlackman's MSHC Partners was handling all of the direct mail and internet advertising for Alioto-Pier's State Insurance Commissioner campaign. Also attached is a copy of the pertinent pages from Alioto-Pier's 2008 Form 460 showing expenditures made to MSHC Partners.

12. The Committee also used Rich Schlackman's company, MHSC Partners, to prepare its campaign mail and materials. Attached are copies of pertinent pages from the Committee's Third Party Disclosure Form Regarding San Francisco Candidates filed on October 23, 2010, with the SFEC that show expenditures made to MSHC Partners. MSHC Partners was a common vendor used by the 2010 Alioto-Pier State Insurance Commissioner committee, the 2006 Alioto-Pier Supervisorial Reelection committee, and the Committee in 2010.

13. There appears to be very close insider relationships between Mark Farrell and the parties supporting Mark Farrell for Supervisor. Attached are 17 photographs, 15 of which depict Supervisor Alioto-Pier at a Farrell campaign event. The photos also show a house party for Mark Farrell hosted by Thomas Coates. These photos were uploaded onto the Farrell Facebook site on October 15, 2010, as evidenced by one of the attached images that notes the upload date of the album. Note that the Committee was formed on October 2, 2010. One of the attached photos depicts Mark Farrell together with Thomas Coates and Michaela Alioto-Pier just days before Mr. Coates made a $100,000 contribution to the Committee for purposes of making independent expenditures largely against Janet Reilly for purposes of benefiting Mark Farrell.

Based on the foregoing facts, we believe that the Committee may have violated a number of legal provisions, as follows:

A. POLITICAL REFORM ACT VIOLATIONS

1. The Committee appears to be controlled by Supervisor Michaela Alioto-Pier and would thereby be prohibited from making IEs from Committee funds.

a. A controlled committee is defined in part by Government Code 82016 as meaning "...a committee that is controlled directly or indirectly by a candidate...or that acts jointly with a candidate...in connection with the making of expenditures. A candidate...controls a committee if he or she controls or has a significant influence on the actions of decisions of the committee."

b. Under the law, an officeholder retains his or her status as a candidate during the period that the person holds office. Michaela Alioto-Pier holds the office of District 2 Supervisor in San Francisco currently.

c. California Government Code Section 85501 states: "A controlled committee of a candidate may not make independent expenditures and may not contribute funds to another committee for the purpose of making independent expenditures to support or oppose other candidates."

d. In support of this allegation, the October 27, 2010, San Francisco Chronicle article stated, in part, as follows:

"At the center of the fight is Janet Reilly, wife of political mover and shaker Clint Reilly. She's been endorsed by Mayor Gavin Newsom and Sen. Dianne Feinstein; and, until recently, was thought to be the odds-on favorite to succeed her one-time friend, termed-out Supervisor Michela Alioto-Pier. Alioto-Pier, however, is supporting Reilly's main opponent in the race, Mark Farrell - and has backed it up with a $221,000 independent spending effort that includes a $141,000 contribution from real estate magnate Tom Coates and $50,000 from art philanthropist and socialite Dede Wilsey."

Moreover, the article goes on to describe the exact nature and thrust of the attacks to come from the Committee as described by Alioto-Pier: "The money will be used in a closing campaign to 'educate' voters about Reilly's support for such causes as publicly owned power and ties to Supervisor Chris Daly and former Supervisor Aaron Peskin - none of them big favorites in the moderate-to-liberal district. 'It's nothing personal,' Alioto-Pier said of the incoming missile attack."

e. Further support of control of the Committee by officeholder/candidate Alioto-Pier is shown by the inclusion of the Alioto-Pier letter and photo in the doorhanger, the intimate photographs of the fundraising event hosted by Thomas Coates, and the common use of vendors by the Committee and the Alioto-Pier committee.

f. The expenditure of approximately $250,000 by the Committee under circumstances whereby Supervisor Alioto-Pier "controls" the Committee, as defined by Government Code Section 82016, would be totally unlawful and in direct contravention of the clear prohibitions of law.

g. A candidate-controlled committee making IEs in an election clearly undermines democratic principles for elections and should not be allowed to occur without severe penalties.

h. Notwithstanding the absolute prohibition on a candidate-controlled committee making IEs for or against another candidate, the Committee has committed numerous other violations of law as well, as explained below.

2. As a controlled committee of Supervisor Michaela Alioto-Pier, the Committee should have included the Supervisor's name in the Committee name and on campaign mass mailings, doorhangers and campaign reports.

   a. The Committee's Forms 410, 460, and campaign advertisements do not include any reference to Supervisor Alioto-Pier whatsoever, thereby constituting multiple violations of the law if in fact the Supervisor did control, act jointly with, or have a significant influence on the actions of the Committee as suggested by the San Francisco Chronicle article included herewith.

3. The Committee may have failed to disclose on the Form 410 its principal officers as required by FPPC Regulation 18402.1.

   a. Fair Political Practices Commission regulation section 18402.1 requires a committee to disclose on the Form 410 Statement of Organization the identity of up to 3 principal officers who are primarily responsible for approving the committee's political activity.

   b. Only Jack Helfand is shown as a principal officer of the Committee.

   c. Given the publicized explanation regarding the role of Supervisor Alioto-Pier in connection with the Committee, the Committee may have failed to disclose Supervisor Alioto-Pier not only as a controlling candidate, but also as a principal officer of the Committee. This requires further inquiry that can be accomplished best by the FPPC and SFEC as the responsible enforcement agencies. Failure to list Supervisor Alioto-Pier on the Form 410 as a principal officer and as the controlling candidate of the Committee, if such is the case, would involve multiple violations of the law.

4. The Committee failed to include its major funders in the name of the Committee.

a. Government Code section 84506 requires a committee that makes independent expenditures supporting or opposing a candidate to include a disclosure statement in mass mailing advertisements of the name of the committee making the independent expenditures and the names of the persons from whom the committee has received its two highest cumulative contributions of $50,000 or more.

b. The Committee received contributions of $100,000 on October 18 and $41,000 on October 25, 2010, from Thomas Coates. In addition, Diane B. Wilsey made a contribution of $50,000 to the Committee on October 18, 2010. The following tagline: "Major funding by Thomas Coates and Diane B. Wilsey" was required to be included with the name of the committee on the mass mailings. The tagline is missing from both mass mailings. Failure to include the major funder tagline constitutes a violation of law.

5. The Committee failed to include a reference to its opposition to Janet Reilly in the name of the Committee.

a. FPPC regulation section 18402(c)(3) provides that a committee must include in its name the last name of each candidate that the committee supports or opposes, as shown on the Committee's Form 410, and include in the Committee's name the office sought, year of election, and whether the committee supports or opposes each candidate.

b. The Form 410 fails to disclose opposition to Janet Reilly.

c. The Committee's Form 496 filed on October 20, 2010, included a description of mass mailings in opposition to Janet Reilly.

d. The two mass mailings included herewith primarily attack Janet Reilly and do not include any positive message in support of Mark Farrell other than a reference within the name of the Committee.

e. The Committee has failed to properly disclose in its Form 410 its positions in support of Mark Farrell as well as its opposition to Janet Reilly, which constitutes a violation of law.

f. The Committee has failed to properly include in its name its opposition to Janet Reilly, which constitutes a violation of law.

6. The Committee distributed a doorhanger in the days before the election that includes a disclaimer which fails to comply with various provisions of law.

a. The disclaimer fails to include reference to Supervisor Alioto-Pier as controlling the committee.

b. The disclaimer fails to include the $50,000 contributors tagline required by Government Code Section 84506.

c. The disclaimer fails to comply with Government Code Section 84507, which provides in part that any disclosure required pursuant to Section 84506 must be printed clearly and legibly in no less than 10 –point type and in a conspicuous manner as defined by the Commission. The disclaimer is very difficult to read and does not appear to comply with this requirement. It appears to have been designed purposely to not be legible and readable easily by voters to whom it was sent.

B. SAN FRANCISCO CAMPAIGN FINANCE REFORM ORDINANCE VIOLATIONS

1. The Committee failed to include a proper disclaimer required by the San Francisco Campaign Finance Reform Ordinance.

a. The San Francisco Campaign Finance Reform Ordinance Section 1.161(b)(1) requires that any person making an independent expenditure for a mass mailing that supports or opposes a candidate for City elective office to include a special notice on the mailer in at least 14-point type. That notice is included on the October 25, 2010, mass mailing, but is missing completely on the October 22, 2010, mass mailing. This constitutes a violation of the San Francisco CFRO ordinance.

2. The Committee has likely violated SFCFRO Section 1.163.5, which provides that no person may sponsor any advertisement within 90 days of an election that contains a false endorsement where the person acts with knowledge of the falsity of the endorsement or with reckless disregard for the truth or falsity of the endorsement.

a. This section of the SFCFRO describes a false endorsement, in part, as any statement, photo, or image representing that a person expressly endorses or conveys support for or opposition to a candidate when in fact the person does not expressly endorse or convey support or opposition to a candidate as stated or implied in the campaign communication.

b. The "Comparative" mass mailing directly states that Janet Reilly had been endorsed by Chris Daly. However, Chris Daly never endorsed Janet Reilly and in fact emphasized his opposition to Reilly publicly in an article published on October 29, 2010, in the San Francisco Bay Guardian.

c. The "Man Behind the Curtain" mass mailing falsely implies that Chris Daly is tied closely to Janet Reilly and has not only endorsed her but controls her agenda. The piece states:

"PAY NO ATTENTION TO THAT MAN BEHIND THE CURTAIN. Who's the wizard behind Janet Reilly's agenda? It's none other than Chris Daly."

This is false and the persons who created and paid for the ad knew it was false or acted in reckless disregard for the truth or falsity of the representation. They knew clearly that this false statement would create an undesirable impression on voters which was aimed at getting voters to vote against Janet Reilly in District 2.

d. The penalty for violation of this provision of the SFCFRO is an injunction in court before the election to restrain the issuance of such false materials. However, once the Reilly committee learned of these campaign materials in the days just before the election, it was too late to apply for and get relief from a court. There may not be a current remedy available now after the election, but violation of this section is nevertheless being alleged to demonstrate additional violation of the laws, disregard for the truth or falsity of statements made by the Committee, and further potential evidence of willfulness among the persons involved with the Committee to intentionally violate applicable laws. See Section C below.

C. CLAIMS COMMON TO BOTH PRA AND SFCFRO

1. The Committee includes various professional and experienced persons who should be held to a higher standard for appearing to have violated various provisions of the PRA and SFCFRO either negligently or intentionally.

a. The Committee made a variety of costly IEs to oppose Janet Reilly and thereby support Mark Farrell for Supervisor. The Committee was comprised of (1) a treasurer who is also the treasurer of the Mark Farrell for District 2 Supervisor committee, (2) current San Francisco Supervisor Alioto-Pier who openly and strongly supported Mark Farrell, (3) attorney Jack Helfand who is shown on the Form 410 as the only principal officer making decisions for the committee, (4) veteran political materials designer and vendor Richard Schlackman through his company (MHSC Partners), and (5) wealthy political contributors and major funders Diane "Dede" Wilsey and Thomas Coates who provided substantial funds for the IE advertisements. All of these persons have had substantial experience in political campaigns and should have a fairly sophisticated understanding of the laws regulating political contributions, expenditures, disclaimers, and reporting. They should be held to a higher standard than average laypersons who have no prior experience with political and election laws.

b. The Committee distributed various and numerous materials sorely lacking proper and correct disclaimers and information, and knew or should have known that the materials were defective and incomplete. The materials contained false statements about Janet Reilly, such as that Janet Reilly made various contributions, which was not the case, and that Supervisor Chris Daly, unpopular in District 2, endorsed Janet Reilly, which was not the case. These statements were included on the Committee's campaign materials with reckless disregard for the truth or falsity of the statements. They were made for the apparent sole purpose of falsely discrediting Janet Reilly and thereby securing an unearned win for Mark Farrell. The Committee appears to have intentionally hidden from the public the major funders to their Committee. Most importantly, the Committee appears to have qualified as a committee controlled by officeholder/candidate Supervisor Michaela Alioto-Pier and was thereby not permitted under law to make IEs at all for Mark Farrell and against Janet Reilly.

c. Should a factual investigation bear out that the foregoing is true and correct, then the various parties involved would be subject to penalties for not only negligent, but also intentional, violations of the PRA and SFCFRO.

2. The FPPC and SFEC are requested to investigate possible involvement of Mark Farrell, his controlled committee, and his agents and supporters in coordinating with the Committee in the making of IEs.

a. There is some indication of an overlap between the Farrell candidate-controlled committee and the Committee due to a common treasurer and common agents and supporters. This requires further inquiry.

b. Should the facts show that Mark Farrell and/or his agents/supporters communicated, coordinated, cooperated, or acted in concert with the Committee in the making of IEs, then a violation of additional laws under the PRA and SFCFRO would be triggered. We request that this area be fully explored by the FPPC and SFEC.

We are submitting this complaint to your respective offices with the request that you investigate the Committee and its supporters and make a determination as to the violations of the California PRA, FPPC regulations, and the SFCFRO asserted above. We understand that the FPPC has jurisdiction over violations of the PRA, but not provisions of the SFCFRO, and that the SFEC has jurisdiction over violations of both the PRA and the SFCFRO. It is very important that the citizens of San Francisco receive the most accurate and complete information possible to assist them in assessing who is influencing them as to how to vote in any election. On behalf of our clients, we respectfully request that your respective offices fully investigate the allegations above. If, as it appears, there is a concerted effort on the part of the Committee and its major funders and supporters and an apparent controlling officeholder/candidate to hide valuable information from the voters, then those facts need to be brought to light and the responsible

persons held accountable. The integrity of elections in San Francisco, both currently and in the future, is involved. If persons are permitted to act with impunity by engaging in unlawful acts to win elections, without real fear of any meaningful retribution, then corruption of the election process will become commonplace. Any persons who may be responsible for such violations or who may be participating in a possible conspiracy to hide information from the voters need to be made aware that they could be subject to extensive administrative penalties up to $5,000 per violation, to civil lawsuit penalties up to 3 times the amount not reported properly, and/or even possible criminal penalties involving fines and/or jail time upon conviction.

We request that the FPPC initiate civil action against the responsible parties pursuant to Government Code Section 91007 and that we be advised in writing within 120 days pursuant to the statute of the decision of the FPPC as the civil prosecutor to file a civil action. We request to be advised by the SFEC as to whether the SFEC intends to pursue administrative and/or civil actions against the persons responsible for alleged violations of the PRA and SFCFRO.

I certify under the penalty of perjury of the laws of the State of California that the foregoing is true and correct and as to matters stated on information and belief, I believe them to be true and correct.

Very truly yours,

Charles H. Bell, Jr.

CHB: sd

Attachments

1. Copy of Complaint with attachments, dated October 28, 2010, filed by Thomas Willis with Fair Political Practices Commission.

2. Copy of doorhanger distributed by the Committee prior to the November 2, 2010 election.

3. Copies of "Man Behind the Curtain" mass mailing and "Prop H" mass mailing distributed by the Committee prior to the November 2, 2010 election.

4. Copy of article from the San Francisco Chronicle, dated October 27, 2010.

5. Copy of article from the San Francisco Examiner, dated July 23, 2010.

6. Copies of pertinent pages from Michaela Alioto-Pier's 2008 Form 460 showing expenditures to MSHC Partners.

7. Copies of pertinent pages from the Committee's filing with the San Francisco Ethics Commission showing expenditures to MSHC Partners.

8. Copies of photographs posted on the Mark Farrell Facebook site depicting major funder Thomas Coates, Supervisor Alioto-Pier, and Mark Farrell at political events just prior to the making of independent expenditures by the Committee before the November 2, 2010 election

ATTACHMENT #1

REMCHO, JOHANSEN & PURCELL, LLP
ATTORNEYS AT LAW

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Joseph Remcho (1944-2003)
Robin B. Johansen
Kathleen J. Purcell (Ret.)
James C. Harrison
Thomas A. Willis
Karen Getman
Margaret R. Prinzing
Kari Krogseng

October 28, 2010

VIA FACSIMILE & MAIL

Roman G. Porter
Executive Director
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95814

Re: Formal Complaint Against Common Sense Voters, SF 2010, Vote for Mark Farrell for District 2 Supervisor; ID #1332919

Dear Mr. Porter:

This firm represents Janet Reilly for District 2 Supervisor 2010 (ID #1319573). Ms. Reilly is running for Board of Supervisors in San Francisco. We are writing to lodge a formal complaint against the committee called "Common Sense Voters, SF 2010, Vote for Mark Farrell for District 2 Supervisor," (the Committee"), which is an independent expenditure committee running a massive campaign against Ms. Reilly. The Committee's ads violate several Political Reform Act provisions, including the requirement that major donors be listed on advertisements.

Just last week, the FPPC took immediate action against Yes on Prop B Pension & Benefits Reform Committee for similar violations and demanded that the committee stop airing ads that failed to inform voters who were behind those ads. We respectfully request that the FPPC take similarly swift action against the Committee by opening an investigation and compelling immediate compliance with the law. This letter is sent as a formal complaint pursuant to Government Code section 83115.

Here are the pertinent facts:

1. The Committee filed an initial Form 410 Statement of Organization with the San Francisco Ethics Commission on October 13, 2010. The Committee described itself as a "primarily formed committee" in support of Mark Farrell for District 2 Supervisor. The Form 410 showed Jack Helfand as the only other

principal officer of the committee who is primarily responsible for approving the Committee's political activity. (Attached as Exhibit A.)

2. The Committee filed a Form 460 for the period October 1, 2010, through October 16, 2010, with the San Francisco Ethics Commission that was dated October 21, 2010. The Form 460 disclosed $30,500 in contributions from the different contributors in amounts ranging from $1,000 to $15,000. (Attached as Exhibit B.)

3. The Committee filed a Form 496 on October 20, 2010, disclosing that expenditures for mailers and a website "in opposition to Janet Reilly for Supervisor" were made on October 19, 2010. The Form also disclosed substantial receipts in the form of contributions by Thomas J. Coates totaling $100,000 on October 18, 2010, and by Diane B. Wilsey in the amount of $50,000 also on October 18, 2010. (Attached as Exhibit C.)

4. The Committee filed a Form 496 on October 26, 2010, disclosing an independent expenditure of $35,000 for a doorhanger "in support of Mark Farrell for Supervisor." The Form also disclosed receipt of an additional contribution of $41,000 from Thomas J. Coates on October 25, 2010. (Attached as Exhibit D.)

5. The Committee distributed the "Man Behind the Curtain" mass mailing on or about October 22, 2010 and distributed the "Prop H" mass mailing on or about October 25, 2010. These mailings mainly attacked Janet Reilly as a candidate for Supervisor and only nominally supported Mark Farrell by including a tagline supporting him in the name of the Committee shown on the mailing. (These are attached as Exhibit E.)

Based on these facts, it is apparent the Committee is likely violating provisions of the Political Reform Act.

First, the Committee failed to include its major donors in the name of the Committee. Government Code section 84506 requires a committee that makes independent expenditures supporting or opposing a candidate to include a disclosure statement in mass mailing advertisements of the name of the committee making the independent expenditures and the names of the persons from whom the committee has received its two highest cumulative contributions of $50,000 or more. The Committee received contributions of $100,000 on October 18 and $41,000 on October 25, 2010, from Thomas Coates. In addition, the Committee received a contribution of $50,000 from Diane B. Wilsey on October 18, 2010. A statement that "Major funding by [insert names of top two funders of $50,000 or more]" was required to be included on the mass mailings. The identification of the major donors is missing from both mass mailings. Failure to include the major funder information constitutes a violation of law.

Second, the Committee failed to include a reference to its opposition to Janet Reilly in the name of the Committee. FPPC regulation section 18402(c)(3) provides that a

committee must include in its name the last name of each candidate that the committee supports or opposes, as shown on the Committee's Form 410, and include in the Committee's name the office sought, year of election, and whether the committee supports or opposes each candidate. The Form 410 fails to disclose the Committee's opposition to Janet Reilly. The Committee's Form 496 filed on October 20, 2010, included a description of mass mailings in opposition to Janet Reilly. The two mass mailings included herewith attack Janet Reilly and do not include any positive message in support of Mark Farrell other than a reference in the name of the committee. The Committee has failed to properly include in its name its opposition to Janet Reilly, which constitutes a violation of law.

In sum, the Committee is hiding the major funders of these advertisements. This is a clear violation of the law, just like the Prop B case, and requires a similarly rapid response on the part of the FPPC in order to stop a flagrant example of voter deception. Given the immediacy of the election and the harm being done to San Francisco voters, we request that the FPPC immediately (1) demand that the Committee stop distributing ads that violate the disclosure laws and (2) fine the Committee.

I certify under penalty of perjury that, to the best of my knowledge, the information set forth in this complaint is true and complete.

Sincerely,



Thomas A. Willis

TAW:NL
Attachments
cc: Gary S. Winuk, Esq.
Chief, Enforcement Division
(via facsimile, w/attachments)
(00130812.2)

ATTACHMENT A

ORIGINAL

Statement of Organization
Recipient Committee

Type or print in ink

STATEMENT OF ORGANIZATION
CALIFORNIA FORM 410
For Official Use Only

Date Stamp
RECD
10 OCT 13 AM 9:29
S.F. ETHICS COMMISSION
BY pm 10-12-10 CTW

Statement Type: ☒ Initial (Not yet qualified ☒ or) ☐ Amendment (List I.D. number: #) ☐ Termination – See Part 5 (List I.D. number: #)

Date qualified as committee | Date qualified as committee (if applicable) | Date of Termination

1. Committee Information

NAME OF COMMITTEE
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

STREET ADDRESS (NO P.O. BOX)
[redacted]

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Woodside, CA		94062	(650) 868-1614

MAILING ADDRESS (IF DIFFERENT)

OPTIONAL: FAX / E-MAIL ADDRESS
commonsensevoters@gmail.com

COUNTY OF DOMICILE	COUNTY WHERE COMMITTEE IS ACTIVE IF DIFFERENT THAN COUNTY OF DOMICILE
San Mateo	San Francisco

Attach additional information on appropriately labeled continuation sheets.

2. Treasurer and Other Principal Officers

NAME OF TREASURER
Ms. Stacy Owens

STREET ADDRESS
[redacted]

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland,	CA	94618	(510) 652-1000

NAME OF ASSISTANT TREASURER, IF ANY
Mr. Henry C. Levy

STREET ADDRESS
[redacted]

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland,	CA	94618	(510) 652-1000

NAME AND POSITION OF OTHER PRINCIPAL OFFICER(S), IF APPLICABLE
Mr. Jack Helfand

MAILING ADDRESS
[redacted]

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Woodside,	CA	94062	(650) 868-1614

3. Verification

I have used all reasonable diligence in preparing this statement and to the bes[redacted]nd complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and c[redacted]

Executed on 10/12/2010 (DATE) By [redacted] (SIGNATURE OF TREASURER)

Executed on _____ (DATE) By _____ (SIGNATURE OF CONTROLLING OFFICEHOLDER, CANDIDATE, OR STATE MEASURE PROPONENT)

Executed on _____ (DATE) By _____ (SIGNATURE OF CONTROLLING OFFICEHOLDER, CANDIDATE, OR STATE MEASURE PROPONENT)

Executed on _____ (DATE) By _____ (SIGNATURE OF CONTROLLING OFFICEHOLDER, CANDIDATE, OR STATE MEASURE PROPONENT)

0114

Statement of Organization
Recipient Committee

STATEMENT OF ORGANIZATION
CALIFORNIA FORM 410
2 of 3

INSTRUCTIONS ON REVERSE

COMMITTEE NAME
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER

Complete the applicable sections.

Controlled Committee

- List the name of each controlling officeholder, candidate, or state measure proponent. If candidate or officeholder controlled, also list the elective office sought or held, and district number, if any, and the year of the election.
- List the political party with which each officeholder or candidate is affiliated or check "non-partisan."
- If this committee acts jointly with another controlled committee, list the name and identification number of the other controlled committee.

NAME OF CANDIDATE/OFFICEHOLDER/STATE MEASURE PROPONENT	ELECTIVE OFFICE SOUGHT OR HELD (INCLUDE DISTRICT NUMBER IF APPLICABLE)	YEAR OF ELECTION	PARTY
			☐ Non-Partisan
			☐ Non-Partisan

- List the financial institution where the campaign bank account is located (controlled "candidate election" committees only)

NAME OF FINANCIAL INSTITUTION	AREA CODE/PHONE	BANK ACCOUNT NUMBER
ADDRESS	CITY	STATE / ZIP CODE

Primarily Formed Committee Primarily formed to support or oppose specific candidates or measures in a single election. List below:

CANDIDATE(S) NAME OR MEASURE(S) FULL TITLE (INCLUDE BALLOT NO. OR LETTER)	CANDIDATE(S) OFFICE SOUGHT OR HELD OR MEASURE(S) JURISDICTION (INCLUDE DISTRICT NO., CITY OR COUNTY, AS APPLICABLE)	CHECK ONE	
		SUPPORT	OPPOSE
Mr. Mark Farrell	County Supervisor City & County of San Francisco Dist. No: 2	X	
		SUPPORT	OPPOSE

0115

Statement of Organization
Recipient Committee

INSTRUCTIONS ON REVERSE

STATEMENT OF ORGANIZATION
CALIFORNIA FORM 410
3 of 3

COMMITTEE NAME
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER

4. Type of Committee (Continued)

[illegible] election. Check only one box:

☐ CITY Committee ☐ COUNTY Committee ☐ STATE Committee

PROVIDE BRIEF DESCRIPTION OF ACTIVITY

Sponsored Committee List additional sponsors on an attachment.

NAME OF SPONSOR

INDUSTRY GROUP OR AFFILIATION OF SPONSOR

STREET ADDRESS NO. AND STREET CITY STATE ZIP CODE

Small Contributor Committee ☐ ____/____/____ Date qualified Check box and provide the date this committee qualified as a small contributor committee. If the committee qualified as a small contributor committee on January 1, 2001, enter 1/1/01.

5. Termination Requirements

By signing the verification, the treasurer, assistant treasurer and/or candidate, officeholder, or proponent certify that all of the following conditions have been met:

- This committee has ceased to receive contributions and make expenditures;
- This committee does not anticipate receiving contributions or making expenditures in the future;
- This committee has eliminated or has no intention or ability to discharge all debts, loans received, and other obligations;
- This committee has no surplus funds; and
- This committee has filed all campaign statements required by the Political Reform Act disclosing all reportable transactions.
  - -- There are restrictions on the disposition of surplus campaign funds held by elected officers who are leaving office and by defeated candidates. Refer to Government Code Section 89519.
  - -- Additional filing obligations will be incurred if, after terminating, the committee receives or spends any funds, or receives the forgiveness of a loan, repayments of loans made to others, or any other receipts.

0116

ATTACHMENT B

Recipient Committee Campaign Statement Cover Page

(Government Code Sections 84200-84216.5)

SEE INSTRUCTIONS ON REVERSE

Type or print in ink.

Date Stamp

COVER PAGE

CALIFORNIA FORM 460

Page 1 of 4

For Official Use Only

Statement covers period: from 01/01/2010 through 10/16/2010

Date of election if applicable: (Month, Day, Year) 11/02/2010

1. Type of Recipient Committee: All Committees – Complete Parts 1, 2, 3, and 4.

- ☐ Officeholder, Candidate Controlled Committee
  - ○ State Candidate Election Committee
  - ○ Recall
  - *(Also Complete Part 5)*
- ☐ General Purpose Committee
  - ○ Sponsored
  - ○ Small Contributor Committee
  - ○ Political Party/Central Committee
- ☒ Primarily Formed Ballot Measure Committee
  - ○ Controlled
  - ○ Sponsored
  - *(Also Complete Part 6)*
- ☐ Primarily Formed Candidate/ Officeholder Committee *(Also Complete Part 7)*

2. Type of Statement:

- ☒ Preelection Statement
- ☐ Semi-annual Statement
- ☐ Termination Statement (Also file a Form 410 Termination)
- ☐ Amendment (Explain below)
- ☐ Quarterly Statement
- ☐ Special Odd-Year Report
- ☐ Supplemental Preelection Statement - Attach Form 495

3. Committee Information

I.D. NUMBER: 1332919

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

STREET ADDRESS (NO P.O. BOX)

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Woodside	CA	94062	(650) 868-1614

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX

CITY	STATE	ZIP CODE	AREA CODE/PHONE

OPTIONAL: FAX / E-MAIL ADDRESS
commonsensevoters@gmail.com

Treasurer(s)

NAME OF TREASURER
Ms. Stacy Owens

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

NAME OF ASSISTANT TREASURER, IF ANY
Mr. Henry C. Levy

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

OPTIONAL: FAX / E-MAIL ADDRESS

4. Verification

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 10/21/2010 (Date) By Stacy Owens (Signature of Treasurer or Assistant Treasurer)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

Recipient Committee Campaign Statement Cover Page — Part 2

Type or print in ink.

CALIFORNIA FORM 460

5. Officeholder or Candidate Controlled Committee

NAME OF OFFICEHOLDER OR CANDIDATE

OFFICE SOUGHT OR HELD (INCLUDE LOCATION AND DISTRICT NUMBER IF APPLICABLE)

RESIDENTIAL/BUSINESS ADDRESS (NO. AND STREET) CITY STATE ZIP

Related Committees Not Included in this Statement: *List any committees not included in this statement that are controlled by you or are primarily formed to receive contributions or make expenditures on behalf of your candidacy.*

COMMITTEE NAME	I.D. NUMBER
NAME OF TREASURER	CONTROLLED COMMITTEE? ☐ YES ☐ NO

COMMITTEE ADDRESS STREET ADDRESS (NO P.O. BOX)

CITY STATE ZIP CODE AREA CODE/PHONE

COMMITTEE NAME	I.D. NUMBER
NAME OF TREASURER	CONTROLLED COMMITTEE? ☐ YES ☐ NO

COMMITTEE ADDRESS STREET ADDRESS (NO P.O. BOX)

CITY STATE ZIP CODE AREA CODE/PHONE

6. Primarily Formed Ballot Measure Committee

NAME OF BALLOT MEASURE

BALLOT NO. OR LETTER	JURISDICTION	☐ SUPPORT ☐ OPPOSE

Identify the controlling officeholder, candidate, or state measure proponent, if any.

NAME OF OFFICEHOLDER, CANDIDATE, OR PROPONENT

OFFICE SOUGHT OR HELD	DISTRICT NO. IF ANY

7. Primarily Formed Candidate/Officeholder Committee

List names of officeholder(s) or candidate(s) for which this committee is primarily formed.

NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE

Attach continuation sheets if necessary

Campaign Disclosure Statement
Summary Page

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

SUMMARY PAGE

Statement covers period
from 01/01/2010
through 10/16/2010

CALIFORNIA FORM 460

Page 3 of 4

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

Contributions Received

		Column A (TOTAL THIS PERIOD (FROM ATTACHED SCHEDULES))	Column B (CALENDAR YEAR TOTAL TO DATE)
1. Monetary Contributions	*Schedule A, Line 3*	$30,500.00	$30,500.00
2. Loans Received	*Schedule B, Line 3*	$0.00	$0.00
3. SUBTOTAL CASH CONTRIBUTIONS	*Add Lines 1 + 2*	$30,500.00	$30,500.00
4. Nonmonetary Contributions	*Schedule C, Line 3*	$0.00	$0.00
5. TOTAL CONTRIBUTIONS RECEIVED	*Add Lines 3 + 4*	$30,500.00	$30,500.00

Expenditures Made

6. Payments Made	*Schedule E, Line 4*	$0.00	$0.00
7. Loans Made	*Schedule H, Line 3*	$0.00	$0.00
8. SUBTOTAL CASH PAYMENTS	*Add Lines 6 + 7*	$0.00	$0.00
9. Accrued Expenses (Unpaid Bills)	*Schedule F, Line 3*	$0.00	$0.00
10. Nonmonetary Adjustment	*Schedule C, Line 3*	$0.00	$0.00
11. TOTAL EXPENDITURES MADE	*Add Lines 8 + 9 + 10*	$0.00	$0.00

Current Cash Statement

12. Beginning Cash Balance	*Previous Summary Page, Line 16*	$0.00
13. Cash Receipts	*Column A, Line 3 above*	$30,500.00
14. Miscellaneous Increases to Cash	*Schedule I, Line 4*	$0.00
15. Cash Payments	*Column A, Line 8 above*	$0.00
16. ENDING CASH BALANCE	*Add Lines 12 + 13 + 14, then subtract Line 15*	$30,500.00

If this is a termination statement, Line 15 must be zero.

17. LOAN GUARANTEES RECEIVED — *Schedule B, Part 2* — $0.00

Cash Equivalents and Outstanding Debts

18. Cash Equivalents	*See instructions on reverse*	$0.00
19. Outstanding Debts	*Add Line 2 + Line 9 in Column B above*	$0.00

To calculate Column B, add amounts in Column A to the corresponding amounts from Column B of your last report. Some amounts in Column A may be negative figures that should be subtracted from previous period amounts. If this is the first report being filed for this calendar year, only carry over the amounts from Lines 2, 7, and 9 (if any).

Calendar Year Summary for Candidates Running in Both the State Primary and General Elections

	1/1 through 6/30	7/1 to Date
20. Contributions Received	$	$
21. Expenditures Made	$	$

Expenditure Limit Summary for State Candidates

22. Cumulative Expenditures Made*
(If Subject to Voluntary Expenditure Limit)

Date of Election (mm/dd/yy)	Total to Date
/ /	$
/ /	$

*Amounts in this section may be different from amounts reported in Column B.

0120

Schedule A
Monetary Contributions Received

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

SCHEDULE A

Statement covers period
from 01/01/2010
through 10/16/2010

CALIFORNIA FORM 460

Page 4 of 4

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)	PER ELECTION TO DATE (IF REQUIRED)	
10/08/2010	Sam W. Humphreys San Francisco CA 94115	☒IND ☐COM ☐OTH ☐PTY ☐SCC	CEO London Bay Capital, LLC	$7,500.00	$7,500.00	G10	$7,500.00
10/02/2010	David Lamond San Francisco CA 94123	☒IND ☐COM ☐OTH ☐PTY ☐SCC	Business Manager Artis Capital Management	$2,000.00	$2,000.00	G10	$2,000.00
10/08/2010	Mark R. Malcoun San Francisco CA 94115	☒IND ☐COM ☐OTH ☐PTY ☐SCC	Analyst Zazove Associates	$5,000.00	$5,000.00	G10	$5,000.00
10/02/2010	Kamran Moghtaderi New York NY 10024	☒IND ☐COM ☐OTH ☐PTY ☐SCC	Investment Advisor Apis Capital Advisors, LLC	$15,000.00	$15,000.00	G10	$15,000.00
10/08/2010	Raj Venkatesan San Francisco CA 94118	☒IND ☐COM ☐OTH ☐PTY ☐SCC	Business Manager Standard Pacific Capital	$1,000.00	$1,000.00	G10	$1,000.00
			SUBTOTAL $	$30,500.00			

Schedule A Summary

1. Amount received this period – Itemized monetary contributions. (Include all Schedule A subtotals.) ..... $ $30,500.00
2. Amount received this period – unitemized monetary contributions of less than $100 ..... $ $0.00
3. Total monetary contributions received this period. (Add Lines 1 and 2. Enter here and on the Summary Page, Column A, Line 1.) ..... TOTAL $ $30,500.00

*Contributor Codes
IND – Individual
COM – Recipient Committee (other than PTY or SCC)
OTH – Other (e.g., business entity)
PTY – Political Party
SCC – Small Contributor Committee

ATTACHMENT C

Late Independent Expenditure Report

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

LATE INDEPENDENT EXPENDITURE REPORT

NAME OF FILER		Date of This Filing 10/20/2010	Date Stamp	CALIFORNIA FORM 496
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor				For Official Use Only
AREA CODE/PHONE NUMBER	I.D. NUMBER (If applicable) 1332919	Report No. 101910JR		
STREET ADDRESS		☐ Amendment to Report No. (explain below)		
CITY / STATE / ZIP CODE		No. of Pages 2		
Woodside, CA 94062				

1. List Only One Candidate or Ballot Measure

NAME OF CANDIDATE SUPPORTED OR OPPOSED			NAME OF BALLOT MEASURE SUPPORTED OR OPPOSED			
Janet Reilly						
OFFICE SOUGHT OR HELD/DISTRICT NO.	SUPPORT	OPPOSE	BALLOT NO./LETTER	JURISDICTION	SUPPORT	OPPOSE
County Supervisor City & County of San Francisco / 2		X				

2. Independent Expenditures Made *Attach additional information on appropriately labeled continuation sheets.*

DATE	DESCRIPTION OF EXPENDITURE	AMOUNT
10/19/2010	Mailer in opposition to Janet Reilly for San Francisco Supervisor, District 2.	13840.24
10/19/2010	Website in opposition to Janet Reilly for San Francisco Supervisor, District 2.	16200.00
10/19/2010	Mailer in opposition to Janet Reilly for San Francisco Supervisor, District 2.	30566.06

Reason for Amendment: _____

Late Independent Expenditure Report

LATE INDEPENDENT EXPENDITURE REPORT

CALIFORNIA FORM 496

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER (If applicable)
1332919

3. Contributions of $100 or More Received*

DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CONTRIBUTOR CODE**	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED	INTEREST RATES
10/18/2010	Thomas J. Coates San Francisco, CA 94111	[X] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC	Founding Partner Arroyo & Coates	100000.00	If loan, enter interest rate, if any _____%
10/18/2010	Diane B. Wilsey San Francisco, CA 94115	[X] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC	President A Wilsey Properties Co.	50000.00	If loan, enter interest rate, if any _____%
		[ ] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC			If loan, enter interest rate, if any _____%
		[ ] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC			If loan, enter interest rate, if any _____%
		[ ] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC			If loan, enter interest rate, if any _____%
		[ ] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC			If loan, enter interest rate, if any _____%

*Major donor and independent expenditure committees that do not receive contributions are not required to complete Part 3.

**Contributor Codes
IND – Individual
COM – Recipient Committee (other than PTY or SCC)
OTH – Other
PTY – Political Party
SCC – Small Contributor Committee

Late Independent Expenditure Report

LATE INDEPENDENT EXPENDITURE REPORT

CALIFORNIA FORM 496

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER (if applicable)
1332919

3. Contributions of $100 or More Received*

DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CONTRIBUTOR CODE**	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED	INTEREST RATES
10/25/2010	Thomas J. Coates San Francisco, CA 94111	[X] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC	Founding Partner Arroyo & Coates	41000.00	If loan, enter interest rate, if any _____%
		[ ] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC			If loan, enter interest rate, if any _____%
		[ ] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC			If loan, enter interest rate, if any _____%
		[ ] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC			If loan, enter interest rate, if any _____%
		[ ] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC			If loan, enter interest rate, if any _____%
		[ ] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC			If loan, enter interest rate, if any _____%

*Major donor and independent expenditure committees that do not receive contributions are not required to complete Part 3.

**Contributor Codes
IND – Individual
COM – Recipient Committee (other than PTY or SCC)
OTH – Other
PTY – Political Party
SCC – Small Contributor Committee

ATTACHMENT E

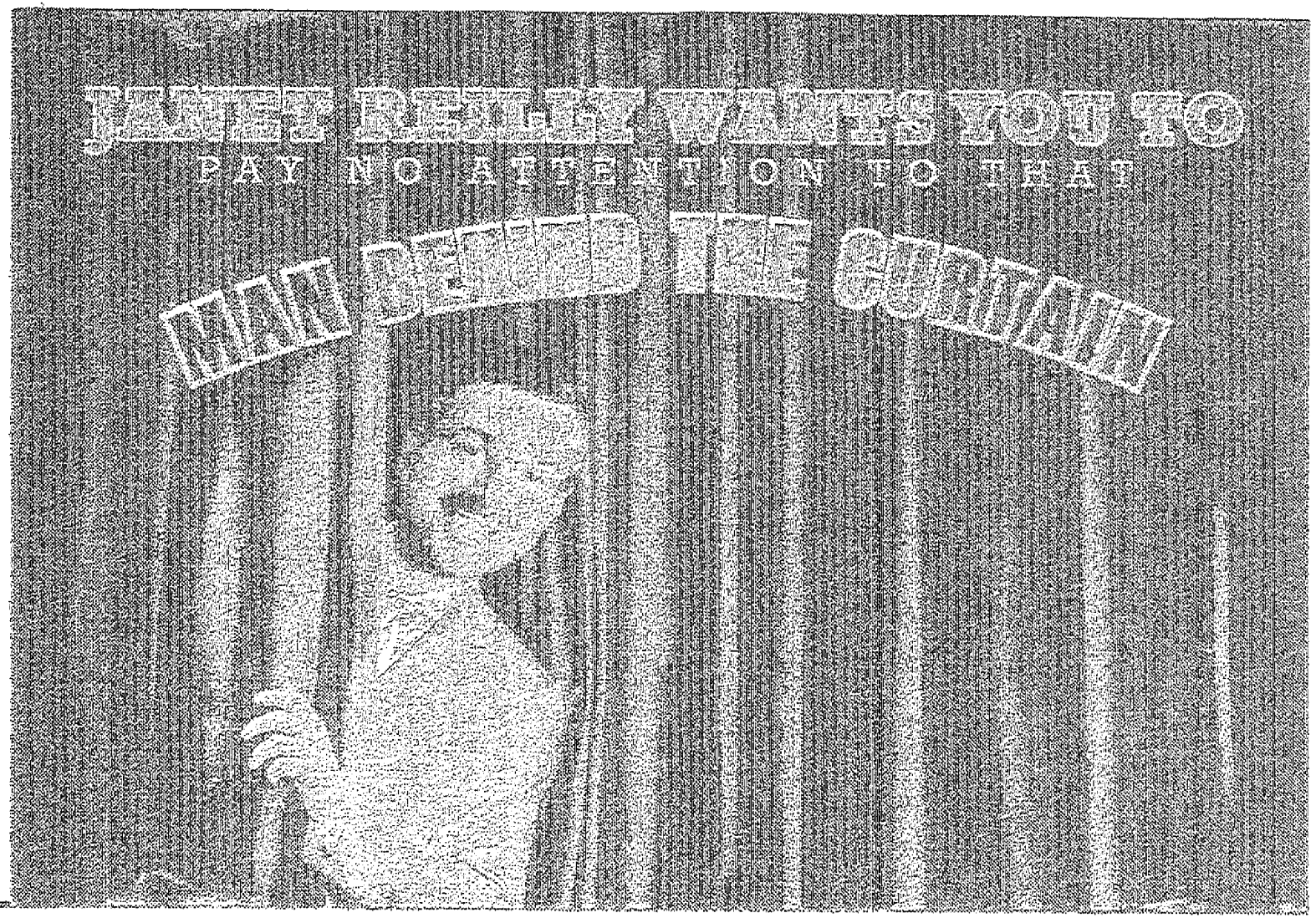
5940 College Avenue
Oakland, CA 94618

PRSRT STD
US POSTAGE
PAID
DMI

[redacted]

CMV1002 | Ford | Paid for by Common Sense Voters, SF 2010, Vote for Mark Farrell for District 2 Supervisor FPPC # 1332918.

0127


JANET REILLY WANTS YOU TO
PAY NO ATTENTION TO THAT
MAN BEHIND THE CURTAIN

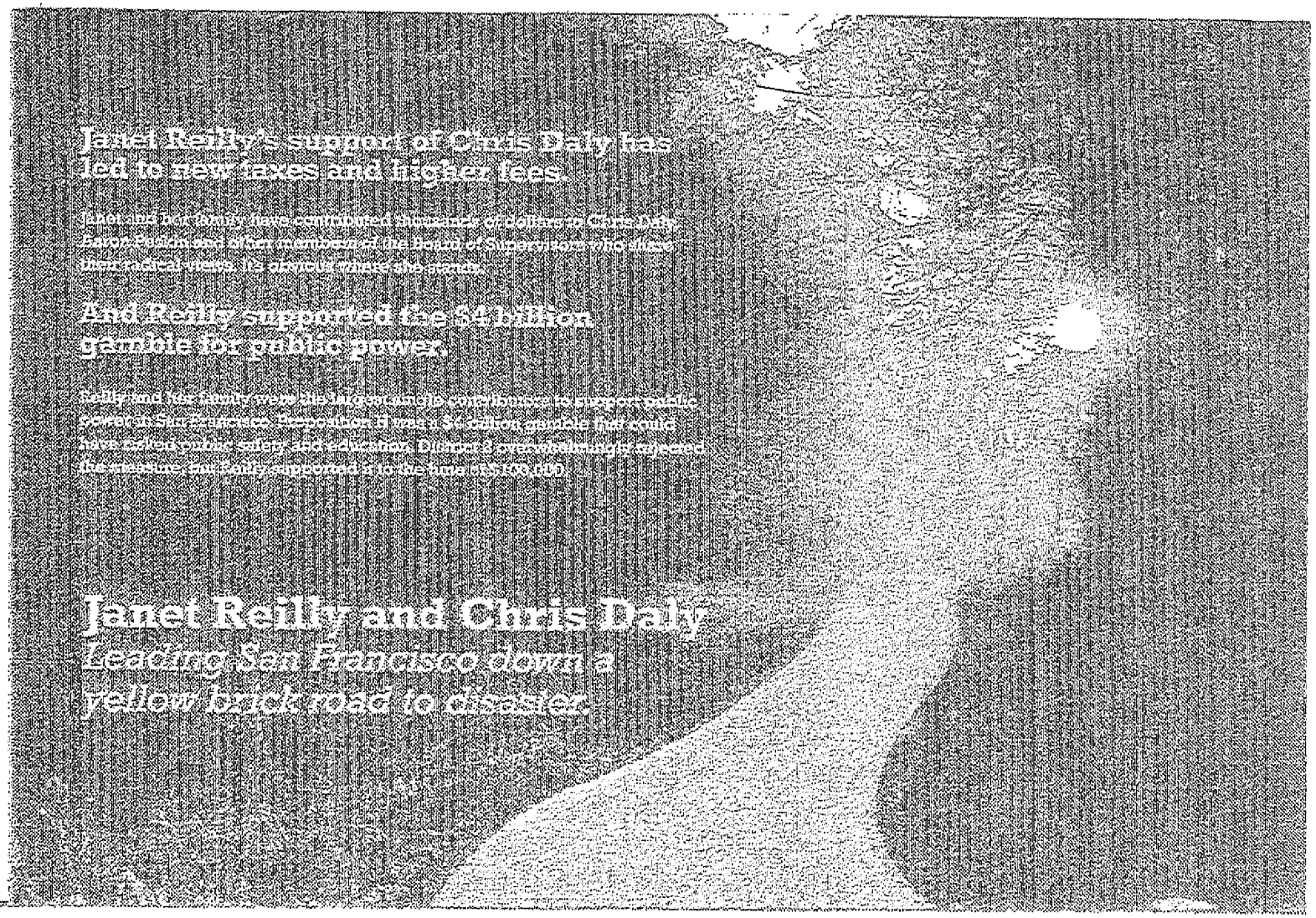




Who's the wizard behind Janet Reilly's agenda?

It's none other than Chris Daly.

On November 2, Vote NO on Janet Reilly.

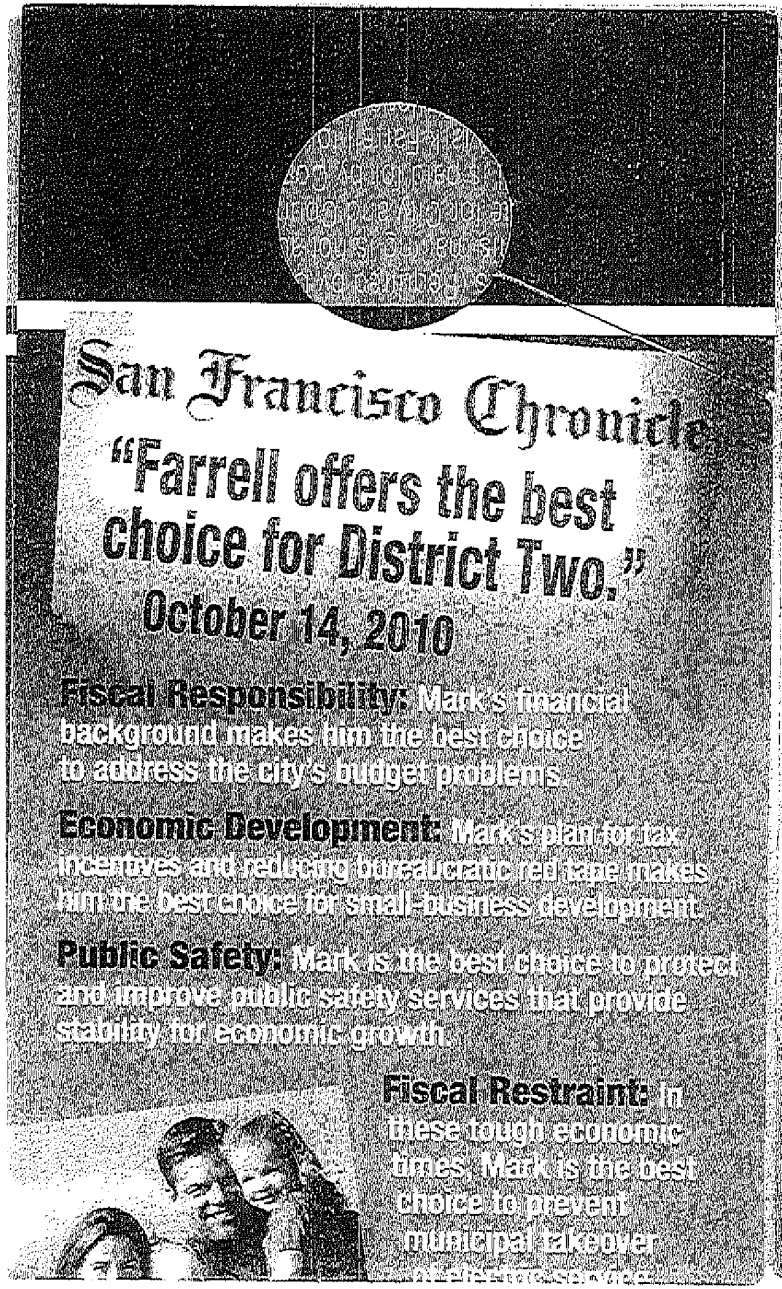

Janet Reilly's support of Chris Daly has led to new taxes and higher fees.
Janet and her family have contributed thousands of dollars to Chris Daly, Aaron Peskin and other members of the Board of Supervisors who share their radical views. It's obvious where she stands.
And Reilly supported the $4 billion gamble for public power.
Reilly and her family were the largest single contributors to support public power in San Francisco. Proposition H was a $4 billion gamble that could have sacked public safety and education. Dismort 8 overwhelmingly rejected the measure, but Reilly supported it to the time of $100,000.
Janet Reilly and Chris Daly
Leading San Francisco down a yellow brick road to disaster.

[redacted]

72% OF DISTRICT 2 VOTED DOWN PROPOSITION H – A PUBLIC UTILITIES TAKEOVER.

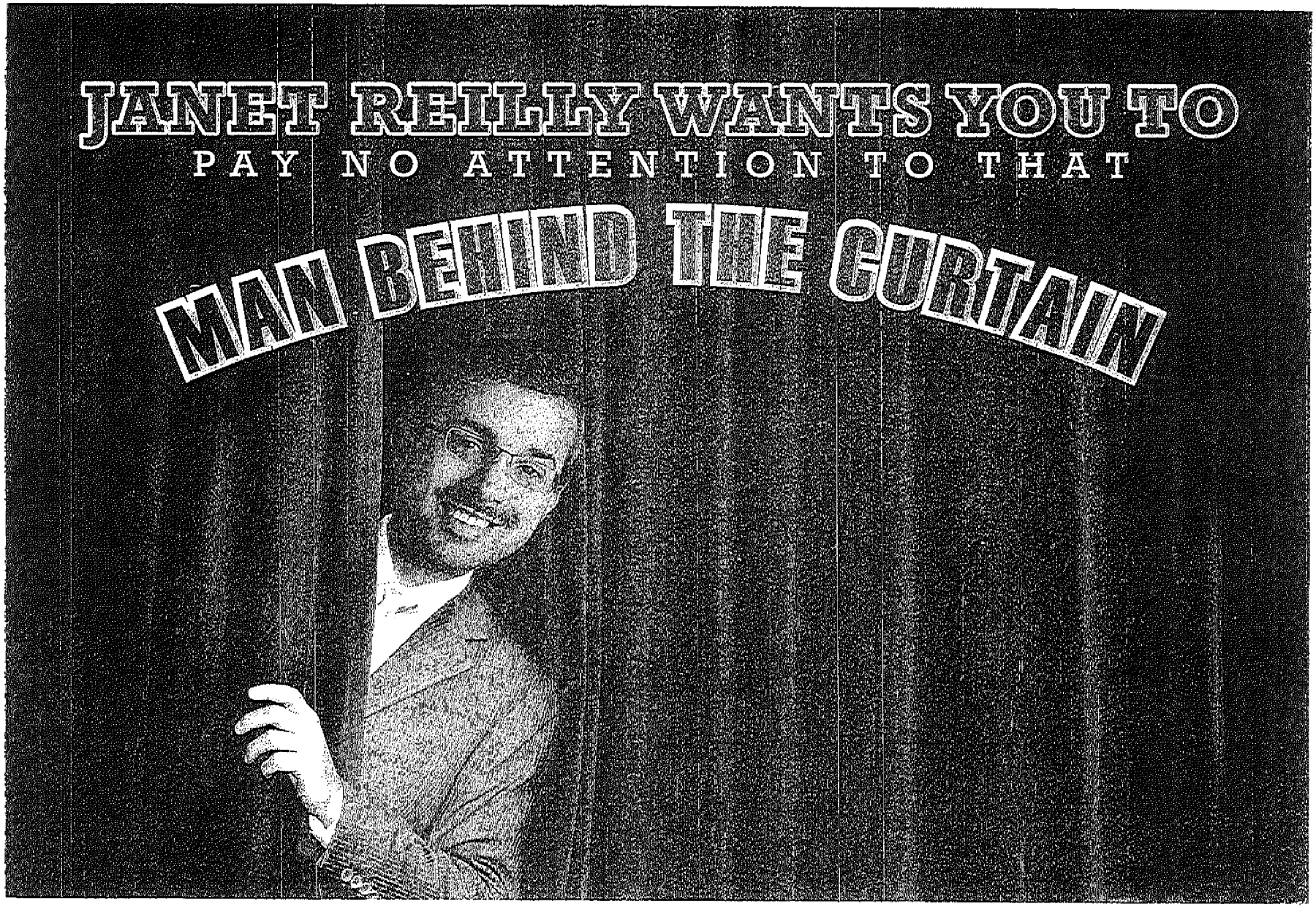
Janet Reilly had her own ideas.

ATTACHMENT #2


San Francisco Chronicle
"Farrell offers the best choice for District Two."
October 14, 2010
Fiscal Responsibility: Mark's financial background makes him the best choice to address the city's budget problems.
Economic Development: Mark's plan for tax incentives and reducing bureaucratic red tape makes him the best choice for small-business development.
Public Safety: Mark is the best choice to protect and improve public safety services that provide stability for economic growth.
Fiscal Restraint: In these tough economic times, Mark is the best choice to prevent municipal takeover


Mark Farrell – born and raised, and raising his family, here in District 2
On November 2
Vote
Mark
Farrell
For Supervisor • District 2

ATTACHMENT #3


JANET REILLY WANTS YOU TO
PAY NO ATTENTION TO THAT
MAN BEHIND THE CURTAIN

0135



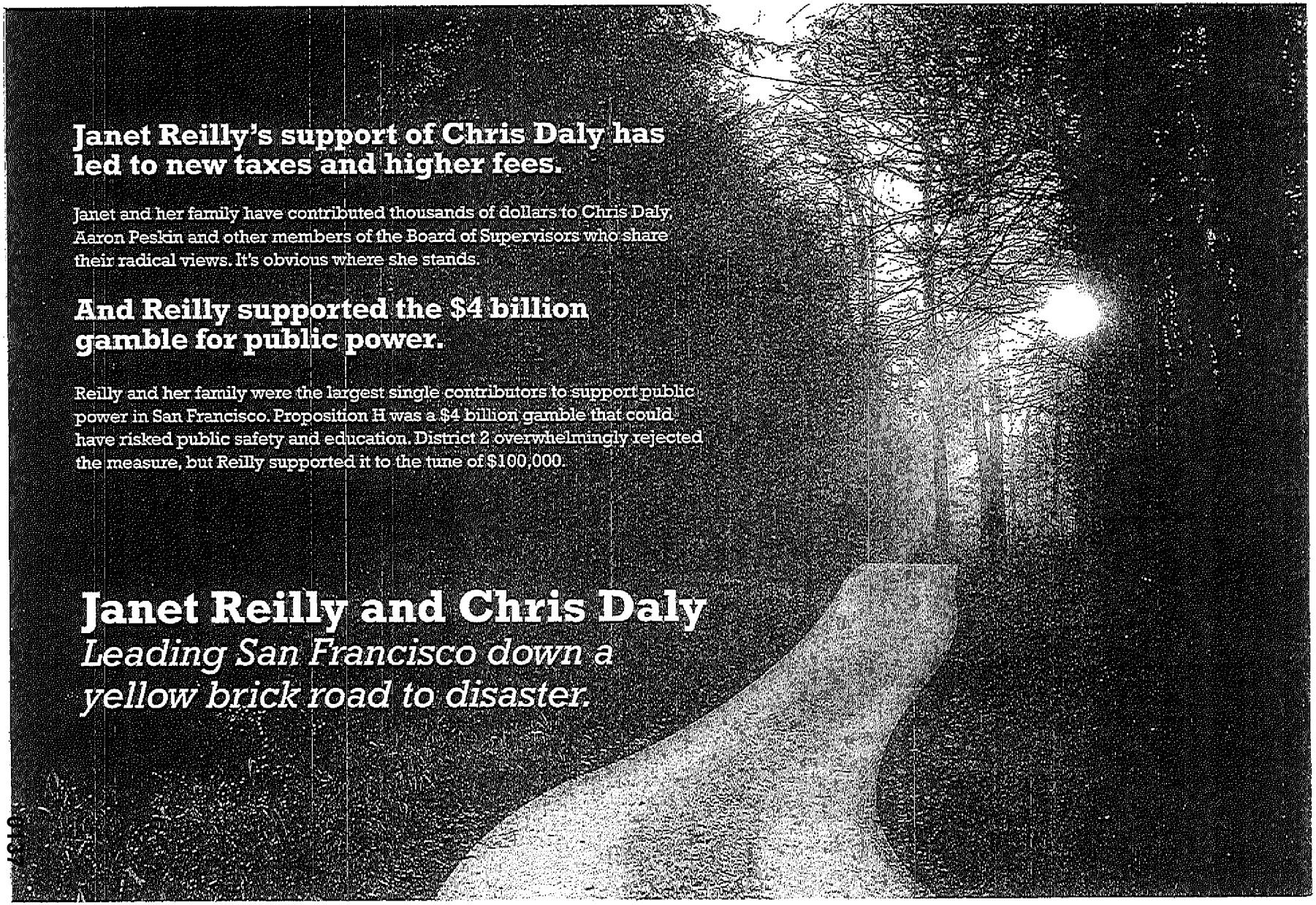


Who's the wizard behind Janet Reilly's agenda?

It's none other than Chris Daly.

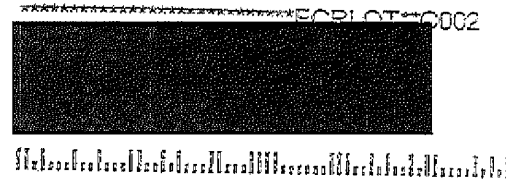
On November 2, Vote NO on Janet Reilly.

0136


Janet Reilly's support of Chris Daly has led to new taxes and higher fees.
Janet and her family have contributed thousands of dollars to Chris Daly, Aaron Peskin and other members of the Board of Supervisors who share their radical views. It's obvious where she stands.
And Reilly supported the $4 billion gamble for public power.
Reilly and her family were the largest single contributors to support public power in San Francisco. Proposition H was a $4 billion gamble that could have risked public safety and education. District 2 overwhelmingly rejected the measure, but Reilly supported it to the tune of $100,000.
Janet Reilly and Chris Daly
Leading San Francisco down a yellow brick road to disaster.

5940 College Avenue
Oakland, CA 94618

PRSRT STD
US POSTAGE
PAID
DMI



CMV1002 | Paid for by Common Sense Voters, SF 2010, Vote for Mark Farrell for District 2 Supervisor. FPPC # 1332919.

0138

PROPOSITION H

Proposition H would have cost voters $4 billion.

District 2 voted it down by 72%.
JANET REILLY SUPPORTED IT.

Proposition H would have cost us billions in revenue bonds and massive rate increases.
There's a reason we overwhelmingly voted down Proposition H: it would have given the Board of Supervisors the power to take over utilities without voter approval, costing us almost $4 billion in taxes and fees in the process.[1]

It could have resulted in cuts to critical services like public safety, small business development and education funding.
If Proposition H had passed, it could have resulted in disastrous cuts to the public services we need and deserve, including public safety and education funding.[2]

Janet Reilly and her family were the biggest single contributors to the Proposition H campaign.
Despite all of the possible negative repercussions for our community, Janet Reilly and her family donated thousands of dollars to support the passing of Proposition H.[3]



NO ON JANET REILLY
No regard for what matters to District 2

Check the facts: 1. www.stoptheblankcheck.com/facts, 5/1/2008.
2. http://www.stoptheblankcheck.com/check the facts, accessed 10/15/2010.
3. San Francisco Clean Energy - A Committee in Support of Proposition H, Pre-election statement, 9/29/2008.

5940 College Avenue
Oakland, CA 94618

PRSRT STD
US POSTAGE
PAID
DMI

[redacted]



72% OF DISTRICT 2 VOTED DOWN PROPOSITION H - A PUBLIC UTILITIES TAKEOVER.

Janet Reilly had her own ideas.

0140

CMV1063

Notice to Voters (Required by City and County of San Francisco): This mailing is not authorized or approved by any candidate for City and County office or by any election official. It is paid for by Common Sense Voters. SF 2010, Vote for Mark Farrell for District 2 Supervisor. FPPC# 1382919, 5940 College Avenue, Oakland, CA 94618. Total Cost of this mailing is $16,798.37.

ATTACHMENT #4



"Farrell offers the best choice for District 2."

– San Francisco Chronicle, 10/14/2010



Janet Reilly

***San Francisco Bay Guardian* wished Janet Reilly would "be realistic about the fiscal nightmare she would inherit as a supervisor."**

The *Guardian* stated that Reilly's policies were, "solutions that might stem a tiny fraction of the red ink."[1]

Reilly supported Proposition H—a public utilities takeover, which would have cost voters $4 billion and allowed the Board of Supervisors to take over our utilities.

Reilly and her family were the single largest contributors to Proposition H.[2]

Janet Reilly is endorsed by:

Former Supervisor Aaron Peskin and District 6 Supervisor Chris Daly.

Mark Farrell

***San Francisco Chronicle* endorsed Mark Farrell, calling him the candidate with "the pragmaticism and fiscal responsibility."[3]**

Mark has worked as an attorney, investment banker and venture capitalist, he knows how to cultivate small businesses and turn them into thriving companies.

Farrell stood with District 2 in our opposition to Proposition H.

Mark was against a public takeover of utilities, which would have cost taxpayers over $4 billion in taxes and fees.

Mark Farrell is endorsed by: Current District 2 Supervisor, Michela Alioto-Pier and San Francisco Sheriff, Mike Hennessey.

"Mark was born and raised in our community, and he's raising his family here. That's why he's the best choice to defend neighborhood character. He will do all that is required to keep Lombard Street safe, improve Union Street, and protect public safety in the budget process." — Michela Alioto-Pier

Check the facts: 1. Endorsement by the *San Francisco Bay Guardian* 10/5/10. 2. San Francisco Clean Energy: A Committee in Support of Proposition H, Pre-election statement, 9/20/08. 3. Endorsement by the *San Francisco Chronicle*, 10/14/10.

Move San Francisco forward.

Vote Mark Farrell for Supervisor.

0142

5940 College Avenue
Oakland, CA 94618

PRSRT STD
US POSTAGE
PAID
DMI



Which direction does San Francisco head November 2? District 2, the choice is yours...

0143

CMV1005

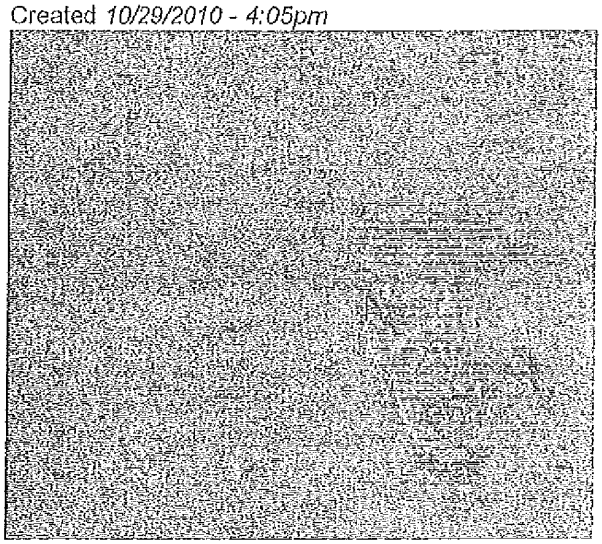
Notice to Voters (Required by City and County of San Francisco): This mailing is not authorized or approved by any candidate for City and County office or by any election official. It is paid for by Common Sense Voters, SF 2010. Vote for Mark Farrell for District 2 Supervisor, FPPC# 1332919. 5940 College Avenue, Oakland, CA 94618. Total Cost of this mailing is $16,798.37.

ATTACHMENT #5

SFBG
SAN FRANCISCO BAY GUARDIAN ONLINE
Published on *San Francisco Bay Guardian* (http://www.sfbg.com)

Hey, D2 voters: BOO!!!!

By *steven*
Created *10/29/2010 - 4:05pm*



Watch out, D2 voters, the progressives want to eat your babies and drink your best wine. Boo!

Why are the rich people in District 2 so scared of Chris Daly, Aaron Peskin, and other progressives? Just the hint that a supervisorial candidate like Janet Reilly might have some vague, tangential connection to a (gasp!) progressive is enough send trembles of fear through their delicate nervous systems, and to fill mailboxes with alarmist warnings of dark progressive [1] plots.

"I eat small children," Daly deadpanned when I asked him about the campaign by candidate Mark Farrell and some of his wealthy venture capitalist buddies – along with moneyed socialite Dede Wilsey [2], the yacht-loving, renter-hating [3] Thomas Coates, and [4] their Common Sense Voters SF front group [5] – to hurt frontrunner Reilly's chances by inaccurately claiming she's somehow Daly's puppet.

Nevermind the fact that Daly doesn't support Reilly, and that he wouldn't even endorse Reilly a few year ago during her Assembly campaign against Fiona Ma when the Guardian and many progressives were supporting Reilly. "Fiona was a better supervisor than Reilly is going to be," Daly told us, a prediction that I don't agree with, but one that shows how ridiculous the website [1], mailers, and doorhangers that claim Daly is "behind Janet Reilly's agenda" are.

Nonetheless, Mayor Gavin Newsom, who supports Reilly, has sent out two press releases in the last two days claiming that "Janet Reilly opposes Chris Daly's agenda as much as I do. She has the full support of our city's greatest moderate leaders and she will be a strong moderate voice on the board."

Daly, who is amused by this fearful battle of the rich people, couldn't agree more. "There is no bigger opponent of Daly's agenda to build more affordable housing in San Francisco than Gavin Newsom and Janet Reilly. Because that's my biggest issue," Daly told us. "Apparently they are afraid of affordable housing in D2."

But Daly isn't the only boogeyman who strikes terror into the hearts of the residents of Sea Cliff, Pacific Heights, and other wealthy D2 enclaves. Farrell and his ilk also made such a big deal of Reilly's association with Peskin, who actually is supporting Reilly, that she announced that if Newsom leaves for Sacramento in January, her vote for interim mayor would only go to a moderate who had never served on the Board of Supervisors with any current members, thus eliminating the chance of supporting Peskin.

Although we at the Guardian held our noses and endorsed Reilly as the best of a bunch of bad choices in San Francisco's most conservative district, we were appalled during her endorsement interview at just how myopically conservative she had become since her Assembly run, when universal health care was her big issue. Listen for yourself here [6] and decide whether she's planning to be Daly's minion.

Geez, what exactly are these people so scared of? Perhaps it's as simple as Lewis Lapham put it a couple weeks ago [7], when we discussed the political dynamics of big cities: "The rich are afraid of the poor."

Elections Steven T. Jones

Source URL: http://www.sfbg.com/politics/2010/10/29/hey-d2-voters-boo

Links:
[1] http://www.notjanetreilly.com/
[2] http://www.sfbg.com/2006/04/18/dede-wilseys-whoppers?page=0,0
[3] http://www.sfbg.com/2010/10/26/rent-too-damn-high
[4] http://www.sfbg.com/2010/10/26/cash-not-care
[5] http://nf4.netfile.com/pub2/AllFilingsByFiler.aspx?id=11178409
[6] http://www.sfbg.com/politics/2010/09/27/endorsement-interviews-janet-reilly
[7] http://www.sfbg.com/politics/2010/10/08/civil-sidewalks-lewis-lapham-and-struggle-soul-cities

ATTACHMENT #6

SFGate.com Print This Article Back to Article
SFGate.com

SF Giants cash registers fill with playoff wins

Phillip Matier,Andrew Ross
Wednesday, October 27, 2010


More...

advertisement | your ad here



The San Francisco Giants were braced to lose $4 million to $5 million before their playoff run began.

Now, thanks to their postseason success, they stand to end the year $7 million to $10 million in the black, according to team sources.

A good part of the jackpot will come from ballpark concessions, World Series gear and other memorabilia.

Ticket sales will help as well - if the series lasts more than four games. Until then, the revenue pays the players' World Series bonuses.

"But the biggest financial opportunity is the way 2010 can be parlayed into 2011," said Giants' President **Larry Baer**.

Baer said the Giants have already taken deposits from 3,500 new season-ticket holders, to add to their current base of 21,000. They are also looking to add new sponsorships and charge more for existing ones.

The Giants can certainly use the cash. They are still paying off ex-slugger **Barry Bonds**' contract, to the tune of $5 million a year, and their payroll has shot up nearly $10 million in the past two years, to $98 million - 10th-highest in the major leagues.

As for team's overall value: Forbes magazine conservatively puts it at $483 million, up $12 million from last year.

The fight is on: A full-blown rumble has broken out in San Francisco's District Two supervisor's race, as big names and big money come together to try to pull off a big upset.

At the center of the fight is **Janet Reilly**, wife of political mover and shaker **Clint Reilly**. She's been endorsed by Mayor Gavin Newsom and Sen. **Dianne Feinstein**; and, until recently, was

thought to be the odds-on favorite to succeed her one-time friend, termed-out Supervisor **Michela Alioto-Pier.**

Alioto-Pier, however, is supporting Reilly's main opponent in the race, **Mark Farrell** - and has backed it up with a $221,000 independent spending effort that includes a $141,000 contribution from real estate magnate **Tom Coates** and $50,000 from art philanthropist and socialite **Dede Wilsey.**

The money will be used in a closing campaign to "educate" voters about Reilly's support for such causes as publicly owned power and ties to Supervisor **Chris Daly** and former Supervisor **Aaron Peskin** - none of them big favorites in the moderate-to-liberal district.

"It's nothing personal," Alioto-Pier said of the incoming missile attack. "This is about the future of the Board of Supervisors, and who they may pick to be the next mayor," should Newsom head off to Sacramento.

Reilly declined to comment, but her aides did send us a statement calling the pending attack a "bogus campaign."

Final round: Despite an early lead in both the polls and money, Sen. **Barbara Boxer** is now in the fight of her life.

To date, Boxer and her allies have spent $19.4 million, compared with Republican rival Carly Fiorina's $15.6 million.

But as they enter the campaign's final stretch, Fiorina is outspending Boxer this week by $1 million, according to campaign insiders.

And the U.S. Chamber of Commerce just made another TV buy for Fiorina.

Boxer is now counting on the pro-choice Emily's List coming through with a final round of TV dollars and phone-bank operations targeting pro-choice women. The group has already put nearly $1 million into an ad buy in the L.A. market.

"This is absolutely a priority race for us," said Emily's List spokeswoman **Jen Bluestein.**

The other side: Burlingame power attorney and big-time Democratic fundraiser **Joe Cotchett** is crossing party lines and backing Republican **Steve Cooley** for state attorney general.

"It's really very simple," Cotchett said. "I believe in the death penalty where appropriate. I also think Cooley would make an outstanding attorney general."

Cooley's Democratic rival, San Francisco District Attorney **Kamala Harris,** has made opposition to the death penalty a cornerstone of her political career.

Cotchett would only say he's raised "a few bucks" for Cooley, the L.A. county district attorney.

It's quite a turnaround for a guy who in recent days has played host to a Democratic dinner with Vice President **Joe Biden** and another for lieutenant governor candidate **Gavin Newsom**.

Former San Francisco Public Defender **Kimiko Burton**, as in the daughter of state Democratic Party Chairman **John Burton**, recently sent out an e-mail with her picks for the upcoming election that also included an endorsement of Cooley.

It's no secret that a chill settled over Harris and the younger Burton, former pals and law school classmates, after Kimiko lost her race for public defender a few years back and Harris won the district attorney's job.

But you won't get much out of Kimiko Burton when you bring up the subject.

"It speaks for itself," she said brusquely when we asked about the endorsement.

EXTRA! Catch our blog at www.sfgate.com/matierandross.

Chronicle columnists Phillip Matier and Andrew Ross appear Sundays, Mondays and Wednesdays. Matier can be seen on KPIX-TV's morning and evening news. He can also be heard on KCBS radio Monday through Friday at 7:50 a.m. and 5:50 p.m. Got a tip? Call (415) 777-8815, or e-mail matierandross@sfchronicle.com.

http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/10/27/BAUT1G2C42.DTL

This article appeared on page E - 1 of the San Francisco Chronicle

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ATTACHMENT #7

examiner.com
the insider source for local

Print Close [x]

All in the Famliy

July 23rd, 2009 10:31 am PT
By Melissa Griffin, SF City Hall Examiner

District 2 Supervisor Michela Alioto-Pier recently announced that she's running for insurance commissioner. Political consultant Ace Smith of SCN Strategies is running her campaign and Rich Schlackman (whose wife is Smith's sister-in-law) is handling the direct mail and Internet advertising.

Alioto-Pier had considered running for lieutenant governor and this move has left many wondering whether she's stepping aside because Mistermayor (her cousin by marriage - okay, like second or third cousin) may decide to run for lieutenant governor instead of governor. Eric Jaye, Newsom's campaign manager, actually chuckled a little when I asked him about the rumor. "It just goes beyond ridiculous all the way to laughable. One-hundred percent untrue," he told me.

A source close to Alioto-Pier's campaign confirmed that her decision had nothing to do with cousin Gavin. The wheelchair-bound supervisor chose to run for insurance commissioner because the job would simply be a better fit given her experience with insurance companies.

ATTACHMENT #8

COVER PAGE

Recipient Committee Campaign Statement Cover Page

(Government Code Sections 84200-84216.5)

Type or print in ink.

Date Stamp

CALIFORNIA FORM 460

Page 1 of 34

For Official Use Only

SEE INSTRUCTIONS ON REVERSE

Statement covers period
from 10/01/2006
through 10/21/2006

Date of election if applicable: (Month, Day, Year)
11/07/2006

1. Type of Recipient Committee: All Committees – Complete Parts 1, 2, 3, and 4.

- [X] Officeholder, Candidate Controlled Committee
  - ( ) State Candidate Election Committee
  - ( ) Recall *(Also Complete Part 5)*
- [ ] General Purpose Committee
  - ( ) Sponsored
  - ( ) Small Contributor Committee
  - ( ) Political Party/Central Committee
- [ ] Primarily Formed Ballot Measure Committee
  - ( ) Controlled
  - ( ) Sponsored *(Also Complete Part 6)*
- [ ] Primarily Formed Candidate/ Officeholder Committee *(Also Complete Part 7)*

2. Type of Statement:

- [X] Preelection Statement
- [ ] Semi-annual Statement
- [ ] Termination Statement (Also file a Form 410 Termination)
- [ ] Amendment (Explain below)
- [ ] Quarterly Statement
- [ ] Special Odd-Year Report
- [ ] Supplemental Preelection Statement - Attach Form 495

3. Committee Information

I.D. NUMBER
1277617

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)
Committee to Reelect Michela Alioto-Pier

STREET ADDRESS (NO P.O. BOX)

CITY	STATE	ZIP CODE	AREA CODE/PHONE
San Francisco	CA	94114	415-252-3700

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX

CITY	STATE	ZIP CODE	AREA CODE/PHONE
San Francisco	CA	94114	

OPTIONAL: FAX / E-MAIL ADDRESS
415-252-3701
nwarren@warrenandassoc.com

Treasurer(s)

NAME OF TREASURER
James R. Sutton Esq.

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
San Francisco	CA	94108	415-732-4500

NAME OF ASSISTANT TREASURER, IF ANY

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE

OPTIONAL: FAX / E-MAIL ADDRESS

4. Verification

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 10/26/2006 (Date) By James R. Sutton (Signature of Treasurer or Assistant Treasurer)

Executed on 10/26/2006 (Date) By Michela Alioto-Pier (Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

0154

Schedule F
(Continuation Sheet)
Accrued Expenses (Unpaid Bills)

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

SCHEDULE F (CONT.)

Statement covers period
from 10/01/2006
through 10/21/2006

CALIFORNIA FORM 460

NAME OF FILER
Committee to Reelect Michela Alioto-Pier

I.D. NUMBER
1277617

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

NAME AND ADDRESS OF CREDITOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE OR DESCRIPTION OF PAYMENT	(a) OUTSTANDING BALANCE BEGINNING OF THIS PERIOD	(b) AMOUNT INCURRED THIS PERIOD	(c) AMOUNT PAID THIS PERIOD (ALSO REPORT ON E)	(d) OUTSTANDING BALANCE AT CLOSE OF THIS PERIOD
Accurate Printing San Francisco CA 94107-0000	LIT/POS	$0.00	$1,619.53	$0.00	$1,619.53
MSHC Partners Washington DC 20005-0000	LIT/POS	$0.00	$12,155.00	$0.00	$12,155.00
MSHC Partners Washington DC 20005-0000	WEB	$0.00	$20,280.00	$0.00	$20,280.00
Warren & Associates,LLC San Francisco CA 94114	PRO	$0.00	$1,247.50	$0.00	$1,247.50
	SUBTOTALS $	$0.00 $	$35,302.03 $	$0.00 $	$35,302.03

0155

ATTACHMENT #9

ORIGINAL

San Francisco Ethics Commission
25 Van Ness, Suite 220
San Francisco, CA 94102
Phone: (415) 252-3100
Fax: (415) 252-3112
Email: ethics.commission@sfgov.org
Web: www.sfethics.org

For SEEC use

ENTERED

THIRD PARTY DISCLOSURE FORM REGARDING SAN FRANCISCO CANDIDATES

(S.F. Campaign and Governmental Conduct Code §§ 1.134(c), 1.152(a)(3), 1.152(b)(3), 1.161(b), 1.161.5, and 1.160.5)

Part 1. Report Information

Date of this filing 10/23/2010	Enter date of election 11/2/2010
No. of pages (do not count pages with instructions) 5	
Report Number (Assign a unique identification number to each filing. Label attached communication with same number.) 102210JR&MF	
☐ Amendment to Report Number (list report number below and explain reason for amendment in next row)	
Reason for amendment:	

Part 2. Filer Information

Name of Filer (if committee, enter committee name) Common sense Voters, SF 2010	FPPC I.D. Number (if applicable) 1332919
Filer telephone number (610) 652-1000	
Filer street address, city, state and zip code [redacted] Woodside, CA 94062	
Signature [redacted]	
Name of signatory Stacy Owens	Date signed 10/23/2010

Part 3. Type of Filing (check all boxes that apply)

- ☒ Part 4---Section 1.134(c), 1.152(a)(3), or 1.152(b)(3) filing ($5,000 expenditures)
- ☒ Part 5---Section 1.161(b) filing (mass mailing)
- ☐ Part 6---Section 1.161.5 filing (electioneering communication)
- ☐ Part 7---Section 1.160.5 filing (persuasion poll)

Received Time Oct. 23. 2010 4:08PM No. 0910

Part 4. Report of Expenditures of $5,000 or More Relating to a Candidate

In elections for City elective office other than Mayor or the Board of Supervisors, this part of the form is required only if at least one candidate for the City elective office has accepted the applicable voluntary expenditure ceiling and the Ethics Commission has not lifted the voluntary expenditure ceiling. In elections for Mayor or the Board of Supervisors, this form is required when the Ethics Commission has certified at least one candidate in the race as eligible to receive public funds.

a. Specify the race(s), including district number, in which cumulative expenditures of $5,000 or more per candidate were made: Supervisor, District 2

b. In the table below, provide information about all expenditures that aggregate to $5,000 or more per candidate for City elective office.[1]

Candidate(s) identified in the communication	Type of Expenditure(s), i.e., independent expenditure, electioneering communication, or member communication	Indicate whether communication is intended to (1)support; or (2)oppose the candidate; or (3)be neutral.	Date of expenditure(s) (earlier of date goods/services are received or paid)	Cost apportioned to this candidate[2]	Total amount of expenditures made related to this candidate for the election specified[3]
Janet Reilly	Independent Expenditure (Proposition H Mailer)	Oppose	10/22/2010	16,798.37	135,003.86
Janet Reilly	Independent Expenditure (Comparative Mailer)	Oppose	10/22/2010	8,399.19	135,003.86
Janet Reilly	Independent Expenditure (Website)	Oppose	10/22/2010	59,200.00	135,003.86

c. Attach a legible copy of the communication if it is conveyed in writing or an electronic recording if it is conveyed via audio or video. Remember to label your communication so that it matches the Report Number that you assign to this form.

d. Please check this box if you are attaching additional pages and indicate the number of pages attached: [☒] No. of additional pages: [3]

[1] "Expenditures" include independent expenditures, electioneering communications and member communications. You must include expenses that have been incurred but not yet paid. Do not count contributions made directly to candidates.

[2] In this column, include all unreported expenditures relating to this candidate. For example, if you previously incurred $2,000 in independent expenditures for Candidate Dhillon that were not reported because you had not met the $5,000 threshold at that time, and then you incurred another $4,000 for Candidate Dhillon, you must report in this column that you spent a cumulative amount of $6,000 for this candidate. In this example, you would attach a copy of the communication(s) relating to the $2,000 and $6,000 expenditures.

[3] In this column, report the sum of all previously reported amounts and the amount currently being reported.

Received Time Oct. 23. 2010 4:08PM No. 0910

Part 4. Report of Expenditures of $5,000 or More Relating to a Candidate

In elections for City elective office other than Mayor or the Board of Supervisors, this part of the form is required only if at least one candidate for the City elective office has accepted the applicable voluntary expenditure ceiling and the Ethics Commission has not lifted the voluntary expenditure ceiling. In elections for Mayor or the Board of Supervisors, this form is required when the Ethics Commission has certified at least one candidate in the race as eligible to receive public funds.

a. Specify the race(s), including district number, in which cumulative expenditures of $5,000 or more per candidate were made: Supervisor, District 2

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Candidate(s) identified in the communication	Type of Expenditure(s), i.e., independent expenditure, electioneering communication, or member communication	Indicate whether communication is intended to (1)support; or (2)oppose the candidate; or (3)be neutral.	Date of expenditure(s) (earlier of date goods/services are received or paid)	Cost apportioned to this candidate[5]	Total amount of expenditures made related to this candidate for the election specified[6]
Mark Farrell	Independent Expenditure (Comparative Mailer)	Support	10/22/2010	8,399.18	8,399.18

c. Attach a legible copy of the communication if it is conveyed in writing or an electronic recording if it is conveyed via audio or video. Remember to label your communication so that it matches the Report Number that you assign to this form.

d. Please check this box if you are attaching additional pages and indicate the number of pages attached: [☒] No. of additional pages: [2]

[4] "Expenditures" include independent expenditures, electioneering communications and member communications. You must include expenses that have been incurred but not yet paid. Do not count contributions made directly to candidates.

[5] In this column, include all unreported expenditures relating to this candidate. For example, if you previously incurred $2,000 in independent expenditures for Candidate Dhillon that were not reported because you had not met the $5,000 threshold at that time, and then you incurred another $4,000 for Candidate Dhillon, you must report in this column that you spent a cumulative amount of $6,000 for this candidate. In this example, you would attach a copy of the communication(s) relating to the $2,000 and $6,000 expenditures.

[6] In this column, report the sum of all previously reported amounts and the amount currently being reported.

Received Time Oct. 23. 2010 4:08PM No. 0910

ATTACHMENT #10

Thomas Coates' event for Mark Farrell posted on Farrell's Facebook campaign page.



Thomas Coates (second from the left), hosting a campaign event for Mark Farrell (center). Supervisor Michela Alioto-Pier also attended (far right).



Thomas Coates campaign party: Mark Farrell (second from the left) with Michela Alioto-Pier.



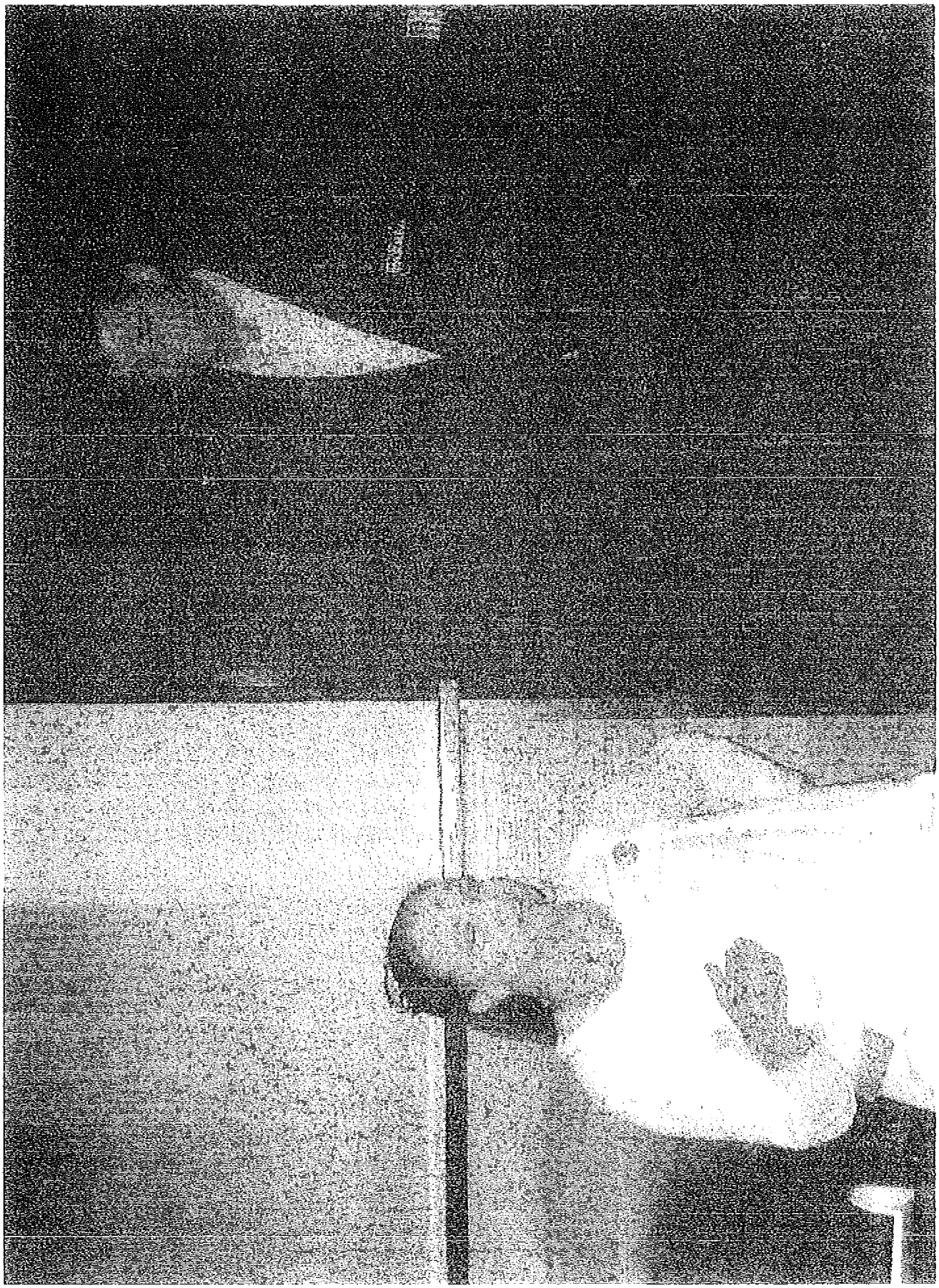

Exhibit B

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

JAMIENNE S. STUDLEY
CHAIRPERSON

EILEEN HANSEN
COMMISSIONER

BEVERLY HAYON
COMMISSIONER

BENEDICT Y. HUR
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

CONFIDENTIAL

Via U.S. Mail

January 26, 2011

Mr. Charles H. Bell, Jr.
Bell, McAndrews & Hiltachk, LLP
o/b/o Janet Reilly
Sacramento, CA 95814-4433

RE: Complaint Against Common Sense Voters, SF 2010, Vote for Mark Farrell for District 2 Supervisor

Dear Mr. Bell:

The Ethics Commission received the complaint you filed against the committee called "Common Sense Voters, SF 2010, Vote for Mark Farrell for District 2 Supervisor" ("Committee") on January 5, 2011.

The complaint alleged various violations of the Political Reform Act and San Francisco campaign finance laws. As the Enforcement Division of the Fair Political Practices Commission ("FPPC") is investigating the alleged violations of the Political Reform Act, our office will defer any action on those allegations until the FPPC concludes its investigation. All alleged violations of local campaign finance laws will be reviewed by our office.

If you have any further questions regarding filing requirements, please contact Enforcement staff at (415) 252-3100.

Sincerely,

[redacted]

John St. Croix
Executive Director

RECEIVED
FAIR POLITICAL
PRACTICES COMMISSION
11 JAN 28 PM 12:51

cc: Galena West, Senior Commission Counsel
Enforcement Division – FPPC

25 Van Ness Avenue, Suite 220 San Francisco, CA 94102-6027 Phone (415) 252-3100 Fax (415) 252-3112
E-Mail Address: ethics.commission@sfgov.org Web site: www.sfethics.org

James R. Sutton, Esq. (SBN 135930)
Bradley W. Hertz, Esq. (SBN 138564)
Matthew C. Alvarez, Esq. (SBN 301483)
THE SUTTON LAW FIRM, PC
150 Post Street, Suite 405
San Francisco, California 94108
Tel: 415/732-7700
Fax: 415/732-7701
Email: jsutton@campaignlawyers.com

Attorneys for Cross-Defendant
MARK FARRELL

ELECTRONICALLY
FILED
Superior Court of California, County of San Francisco
07/18/2016
Clerk of the Court
BY:CAROL BALISTRERI
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 and MARK FARRELL,

Petitioners and Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO ETHICS COMMISSION; CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR; and DOES 1 to 100, inclusive,

Respondents and Defendants.

CITY AND COUNTY OF SAN FRANCISCO, by and through its Ethics Commission,
Cross-complainant,

vs.

MARK FARRELL, an individual, and ROES 1 to 25, inclusive,

Cross-defendants.

Case No. CGC-16-551745

DECLARATION OF MATTHEW C. ALVAREZ IN SUPPORT OF SPECIAL MOTION TO STRIKE THE CITY AND COUNTY OF SAN FRANCISCO'S CROSS-COMPLAINT; EXHIBITS

PART 2 OF 4

Judge: Hon. Harold E. Kahn
Date: August 11, 2016
Reservation #: 07180811-01
Time: 9:30am
Dept: 302

Exhibit C

GARY S. WINUK
Chief of Enforcement
GALENA WEST
Commission Counsel IV
FAIR POLITICAL PRACTICES COMMISSION
428 J Street, Suite 620
Sacramento, CA 95814
Telephone: (916) 322-5660

Attorneys for Complainant

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of COMMON SENSE VOTERS, SF 2010; VOTE FOR MARK FARRELL FOR DISTRICT 2 SUPERVISOR AND CHRIS LEE Respondents.	FPPC No. 10/973 STIPULATION, DECISION and ORDER

Complainant Fair Political Practices Commission and Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor committee and Chris Lee agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondents, pursuant to Section 83116 of the Government Code.

Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to, the right to personally appear at any administrative hearing held in this matter, to be represented by an

attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

It is further stipulated and agreed that Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor committee and Chris Lee violated the Political Reform Act by failing to file an amended statement of organization within 10 days to disclose that Respondent Committee was controlled by a candidate, in violation of Sections 84102, subdivisions (e) and (g), and 84103, subdivision (a), of the Government Code (1 count) and failing to use proper sender identification on mass mailers sent in support of Mark Farrell for District 2 Supervisor and against his opponent, Janet Reilly, which failed to display the name of the candidate controlling the committee, in violation of Section 84305 (4 counts). All counts are described in Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

Respondents agree to the issuance of the Decision and Order, which is attached hereto. Respondents also agree to the Commission imposing upon them an administrative penalty in the amount of Fourteen Thousand Five Hundred Dollars ($14,500). A cashier's check from Respondents in said amount, made payable to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the administrative penalty, to be held by the State of California until the Commission issues its decision and order regarding this matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and agree that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither any member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

Dated: _____

_____
Gary Winuk, Enforcement Chief,
on behalf of the
Fair Political Practices Commission

Dated: _____

_____
Chris Lee, Respondent
Individually and on behalf of Common Sense Voters,
SF 2010; Vote for Mark Farrell for District 2 Supervisor

DECISION AND ORDER

The foregoing Stipulation of the parties "In the Matter of Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor and Chris Lee," FPPC No. 10/973, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chairman.

IT IS SO ORDERED.

Dated: _____

_____
Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

In November 2010, the City and County of San Francisco held a ranked-choice voting election to elect the representative for District 2 of the Board of Supervisors. Respondent Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor ("Respondent CSV") qualified as a primarily formed committee on October 1, 2010, and registered on October 13, 2010. At all relevant times, Respondent Stacy Owens ("Respondent Owens") was the treasurer of the Respondent CSV and Henry C. Levy, was assistant treasurer. The principal officer for Respondent CSV was Jack Helfand ("Principal Officer").

In August 2009, Mark Farrell created a campaign committee for the November 2010 Supervisor race named the Mark Farrell for District 2 Supervisor 2010 committee ("Farrell Committee"). At all relevant times, Respondent Owens was the treasurer of the Respondent CSV and Henry C. Levy, was assistant treasurer. Respondent CSV's Principal Officer was a member of the fundraising subcommittee for the Farrell Committee for the November 2010 election campaign before leaving to form Respondent CSV. During this campaign, the Farrell Committee retained Chris Lee of Townsquare Consulting ("Respondent Lee"), as its campaign consultant.

In September 2010, incumbent Supervisor Michela Alioto-Pier was informed by the California courts that she was unable to run for reelection for her District 2 Supervisor seat. She then chose Mark Farrell, a candidate for District 2 Supervisor, to endorse as her replacement. She and her staff worked with Mark Farrell and his campaign consultant, Respondent Lee, during the course of the campaign to offer her endorsement and appear at events in support of Mark Farrell. In addition to this interaction with Mark Farrell and his staff, Supervisor Alioto-Pier was also in charge of the fundraising activities for Respondent CSV. Supervisor Alioto-Pier raised 86% of the contributions received by Respondent CSV.

While Respondent Lee was a campaign consultant for the Farrell Committee, he also coordinated with Respondent CSV, the Principal Officer, and the campaign consultant for Respondent CSV, MSHC Partners, regarding the setup, fundraising, and initial campaign planning of Respondent CSV. Respondent Lee reached out to the Principal Officer, who had previously volunteered for the Farrell Committee, to assist the Principal Officer with the formation of Respondent CSV. In addition, Respondent Lee also had contacts with another mail house used by Respondent CSV to produce a door hanger. The door hanger was being produced as a Farrell support piece containing an endorsement letter written by Supervisor Alioto-Pier. Respondent Lee's interactions with Respondent CSV and its staff caused Respondent CSV to become a controlled committee of Mark Farrell, instead of a committee primarily formed for his election. The evidence supports the finding that Mark Farrell did not authorize Respondent Lee, as an agent of the Farrell Committee, to coordinate with Respondent CSV.

Under the Political Reform Act[1] (the "Act"), any person who violates any provision of this title, who purposely or negligently causes any other person to violate any provision of this title, or who aids and abets any other person in the violation of any provision of this title, shall be liable under the provisions of this chapter. As a result, Respondents were required to amend the statement of organization to reflect being a controlled committee and have all mailers identify the Farrell Committee as the sender of the mailer.

For the purposes of this Stipulation, Respondents' violations of the Act are stated as follows:

COUNT 1: Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor failed to file an amended statement of organization within 10 days to disclose that Respondent Committee was a controlled committee and failed to add the name of the controlling candidate to the committee name. Respondent Chris Lee purposely or negligently caused this violation (within the meaning of Section 83116.5) through his role of campaign consultant for the Farrell Committee and his coordination with Respondent CSV, the Principal Officer, and the campaign consultant for Respondent CSV, MSHC Partners, regarding CSV's setup, fundraising, and initial campaign planning. In this way, Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor and Chris Lee violated Government Code Sections 84102, subdivisions (e) and (g), and 84103, subdivision (a).

COUNT 2: Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor failed to use proper sender identification on a mass mailer sent on or about October 17, 2010, sent in support of Mark Farrell for District 2 Supervisor and against his opponent, Janet Reilly, which failed to display the name of the candidate controlling the committee. Respondent Chris Lee purposely or negligently caused this violation (within the meaning of Section 83116.5) through his role of campaign consultant for the Farrell Committee and his coordination with Respondent CSV, the Principal Officer, and the campaign consultant for Respondent CSV, MSHC Partners, regarding CSV's setup, fundraising, and initial campaign planning. In this way, Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor and Chris Lee violated Government Code Section 84305.

COUNT 3: Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor failed to use proper sender identification on a mass mailer sent on or about October 19, 2010, sent in support of Mark Farrell for District 2 Supervisor and against his opponent, Janet Reilly, which failed to display the name of the

[1] The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code as it was in effect at the time of the violations, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations as in effect at the time of the violations, unless otherwise indicated.

candidate controlling the committee. Respondent Chris Lee purposely or negligently caused this violation (within the meaning of Section 83116.5) through his role of campaign consultant for the Farrell Committee and his coordination with Respondent CSV, the Principal Officer, and the campaign consultant for Respondent CSV, MSHC Partners, regarding CSV's setup, fundraising, and initial campaign planning. In this way, Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor and Chris Lee violated Government Code Section 84305.

COUNT 4: Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor failed to use proper sender identification on two mass mailers sent on or about October 20, 2010, sent in support of Mark Farrell for District 2 Supervisor and against his opponent, Janet Reilly, which failed to display the name of the candidate controlling the committee. Respondent Chris Lee purposely or negligently caused this violation (within the meaning of Section 83116.5) through his role of campaign consultant for the Farrell Committee and his coordination with Respondent CSV, the Principal Officer, and the campaign consultant for Respondent CSV, MSHC Partners, regarding CSV's setup, fundraising, and initial campaign planning. In this way, Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor and Chris Lee violated Government Code Section 84305.

COUNT 5: Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor failed to use proper sender identification on a mass mailer sent on or about October 25, 2010, sent in support of Mark Farrell for District 2 Supervisor and against his opponent, Janet Reilly, which failed to display the name of the candidate controlling the committee. Respondent Chris Lee purposely or negligently caused this violation (within the meaning of Section 83116.5) through his role of campaign consultant for the Farrell Committee and his coordination with Respondent CSV, the Principal Officer, and the campaign consultant for Respondent CSV, MSHC Partners, regarding CSV's setup, fundraising, and initial campaign planning. In this way, Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor and Chris Lee violated Government Code Section 84305.

SUMMARY OF THE LAW

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

A committee includes any person or combination of persons who receive contributions totaling $1,000 or more in a calendar year. (Section 82013, subd. (a).) This type of committee commonly is referred to as a recipient committee. Section 82047.5 defines a primarily formed

committee, in relevant part, as a committee which is formed or exists primarily to support or oppose a single candidate, a single measure, a group of specific candidates being voted upon in the same city, county, or multicounty election, or two or more measures being voted upon in the same city, county, multicounty, or state election. By contrast, a *controlled committee* is one that is controlled directly or indirectly by a candidate or that acts jointly with a candidate in connection with the making of expenditures. (Section 82016.) A candidate controls a committee if the candidate, the candidate's agent, or any other committee controlled by the candidate has a significant influence on the actions or decisions of the committee. Section 84102, subdivision (g), requires any other information shall be required by Commission regulations that are consistent with the purposes and provisions of this chapter.

To further the well-established state interest in the integrity of its election processes, the Act imposes certain restrictions on candidates for elective offices, chiefly in the form of contribution limits and disclosure requirements. To insure that candidates and their supporters do not evade the Act's contribution limits and disclosure requirements, these restrictions are extended to include the activities of persons who coordinate campaign spending with the candidates themselves, or with the candidates' committees and agents.

Duty to Amend Statement of Organization

Section 84101 requires every recipient committee to file a statement of organization with the Secretary of State. Section 84102, subdivision (a), states that the statement of organization shall include the committee's name, street address and telephone number, if any. The statement of organization shall also include the full name, street address and telephone number, if any, of the treasurer and other principal officers of the committee. (Section 84102, subd. (c).)

Section 84102, subdivision (e), states that the statement of organization shall include a statement of whether the committee is independent or controlled, and if controlled, the name of each candidate or state measure proponent by which it is controlled, or the name of any controlled committee with which it acts jointly. Regulation 18402, subdivision (c), requires that whenever identification of a committee is required by law, the identification shall include the full name of the committee as required in the statement of organization including the last name of each candidate that controls the committee.

Section 84103, subdivision (a), requires that whenever there is a change in any of the information contained in a statement of organization, an amendment shall be filed within 10 days to reflect the change.

Duty to Disclose Proper Sender Identification

Section 84305, subdivision (a), requires candidates and committees to properly identify themselves when sending a mass mailing. Specifically, the statute provides that no candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing. If the sender of the mass mailing is a controlled committee, Section 84305, subdivision (c), requires that the

name of the candidate, as well as the name of the committee, be included on the mass mailing.

Section 82041.5 defines a "mass mailing" as over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry. Regulation 18435, subdivision (a), clarifies this section, and further defines a mass mailing as over two hundred substantially similar pieces of mail sent in a calendar month.

Joint and Several Liability for Causing Another to Violate the Act

Recognizing that the law should hold accountable not only those persons who directly commit violations, but also those persons who encourage or assist in the commission of violations, the Act extends liability for a violation to include anyone who causes, either intentionally or negligently, or aids and abets in the violation of the Act. Section 83116.5 imposes liability for violating the Act on those who: (i) violate the Act; (ii) purposely or negligently cause another to violate the Act; or (iii) aid and abet another in violating the Act. When two or more persons are responsible for a violation of the Act, they are jointly and severally liable. (Section 91006.)

SUMMARY OF THE FACTS

In November 2010, the City and County of San Francisco held a ranked-choice voting election to elect the representative for District 2 of the Board of Supervisors. Respondent CSV qualified as a primarily formed committee on October 1, 2010, and registered on October 13, 2010. As discussed above, while Respondent Lee was a campaign consultant for the Farrell Committee, he also coordinated with Respondent CSV, the Principal Officer, and the campaign consultant for Respondent CSV, MSHC Partners, regarding the setup, fundraising and initial campaign planning of Respondent CSV. Respondent Lee's interactions with Respondent CSV and its staff caused Respondent CSV to become a controlled committee of Mark Farrell, instead of a committee primarily formed for his election. As such, under the Act, Respondents were required to amend the statement of organization to reflect being a controlled committee and have all mailers identify the Farrell Committee as the sender of the mailer.

COUNT 1
Failure to Amend Statement of Organization

Respondent CSV qualified as a primarily formed committee on October 1, 2010, and filed a statement of organization reflected that information on October 13, 2010. Respondent CSV disclosed that it was formed to support candidate Mark Farrell for County Supervisor of the City and County of San Francisco for District 2. As mentioned above, Mark Farrell had a campaign committee for this election, the Farrell Committee. While Respondent Lee was a campaign consultant for the Farrell Committee, he coordinated with Respondent CSV, the Principal Officer, and the campaign consultant for Respondent CSV, MSHC Partners, regarding its setup, fundraising and initial campaign planning. In addition, Respondent Lee also had contacts with another mail house used by Respondent CSV to produce a door hanger. The door

hanger was being produced as a Farrell support piece containing an endorsement letter written by Supervisor Alioto-Pier. Through these interactions, Respondent Lee, an agent of the Farrell Committee, thereby had significant influence on the Respondent CSV and thus caused Respondent CSV to become a controlled committee of Mark Farrell.

As a candidate controlled committee, Respondents were required to include in the name of the candidate controlling the committee in the name of Respondent Committee. Respondents failed to provide this required information in the name of Respondent CSV and failed to amend the statement of organization.

Thus, Respondent CSV failed to file an amended statement of organization within 10 days to disclose that Respondent Committee was a controlled committee and failed to add the name of the controlling candidate to the committee name. Respondent Chris Lee caused this violation (within the meaning of Section 83116.5) through his role of campaign consultant for the Farrell Committee and his coordination with Respondent CSV, the Principal Officer, and the campaign consultant for Respondent CSV, MSHC Partners, regarding its setup, fundraising and initial campaign planning. In this way, Respondents CSV and Chris Lee violated Government Code Sections 84102, subdivisions (e) and (g), and 84103, subdivision (a).

COUNTS 2 - 5
Failure to Disclose the Controlling Candidate in Mass Mailings

Section 82041.5 and Regulation 18435 define a "mass mailing" as over 200 substantially similar pieces of mail sent in a calendar month, which are not sent in response to an unsolicited request. Section 84305, subdivision (a), requires candidates and committees to properly identify themselves when sending a mass mailing. Pursuant to Section 84305, subdivision (b), if a candidate or committee sends a mass mailing, the name, street address, and city of the candidate or committee must be shown on the outside of each piece of mail sent as part of the mass mailing, in no less than 6-point type, which shall be in a color or print which contrasts with the background, so as to easily legible. Furthermore, if the sender of a mass mailing is a controlled committee, the name of the person controlling the committee must also be included in each piece of mail. (Section 84305, subd. (c).)

Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor failed to use proper sender identification on mass mailers sent on or about October 17, 2010, through October 25, 2010, sent in support of Mark Farrell for District 2 Supervisor and against his opponent, Janet Reilly, which failed to display the name of the candidate controlling the committee. Respondent Chris Lee caused this violation (within the meaning of Section 83116.5) through his role of campaign consultant for the Farrell Committee and his coordination with Respondent CSV, the Principal Officer, and the campaign consultant for Respondent CSV, MSHC Partners, regarding its setup, fundraising and initial campaign planning. The mailers are detailed below:

Mailer Title	Date	Quantity (approx.)
The Man Behind the Curtain	10/17/10	12,248
Captain Mysterious Mail Piece	10/19/10	20,239
CMV1003: Proposition H	10/20/10	40,478
Negative/CMV 1005: Comparative 11757 Farrell Doorhanger 03	10/25/10	25,000

Thus, Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor and Chris Lee violated Government Code Section 84305 four times.

CONCLUSION

This matter consists of five counts of violating the Act, which carries a maximum administrative penalty of five thousand dollars ($5,000) per count.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. The Enforcement Division also considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6), which include: the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the Respondent voluntarily filed amendment to provide full disclosure. Additionally, liability under the Act is governed in significant part by the provisions of Section 91001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

Statement of Organization: Respondents had a duty to file an amendment to the statement of organization to disclose it was no longer a primarily formed committee but a controlled committee after the actions of Respondent Lee caused this status change. The amendment was needed to include in the name of the candidate controlling the committee in the name of Respondent CSV. Respondents failed to provide this required information in the name of Respondent CSV and failed to amend the statement of organization.

The failure to amend the statement of organization concealed from the public the true nature of the Respondent CSV's activity. In aggravation, these actions coordinating the committees gave an unlawful advantage to one side in an election which was decided by only the slimmest of margins. In mitigation, Respondents filed other campaign information correctly and the name of the committee disclosed its support of Mark Farrell.

Other cases regarding the failure to amend a statement of organization recently approved by the Commission include:

In the Matter of Put California Back to Work, Sponsored by the Civil Justice Association of California and J. Richard Eichman, FPPC No. 10/504. Respondents formed as a state general purpose committee and failed to amend the statement of organization when the committee became primarily formed. The committee was aware of the requirement, having been told by the treasurer, and chose not to timely amend the statement. A $3,500 stipulated settlement was approved for this violation by the Commission on March 15, 2012.

In the Matter of Californians for SAFE Food, a coalition of public health and food safety experts, labor unions, consumers, family farmers, and veterinarians. No on Proposition 2, FPPC No. 08/515. This case involved one count of failing to name a sponsor on the statement of organization and one count of failing to amend the statement of organization to include a sponsor. A $2,500 penalty for the each count was approved by the Commission on April 8, 2010.

In this matter, Respondent CSV's actions were serious as Respondent CSV coordinated with the candidate's campaign consultant. However, in mitigation, the Principal Officer, had little campaign experience and neither of the Respondents have a history of violating the Act. Therefore, imposition of an administrative penalty in the amount of two thousand five hundred dollars ($2,500) is recommended.

Sender Identification: As a candidate controlled committee, Respondents had a duty to display on the mass mailing the name of the controlling candidate. The failure to provide proper disclosure in a mass mailing deprives the public of important information by making them believe that the mailing is independent of a candidate. In aggravation, Respondent CSV was able to send out hit pieces on opponents without disclosing its association with the candidate. Also, without the statement of organization's amendment, the public would not have been able to trace the association back to the candidate. Further, Respondent CSV was involved in multiple advertisements, all of which failed to provide proper disclosure. In mitigation, the name of Respondent CSV clearly presented its support of candidate Mark Farrell and Respondents have cooperated with the investigation and assert that the contacts and coordination were the actions of only one individual who believed that he was acting within the law.

Other similar cases regarding failing to properly include the required disclosure statements on mailers recently approved by the Commission include:

In the Matter of Alan Frank, Alan Frank for City Council 2012, and Jeff Buchanan, FPPC No. 12/890. Staff: Commission Counsel Zachary Norton and Special Investigator Paul Rasey. Respondent, Alan Frank, was an unsuccessful candidate for Placentia City Council in the November 6, 2012 election. Alan Frank for City Council 2012 was Respondent Frank's candidate controlled committee, and Respondent Jeff Buchanan was the Treasurer of the committee. Prior to the election, Respondents paid for and caused to be sent two mass mailers which failed to identify Respondents as the senders of the mailers in violation of Government Code Section 84305, subdivision (a) (1 count). A stipulated settlement of $2,500 was approved by the Commission on September 19, 2013.

In the Matter of Protect Burlingame and Kevin Osborne, FPPC No. 09/804. This case involved two mailers in a local election campaign, each sent to approximately 7,000 households, which lacked sender identification. Respondent in this matter did not have an Enforcement history. A $2,500 penalty was approved by the Commission on April 11, 2011.

In this matter, Respondents failed to provide proper disclosure statements as a result of failing to properly file as a candidate controlled committee and concealing the connection between the candidate-controlled committee and the committee which was supposed to be independent of it. Taking into consideration the factors above, imposition of an administrative penalty of three thousand dollars ($3,000) is recommended for each of the four counts.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Fourteen Thousand Five Hundred Dollars ($14,500) is recommended.

Exhibit D

San Francisco
Ethics Commission

25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

ETHICS COMMISSION

REGULATIONS FOR INVESTIGATIONS

AND ENFORCEMENT PROCEEDINGS

Effective Date: July 5, 1997
Includes technical amendments effective April 13, 2002; Streamlined Process for Complaints Alleging a Failure to File Campaign Finance Disclosure Reports effective August 15, 2004; amendments effective October 10, 2005; amendments effective March 10, 2006; amendments effective November 10, 2006; amendments effective December 18, 2009; amendments effective January 8, 2010; amendments effective November 11, 2011; and amendments effective March 29, 2013

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I. PREAMBLE

These Regulations of the San Francisco Ethics Commission are promulgated in order to ensure the fair, just, and timely resolution of complaints presented to the Commission that allege violations of laws within the Commission's jurisdiction by:

1. Setting and maintaining objective standards for the investigation and prosecution of matters brought before the Commission;

2. Eliminating any political or improper influence in the investigation and prosecution of persons accused of ethics violations;

3. Protecting the privacy rights of those accused of ethics violations by maintaining the confidentiality of complaints filed with, and investigations conducted by, the Commission;

4. Setting and enforcing reasonable time limits within which enforcement proceedings should be completed;

5. Coordinating and sharing with other governmental agencies the responsibility for investigations and prosecutions of complaints, whenever consistent with the interests of justice;

6. Delegating to the Commission staff maximum discretion in the handling and resolution of complaints at staff level, while retaining oversight of those staff activities.

II. DEFINITIONS

For purposes of these Regulations, the following definitions shall apply:

A. "Business day" means any day other than a Saturday, Sunday, City holiday, or a day on which the Commission office is closed for business.

B. "City" means the City and County of San Francisco

C. "Commission" means the Ethics Commission.

D. "Complainant" means a person or entity that makes a complaint.

E. "Credible" means offering reasonable grounds for being believed.

F. "Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next working day.

G. "Deliver" means transmit by U.S. mail or personal delivery to a person or entity or to an agent authorized to accept delivery on behalf of the person or entity. For purposes of these Regulations, delivery may be made by leaving copies of the material with a responsible person at either the residence or place of business of the person or entity to whom the material is directed. The Commission, the Executive Director or a respondent receiving material may consent to any other means of delivery, including delivery by e-mail or fax. In any proceeding, following a determination of probable cause, the Commission Chair or designated Commissioner or hearing officer may order that delivery of briefs or other materials be accomplished by e-mail.

H. "Enforcement action" means an action pursuant to San Francisco Charter section C3.699-13.

I. "Exculpatory information" means information tending to show that the respondent is not guilty of the alleged violations.

J. "Executive Director" means the Executive Director of the Commission or the Executive Director's designee.

K. "Mitigating information" means information tending to excuse or reduce the significance of the respondent's conduct.

L. "Probable cause" means that based on the evidence presented there is reason to believe that the respondent committed a violation of law.

M. "Respondent" means a person or entity that is alleged in a complaint to have committed a violation of law.

N. "Stipulated order" means an order regarding a complaint the terms of which have been agreed to by both the Executive Director and the respondent.

O. "Violation of law" means a violation of City laws relating to campaign finance, lobbying, campaign consulting, conflicts of interest, or governmental ethics, and State laws relating to campaign finance, conflicts of interest, or governmental ethics, including, but not limited to: San Francisco Charter section 15.100 et seq. and Appendix C (ethics); the San Francisco Campaign and Governmental Conduct Code; the Political Reform Act of 1974, Government Code section 81000 et seq.; Government Code section 1090 et seq.; and Government Code section 3201, et seq.

III. COMPLAINTS

A. Formal Complaints.

1. Any person or entity may file a formal complaint alleging a violation of law. Formal complaints must be made in writing on a form specifically provided by the

Commission staff. Formal complaints must include the following information, upon the complainant's information and belief:

(a) the name and address of the respondent;

(b) the provision(s) of law allegedly violated;

(c) the facts constituting the alleged violation(s);

(d) the names and addresses of witnesses, if any; and

(e) identification of documents or other evidence which may prove the facts constituting the alleged violation(s), if any.

2. Formal complaints may be filed anonymously. Any formal complaint not filed anonymously must be verified and signed by the complainant under penalty of perjury. If the complainant is an entity, the complaint must be verified and signed under penalty of perjury by an authorized officer or agent of the entity.

3. The Executive Director shall process and review all formal complaints following the process described in Section IV.

B. Informal Complaints. Any person or entity may file an informal complaint alleging a violation of law by submitting a complaint by telephone, in person, or in writing other than on the form prescribed by the Commission. The Executive Director shall have no obligation but has the discretion to process and review informal complaints.

C. Complaints Initiated by the Executive Director. The Executive Director may initiate complaints. These complaints need not conform to the requirements for formal complaints specified in subsection A of this Section.

D. Complaints Alleging a Violation of the Sunshine Ordinance. Any complaint that alleges a violation of the San Francisco Sunshine Ordinance shall be governed by the Ethics Commission Regulations for Violations of the Sunshine Ordinance.

IV. REVIEW OF COMPLAINTS

A. Preliminary Review. The Executive Director must conduct a preliminary review of each formal complaint. This inquiry may include reviewing relevant documents, communicating with the complainant, communicating with the respondent, and any other inquiry to determine whether a full investigation is warranted.

B. Dismissal of Complaint. Based on the allegations and information contained in a complaint, and the Executive Director's preliminary review, the Executive Director may dismiss the complaint if the allegations do not warrant further action for reasons that may include, but are not limited to:

1. Credible evidence clearly refutes the allegations.

2. The allegations, if true, do not constitute a violation of law within the Commission's jurisdiction.

3. The complaint contains an expression of opinions, rather than specific allegations.

4. The allegations contained in the complaint are already under investigation, or already have been resolved, by the Commission or another law enforcement agency.

If the Executive Director dismisses a complaint under this section, the Executive Director shall take no further action on the complaint, except that he or she may: 1) inform the complainant of the Executive Director's decision; 2) at his or her discretion, issue a warning letter to the respondent; or 3) at his or her discretion, refer the complaint to another agency for its appropriate action.

The Executive Director shall provide a monthly summary to the Commission of each complaint dismissed, including the reasons for dismissal, provided that such information shall comply with the confidentiality requirements of the Charter.

C. There is Reason to Believe a Violation May Have Occurred. If, based on the allegations and information contained in a complaint, and the Executive Director's preliminary review, the Executive Director determines that there is reason to believe that a violation of law may have occurred, the Executive Director shall immediately forward the complaint to the District Attorney and the City Attorney.

Within ten business days after receipt of the complaint, the District Attorney and City Attorney shall inform the Commission whether the District Attorney or City Attorney has initiated or intends to pursue an investigation of the complaint.

If neither the District Attorney nor City Attorney intends to pursue an investigation, the Executive Director shall, within 14 days of such notification, inform the complainant in writing of the action, if any, that he or she has taken or plans to take on the complaint, together with the reasons for such action or non-action. If the Executive Director has not informed the complainant of the action that he or she has taken or plans to take on the complaint within 14 days, the complainant shall be notified of the reasons for the delay and shall subsequently receive notification as provided above.

V. CONDUCT OF INVESTIGATIONS

A. Factual Investigation. The Executive Director's investigation may include, but shall not be limited to, the interview of the respondent(s) and any witnesses, the deposition of respondent(s) and/or witnesses, and the review of documentary and other evidence.

B. Subpoenas. During an investigation, the Executive Director may compel by subpoena the testimony of witnesses and the production of documents relevant to the investigation.

VI. DETERMINATION THAT THERE IS NOT PROBABLE CAUSE TO BELIEVE A VIOLATION OF LAW HAS OCCURRED

A. Executive Director Determination and Calendaring. If the Executive Director determines that there is not probable cause to believe that a violation of law has occurred, the Executive Director shall inform the Commission of that determination and provide clear and concise reasons supporting that determination. Thereafter any member of the Commission may cause the item to be calendared for consideration by the full Commission in a closed session at the next Commission meeting held no sooner than ten days after the date the Executive Director informs the Commission of the Executive Director's determination. A Commissioner's request that a complaint be calendared for consideration by the full Commission must be received by the Executive Director not less than five days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements.

B. Commission Decision Not to Dismiss. If the matter is calendared for consideration by the Commission, and if the Commission decides that there is reason to believe that a violation of law may have occurred, the Commission shall direct the Executive Director either to investigate the matter further or to prepare a probable cause report and schedule a probable cause hearing.

C. Commission Decision to Dismiss. If the matter is calendared for consideration by the Commission, and if the Commission decides that there is not reason to believe that a violation of law may have occurred, the Commission shall take no further action on the complaint other than: 1) inform the complainant and respondent of the Commission's decision; 2) at the Commission's discretion, issue a warning letter to the respondent; or 3) at the Commission's discretion, refer the complaint to another agency for its appropriate action.

D. Commission Decision Not to Calendar. If the Executive Director determines that there is not probable cause to believe that a violation of law has occurred, and if after the Executive Director informs the Commission of the determination the Commission does not calendar the matter for consideration pursuant to section VI(A), the Executive Director shall take no further action except that he or she may: 1) inform the complainant and respondent of the Executive Director's decision; 2) at his or her discretion, issue a warning letter to the respondent; or 3) at his or her discretion, refer the complaint to another agency for its appropriate action.

VII. RECOMMENDATION THAT THERE IS PROBABLE CAUSE TO BELIEVE A VIOLATION OF LAW HAS OCCURRED

A. **Probable Cause Report.** When the Executive Director determines there is probable cause to believe a violation of law has occurred, the Executive Director shall prepare a written "probable cause report" and schedule a probable cause hearing. The probable cause report shall contain a summary of the laws that the Executive Director believes the respondent(s) violated and evidence gathered through the investigation, including any exculpatory and mitigating information. In the probable cause report, the Executive Director may present statements including hearsay, declarations of investigators or others relating to the statements of witnesses, or the examination of physical evidence. Unless otherwise permitted by the Commission Chair or the Commission Chair's designee for good cause shown, the probable cause report shall not exceed 25 pages excluding attachments.

B. **Delivery of Probable Cause Report and Notice of Probable Cause Hearing.** The Executive Director shall deliver to each respondent a copy of the probable cause report, with written notice of the date, time and location of the probable cause hearing, at least 45 days in advance of the hearing date. The notice shall inform each respondent that he or she has the right to be present and represented by counsel at the probable cause hearing.

C. **Response to the Probable Cause Report.**

1. Each respondent may submit a written response to the probable cause report. The response may contain legal arguments, a summary of evidence, and any mitigating or exculpatory information. Unless otherwise permitted by the Commission Chair or the Commission Chair's designee for good cause shown, the response shall not exceed 25 pages excluding attachments.

2. Each respondent who submits a response must deliver the response no later than 20 days prior to the date of the probable cause hearing. Unless the parties agree to deliver materials by email, the respondent must deliver a total of eight copies of the response to the Executive Director. The Executive Director must then immediately distribute copies of the response to the Commission. The respondent must also deliver one copy of the response to every other respondent named in the probable cause report.

D. **Rebuttal .** The Executive Director may submit evidence or argument in rebuttal to a response. If the Executive Director chooses to do so the Executive Director must deliver the rebuttal to the Commission and each respondent named in the probable cause report no later than seven days prior to the date of the probable cause hearing. Unless otherwise permitted by the Commission Chair or the Commission Chair's designee for good cause shown, the rebuttal shall not exceed ten pages excluding attachments.

VIII. PROBABLE CAUSE HEARING; DETERMINATION OF WHETHER AND HOW TO PROCEED WITH A HEARING ON THE MERITS

A. **General Rules and Procedures.**

1. Unless otherwise decided by the Commission, the Commission shall sit as a hearing panel to conduct the probable cause hearing. The Commission may assign one of its members to conduct the probable cause hearing and submit a report and recommendation to the Commission.

2. The hearing shall be closed to the public to the extent permitted by state law, unless the respondent requests that the probable cause hearing be held in public.

3. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the probable cause hearing. Neither the Executive Director nor the respondent(s) may present live witness testimony at the probable cause hearing.

4. The Commission may find that there is probable cause to believe a violation of law has occurred only if a person of ordinary caution and prudence would conclude, based on the evidence, that there is a reasonable ground to suspect that the respondent has committed the violation.

B. Probable Cause Determination.

1. If the Commission as a whole conducts the probable cause hearing, the Commission shall make the probable cause determination no later than 45 days after the date the hearing is concluded. If the Commission assigns one of its members to conduct the probable cause hearing, the assigned member shall submit a report and recommendation to the Commission no later than 30 days after the date the hearing concludes, and the Commission shall make the probable cause determination no later than 45 days after the assigned member delivers his or her report and recommendation.

2. A determination that there is probable cause to believe that a violation of law has occurred shall be based on the entire record of the proceedings. Each Commissioner who participates in the decision shall certify on the record that he or she personally heard or read the testimony (either in person or by listening to a tape or reading the transcript prepared by a court reporter) and reviewed the evidence, or otherwise reviewed the entire record.

3. The Commission shall not make a finding of probable cause if it is presented with clear and convincing evidence that, prior to the alleged violation:

(a) the respondent had requested and obtained a written opinion from the Commission;

(b) the respondent, in requesting the opinion, disclosed truthfully all the material facts pertinent to the case;

(c) the Commission or its staff issued a formal, written opinion with which both the District Attorney and City Attorney concurred; and

(d) the respondent committed the acts or violations alleged in the complaint in good-faith reliance upon the formal, written opinion of the Commission.

4. If the Commission determines that there is not probable cause to believe a violation has occurred, the Commission shall dismiss the complaint and take no further action on the complaint, except: 1) inform the complainant and each respondent of the Commission's decision; 2) at the Commission's discretion, issue a warning letter to the respondent; or 3) at the Commission's discretion, refer the complaint to another agency for its appropriate action.

5. If the Commission determines that there is probable cause to believe a violation of law has occurred, the Commission shall announce its determination in open session. The announcement shall contain a summary of the allegations for which the Commission determines there is probable cause to believe a violation of law has occurred and a cautionary statement that each respondent is presumed to be innocent unless and until such time that the allegations are proved in a subsequent hearing on the merits.

C. Determination How to Proceed with Hearing on Merits.

1. Following a determination of probable cause by the Commission, the Commission shall proceed with a hearing on the merits of the complaint. Unless otherwise decided by the Commission, the Commission shall sit as the hearing panel to hear the merits of the case. The Commission may also sit as the hearing panel to hear the case, with an outside hearing officer presiding, or designate an individual Commissioner or an outside hearing officer to hear the case and file a report and recommendation for decision by the Commission.

2. The Commission shall provide for resolution of preliminary matters in advance of the hearing on the merits. Unless otherwise decided by the Commission, the Commission Chair shall hear and decide preliminary matters pursuant to Section X, subsection B. The Commission alternatively may designate an individual Commissioner or an outside hearing officer to hear and decide preliminary matters.

3. The Commissioner or hearing officer assigned to decide preliminary matters shall also be authorized to provide for the issuance of subpoenas.

D. Amending Probable Cause Determination.

Before the Executive Director has scheduled the hearing on the merits, or no later than 60 days prior to the date the hearing on the merits is scheduled to commence, the Executive Director may request that the Commission amend the probable cause determination to add or amend allegations or charges against the respondent. If the Executive Director seeks to amend the probable cause determination, the Executive Director, the respondent(s) and the Commission shall follow the procedures set forth in Sections VII and VIII, and the Executive Director shall issue an amended accusation and notice of the hearing on the merits following the procedures set forth in Section IX.

IX. ISSUANCE OF ACCUSATION; SCHEDULING AND NOTICE OF HEARING ON MERITS

A. Issuance of Accusation.

Except as provided in Section XI, following a determination of probable cause by the Commission, the Executive Director shall issue an accusation. The accusation shall clearly specify the provisions of the laws that each respondent allegedly violated and shall set forth the acts or omissions with which each respondent is charged. The accusation shall list only those charges for which the Commission made a determination of probable cause. The Executive Director shall deliver a copy of the accusation to each respondent ten days after the Commission's probable cause determination. The accusation is a public document.

The Executive Director shall present the case in support of the accusation at the hearing on the merits. The accusation shall be the charging document for the purpose of the hearing on the merits. The commission shall not find that any respondent has committed a violation of law if the accusation does not allege such a violation and provide the respondent notice of the basis for the allegation.

B. Scheduling and Notice of Hearing on Merits.

The Executive Director shall schedule the hearing on the merits, and deliver written notice of the date, time and location of the commencement of the hearing to each respondent at least 45 days prior to the commencement of the hearing. The notice shall be in substantially the following form:

> "You are hereby notified that a hearing will be held before the Ethics Commission (or name of hearing officer or assigned Commissioner) at ___ on the __ day of ___, 20__, at the hour of ___, at (location of _____), upon the charges made in the accusation. You may be present at the hearing, may, but need not, be represented by counsel, may present any relevant evidence, and will be given an opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Commission on or before (date)."

X. DISCOVERY; HEARING BRIEFS; PRELIMINARY MATTERS.

A. Discovery. The Executive Director and each respondent shall be entitled to pre-hearing discovery in accordance with the provisions of

California Administrative Procedure Act, Government Code, Title 2, Division 3, Part 1, Chapter 5, section 11500 et seq.

B. Resolution of Preliminary and Procedural Matters.

1. The Executive Director and any respondent may present preliminary matters, unrelated to the merits of the accusation, to the assigned Commissioner or hearing officer designated to hear such matters pursuant to Section VIII, subsection C(2). Preliminary matters may include, but are not limited to, the following:

(a) procedural matters;

(b) disqualification of any member of the Commission from participation in the hearing on the merits;

(c) requests for dismissal of any charges in the accusation because, even if the allegations set forth in the accusation are true, those charges do not state a violation of law as alleged;

(d) discovery motions; and

(e) any other matters not related to the truth or falsity of the factual allegations in the accusation.

2. A request for resolution of preliminary matters must be delivered to the assigned Commissioner or hearing officer no later than 25 days prior to the commencement of a hearing on the merits. At the same time that the request is delivered to the assigned Commissioner or hearing officer, the requester must deliver copies of the request to the Executive Director and every other respondent named in the accusation.

3. The request for resolution of preliminary matters may contain legal arguments and a summary of the facts underlying the request. Unless otherwise permitted by the assigned Commissioner or hearing officer for good cause shown, the request shall not exceed 15 pages excluding attachments.

4. The Executive Director or each respondent may submit a written opposition to a request for resolution of preliminary matters. The opposition must be delivered to the assigned Commissioner or hearing officer no later than ten days after the date of delivery of the request. At the same time that the opposition is delivered to the assigned Commissioner or hearing officer, the party submitting the opposition must deliver copies of the opposition to the Executive Director and every other respondent named in the accusation. Unless otherwise permitted by the assigned Commissioner or hearing officer for good cause shown, the opposition shall not exceed ten pages excluding attachments.

5. The requestor may submit a written reply to an opposition. The reply must be delivered to the assigned Commissioner or hearing officer no later than five days after the

date of delivery of the opposition. At the same time that the reply is delivered to the assigned Commissioner or hearing officer, the party submitting the reply must deliver copies of the reply to the Executive Director and every other respondent named in the accusation. Unless otherwise permitted by the assigned Commissioner or hearing officer for good cause shown, the reply shall not exceed five pages excluding attachments.

6. The assigned Commissioner or hearing officer shall issue a written decision on each request for resolution of preliminary matters no later than five days prior to the commencement of the hearing on the merits.

7. The Executive Director or any respondent may submit a written request for reconsideration, by the Commission, assigned Commissioner or hearing officer who will conduct the hearing on the merits, of any decision made on preliminary matters. A party requesting reconsideration shall deliver the request on the Commission, assigned Commissioner or hearing officer, and the Executive Director and any other respondent, no less than three days prior to the hearing on the merits.

8. Before or during the hearing on the merits, the Executive Director and any respondent may file a request for resolution of a procedural matter affecting the conduct of the hearing. This request shall be directed to the Commissioner or hearing officer designated to hear preliminary matters pursuant to Section VIII, subsection C(2). The request shall follow the process outlined by paragraphs 2 through 5 of this section, except that the request may be submitted later than 25 days prior to the commencement of the hearing on the merits but may not be submitted after the conclusion of the hearing on the merits. If either party requests a written decision, the assigned Commissioner or hearing officer shall issue a written decision no later than 20 days after the date of the request.

C. Hearing Briefs.

The Executive Director shall, and any respondent may, submit a hearing brief. The brief shall outline significant legal arguments and list evidence and witnesses to be presented at the hearing. The brief is not required to list anticipated rebuttal evidence or rebuttal witnesses. Unless the Commission or outside hearing officer agrees to accept briefs by email, six copies of the brief shall be delivered to the Commission, assigned Commissioner, or outside hearing officer no later than 20 days prior to the date the hearing on the merits commences. The Executive Director shall deliver a copy of the Executive Director's brief to each respondent named in the accusation. Each respondent who chooses to submit a brief shall deliver copies of the respondent's brief to the Executive Director and to every other respondent named in the accusation.

D. Issuance of Hearing Subpoenas.

The Executive Director and any respondent named in the accusation may request the issuance of subpoenas for the attendance of witnesses and for the production of documents at the hearing on the merits. Requests for the issuance of subpoenas should be delivered no later than 20 days prior to the commencement of the hearing on the merits.

The request shall be accompanied by a declaration specifying the name and address of the witnesses and setting forth the materiality of their testimony. If the request is for a document subpoena, it shall be accompanied by a declaration which includes the following information: a specific description of the documents sought; an explanation of why the documents are necessary for the resolution of the complaint; and the name and address of the witness who has possession or control of the documents. Subpoenas may be issued upon approval of the Commission or the Commissioner or hearing officer designated by Section VIII, subsection C(2).

XI. DISCOVERY OF EXCULPATORY INFORMATION AND DISMISSAL OF COMPLAINT PRIOR TO HEARING ON THE MERITS

A. Discovery of Exculpatory Information. Following the delivery of the probable cause report, if the Executive Director is aware of or discovers any exculpatory information with respect to any charge listed in the accusation, the Executive Director shall notify the Commission and the respondent(s) of this information.

B. Dismissal Recommendation. After a determination of probable cause and before a hearing on the merits, the Executive Director may recommend that the Commission dismiss the complaint. The Executive Director may make such a recommendation based on the Executive Director's discovery of exculpatory information or other good cause. In such situations, if he or she has not done so already, the Executive Director is not required to issue an accusation and the Commission need not hold a hearing on the merits, unless the Commission overrides the Executive Director's dismissal recommendation.

C. Commission Consideration of Dismissal Recommendation. The Executive Director shall present the dismissal recommendation and the reasons for the recommendation to the Commission in a public memorandum. Thereafter, any member of the Commission may cause the complaint to be calendared for consideration by the full Commission in open session at the next Commission meeting occurring no sooner than ten days from the date the Executive Director informs the Commission of the Executive Director's recommendation. A Commissioner's request that a complaint be calendared must be received by the Executive Director no fewer than five days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements. If members of the Commission do not cause the complaint to be calendared, or if in open session a majority of the Commission does not vote to override the dismissal recommendation, the Commission shall take no further action on the complaint except: 1) inform the complainant and each respondent of the Commission's decision; 2) at the Commission's discretion, issue a warning letter to the respondent; or 3) at the Commission's discretion, refer the complaint to another agency for it appropriate action.

D. Dismissal or Removal of Specific Charges. After a determination of probable cause and before a hearing on the merits, the Executive Director may decide not to

proceed with a specific charge listed in the accusation. If the Executive Director makes such a determination, the Executive Director shall immediately notify in writing the respondent(s) and the Commission or hearing officer. If the Executive Director provides such notice, the Commission shall not find a violation based on the specific charge or violation after a hearing on the merits.

XII. HEARING ON THE MERITS

A. General Rules and Procedures.

1. Public Hearing

The hearing on the merits shall be open to the public, provided that either the Executive Director or the respondent(s) may request that the Commission, assigned Commissioner or hearing officer exclude any witnesses.

2. Standard of Proof

The Commission may determine that a respondent has committed a violation of law only if a person of ordinary caution and prudence would conclude, based on a preponderance of the evidence, that the respondent has committed the violation.

3. Rules of Evidence

All evidence admissible in an administrative proceeding governed by the California Administrative Procedure Act shall be admissible in a hearing on the merits. The Executive Director and each respondent shall have the right to call and examine witnesses under oath or affirmation, to introduce exhibits, to cross-examine and impeach witnesses, and to rebut any evidence presented.

4. Exhibits

Where both parties stipulate to the admissibility of an exhibit, the parties shall so advise the Commission in advance of the hearing. For all other exhibits, each party may move to admit a particular exhibit at the hearing, and the other party shall have an opportunity to object prior to the ruling on the admission.

5. Witnesses

Witnesses shall be examined by the parties as follows: direct examination, cross-examination, re-direct. After the parties have concluded their examination of a witness, Commissioners shall have an opportunity to pose questions to the witness.

6. Oral Argument

At the hearing, the Executive Director and each respondent shall be allowed oral argument. The Commission, assigned Commissioner, or hearing officer shall determine the appropriate length for the arguments.

B. Finding of Violation.

If the Commission as a whole conducts the hearing on the merits, the Commission shall determine, no later than 45 days after the date the hearing is concluded, whether the respondent has committed a violation of law. If the Commission assigns one of its members or an outside hearing officer to conduct the hearing on the merits, the assigned member or hearing officer shall submit a report and recommendation to the Commission no later than 30 days after the date the hearing is concluded. Thereafter, the Commission shall determine, no later than 45 days after the date the report and recommendation is delivered, whether the respondent has committed a violation of law.

The votes of at least three Commissioners are required to find a violation of law. The finding of a violation shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings. Each Commissioner who participates in the decision shall certify on the record that he or she personally heard the testimony (either in person or by listening to a tape or recording of the proceeding) and reviewed the evidence, or otherwise reviewed the entire record of the proceedings.

C. Administrative Orders and Penalties.

1. The votes of at least three Commissioners are required to impose orders and penalties for a violation. The Commission may issue orders and penalties requiring the respondent(s) to:

(a) cease and desist the violation;

(b) file any reports, statements or other documents or information required by law; and/or

(c) pay a monetary penalty to the general fund of the City in an amount permitted under the law that the Commission finds the respondent has violated, or, if the law does not specify the amount of the monetary penalty, in an amount up to five thousand dollars ($5,000) for each violation, or three times the amount which the respondent failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.

2. When deciding on an order and penalties, the Commission shall consider all 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.

3. Unless otherwise ordered by the Commission, any penalties imposed by the Commission must be paid in full by the respondent within 90 days of the Commission's decision.

D. Finding of No Violation.

If the Commission determines that there is insufficient evidence to establish that the respondent has committed a violation, or if the Commission determines that there is sufficient evidence to establish that the respondent has not committed a violation, the Commission shall publicly announce this fact. Thereafter, the Commission shall take no further action on the complaint. The Executive Director shall inform each respondent and complainant of the Commission's determination.

XIII. MISCELLANEOUS PROVISIONS

A. Ex Parte Communications.

Once a complaint is filed, no Commissioner or staff member shall engage in oral or written communications outside of a Commission meeting, interview or settlement conference regarding the merits of an enforcement action with the respondent or complainant or any person communicating on behalf of the respondent or complainant unless the communication is necessary for the conduct of the investigation or enforcement action.

B. Access to Complaints and Related Documents and Deliberations.

1. No complaint, response thereto, investigative file or information contained therein, or Commissioner and staff deliberations about complaints shall be disclosed except as necessary to the conduct of an investigation, prior to a probable cause determination.

2. After a determination of probable cause, the probable report, the response, and the rebuttal shall be confidential, unless the respondent requested that the probable cause hearing be public. All investigative documents, including notes and memoranda, created prior to the probable cause determination, such as the complaint, shall remain confidential, except that the Executive Director may provide a copy of the complaint to the respondent(s) if the Executive Director determines that disclosure is necessary to the

conduct of the investigation. All investigative documents, including notes and memoranda, created by the Executive Director and his or her staff after the probable cause determination shall be confidential, except for the accusation, until any such documents are either delivered to the Commission or respondent(s), introduced as evidence or an exhibit, or distributed for public consumption, such as an agenda or press release.

3. In addition to the prohibition on ex parte communications stated in Section XIII, subsection A, except at a public meeting of the Commission, Commissioners are prohibited, prior to a final determination on the merits of a complaint, from engaging in oral or written communications regarding the merits of a complaint or enforcement action with any person or entity unless the communication is necessary for the conduct of the investigation or enforcement action. After a final determination on the merits of a complaint, Commissioners may discuss matters in the public record.

C. Oaths and Affirmations.

The Commission, and individual Commissioners and hearing officers assigned to conduct hearings, may administer oaths and affirmations.

D. Selection of Designee by the Executive Director.

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the Executive Director shall notify the Commission of the designation no later than the next business day.

E. Powers and Duties of Hearing Officers.

1. Unless otherwise provided, whenever the Commission assigns an individual Commissioner or hearing officer to hear any matter under these Regulations, the assigned Commissioner or hearing officer shall have the same authority, and be subject to the same restrictions, as the Commission.

2. When an individual Commissioner or a hearing officer is assigned to hear and decide preliminary matters in advance of a hearing on the merits, he or she shall make an actual determination. This determination may be reviewed by the Commission upon request by the Executive Director or a respondent, pursuant to the procedures specified in Section X, subsection B(7).

3. When an individual Commissioner or a hearing officer is assigned to conduct a probable cause hearing or hearing on the merits, he or she shall submit a report and recommendation for decision by the Commission. The report and recommendation shall contain proposed findings of fact and conclusions of law. Copies of the report and recommendation shall be delivered to the Commission, Executive Director, and each respondent no later than 30 days after the date the hearing is concluded. Thereafter, the

Executive Director shall calendar the matter for consideration at the next Commission meeting not less than 15 days after the date the report and recommendation is delivered to the Commission.

4. When the Commission sits as the hearing panel to hear a case, with an outside hearing officer presiding, the hearing officer shall rule on procedural matters and on the admission and exclusion of evidence only, and shall have no role in the decision on the merits.

F. Statute of Limitations.

1. Unless otherwise stated in local or State law, for statute of limitations purposes, an action or proceeding for administrative penalties is brought or commenced by the Executive Director on the date the Executive Director delivers the probable cause report.

2. If there is no statute of limitations for violations of the law allegedly violated, the probable cause report must be delivered within four years of the date of events which form the basis of the complaint, or the date that the events constituting the basis of the complaint were discovered by the Ethics Commission, whichever is later.

G. Extensions of Time and Continuances.

Whenever the Executive Director, a respondent, or a witness is required to complete an act or produce materials pursuant to these Regulations, that party may request an extension of time. Requests for extensions of time may be made to the Commission Chair or the Commission Chair's designee. The requester must deliver the request to the Commission Chair or designee and provide a copy of the request to all other parties no later than ten business days before the deadline to complete an act or produce materials. The Commission Chair or designee shall have the discretion to consider untimely requests. The Commission Chair or designee shall approve or deny the request within five business days of the submission of the request. The Commission Chair or designee may grant the request only upon a showing of good cause.

The Executive Director or any respondent may request the continuance of a hearing date. The requester must deliver the request to the Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing shall have the discretion to consider untimely requests.

The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing shall approve or deny the request within five working days of the submission of the request. The Commission Chair or the individual Commissioner or hearing officer assigned to hold the hearing may grant the request only upon a showing of good cause.

H. Referrals to Other Enforcement Agencies.

At any time after the filing of a complaint, the Commission or Executive Director may refer the matter to another government agency or official if the Commission or Executive Director determines that the agency or official may more appropriately resolve the allegations in the complaint or enforce the applicable provisions of law. A copy of all information gathered by the Commission staff shall be sent to the agency or official together with the referral.

A determination by the Executive Director or the Commission that no further action should be taken on a matter shall not prevent any other government agency from initiating its own enforcement action, including disciplinary action, based on the same allegations and facts.

I. Recordings and Transcripts.

Every probable cause hearing and hearing on the merits shall be tape-recorded. Where the Commission assigns a Commissioner to conduct a probable cause hearing, and where the Commission assigns a Commissioner or hearing officer to conduct a hearing on the merits, the hearing shall also be recorded stenographically. The Commission shall retain the tapes until the opportunity for legal challenge has been exhausted. Copies of a tape shall be available to the respondent upon request.

J. Place of Delivery.

1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.

2. Whenever these regulations require delivery to a respondent or his or her committee, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of delivery agreed upon by the parties under section II, subsection F, to:

a. If the respondent is a City employee, to the address listed with the (Controller/ Payroll) as the employee's current address.

b. If the respondent is a former City employee, to the address listed with the City's retirement system.

c. If the respondent is a current or former candidate or committee registered with the Ethics Commission, to the address provided to the Ethics Commission by that candidate or committee.

d. If subsections (a) through (c) are not applicable, to an address reasonably calculated to give notice to and reach the respondent.

It is the responsibility of City employees, or candidates or committees who file reports with the Ethics Commission, to maintain accurate addresses with relevant City Departments. The Executive Director therefore may rely on those addresses in carrying out the objectives of the Commission.

3. Delivery is effective upon the date of delivery, not the date of receipt.

K. Page Limitations and Format Requirements.

Whenever these Regulations impose a page limitation, a "page" means one side of an 8½ inch by 11 inch page, with margins of at least one inch at the left, right, top and bottom of the page, typewritten and double-spaced in no smaller than 12 point type. Each page and any attachments shall be consecutively numbered.

L. Public Summary of Dismissed Complaints.

Notwithstanding any other provision of these regulations, the Executive Director may provide a public summary of dismissed complaints. Such summary may include, but need not be limited to, a generic description of each dismissed complaint and a summary of the reasons for dismissal, provided that such information shall comply with the confidentiality requirements of the Charter.

M. Conclusion of Hearing on the Merits.

For the purposes of these Regulations, a hearing on the merits concludes on the last date on which the Commission hears argument or testimony in the proceeding.

XIV. STIPULATED ORDERS

A. 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. Any proposed stipulation, decision and order shall explicitly state that:

(1) the proposed stipulation, decision and order is subject to approval by the Commission;
(2) the respondent knowingly and voluntarily waives any and all procedural rights under the law and these Regulations;

(3) the respondent understands and acknowledges that the stipulation is not binding on any other law enforcement agency, and does not preclude the Commission or its staff from referring the matter to, cooperating with, or assisting any other government agency with regard to the matter, or any other matter related to it;

(4) the respondent agrees that in the event the Commission refuses to approve the proposed stipulation, it shall become null and void; and

(5) in the event the Commission rejects the proposed stipulation and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission shall be disqualified because of prior consideration of the stipulation.

B. 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.

C. Once the Executive Director enters into a stipulated agreement with a respondent, the Executive Director shall inform the Commission of this stipulation. Thereafter, any member of the Commission may cause the stipulation to be calendared for consideration by the full Commission in a closed session at the next Commission meeting occurring no sooner than ten days from the date the Executive Director informs the Commission of the stipulated agreement. A Commissioners' request that a stipulated agreement be calendared for consideration by the full Commission must be received by the Executive Director no fewer than five days prior to the date of the meeting, so that the Executive Director may comply with the applicable notice and agenda requirements.

D. 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.

XV. SEVERABILITY

If any provision of these Regulations, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Regulations and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

Exhibit E

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

PAUL A. RENNE
VICE-CHAIRPERSON

BRETT ANDREWS
COMMISSIONER

BEVERLY HAYON
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Via U.S. Mail

December 9, 2014

Supervisor Mark Farrell
c/o James Sutton
150 Post Street, Suite 405
San Francisco, CA 94108

RE: Forfeitures due from 2010 election

Dear Supervisor Farrell:

I am writing to you regarding forfeitures that have not yet been paid relating to the 2010 election.

On November 20, 2014, the Fair Political Practices Commission ("FPPC") approved a Stipulation between its staff and Common Sense Voters, Vote for Mark Farrell for Supervisor 2010 ("CSV") and Christopher Lee. In 2009, you created the Mark Farrell for District 2 Supervisor 2010 committee and retained Chris Lee as your committee's campaign consultant. The FPPC found that Mr. Lee coordinated with CSV, its principal officer, and its campaign consultant regarding the setup, fundraising, and initial campaign planning of CSV. The FPPC found that Mr. Lee's interactions caused CSV to become your candidate-controlled committee.

As CSV was a candidate-controlled committee, it was subject to the $500 contribution limits in section 1.114 of the San Francisco Campaign and Governmental Conduct Code ("SF C&GCC"). In addition, CSV's expenditures were not considered independent and have been treated as contributions to you from the persons making the expenditures to the candidate on whose behalf, or for whose benefit the expenditures are made, in accordance with section 1.115 of SF C&GCC. Pursuant to section 1.114(f) of SF C&GCC, each committee that receives a contribution which exceeds the limits "shall pay promptly the amount received...in excess of the amount permitted by this Section to the City and County of San Francisco and deliver the payment to the Ethics Commission for deposit in the General Fund of the City and County."

According to CSV's filings, CSV made $43,399.18 in expenditures in your support and $148,003.86 in expenditures against other candidates for Supervisor of District 2, for a total of $191,403.04. As stated above, these expenditures are not considered independent and have been treated as contributions to you. Of the $191,403.04 spent on your behalf and for your benefit during the 2010 election, $190,903.04 exceeded the $500 contribution limit in SF C&GCC section 1.114. Therefore, pursuant to section

25 Van Ness Avenue, Suite 220 • San Francisco, CA 94102-6053• Phone (415) 252-3100• Fax (415) 252-3112
E-Mail Address: ethics.commission@sfgov.org Web site: http://www.sfethics.org

1.114(f), you are required to forfeit $190,903.04 to the City and County of San Francisco and deliver the payment to the Ethics Commission for deposit in the General Fund of the City and County. The Ethics Commission may provide a waiver or reduction of the forfeiture.

If you have any questions or wish to discuss this letter, please feel free to contact me at 415-252-3100.

Sincerely,

John St. Croix
Executive Director

Exhibit F

THE SUTTON LAW FIRM

FILED
15 MAR 16 AM 10:44
SAN FRANCISCO
ETHICS COMMISSION
BY

March 15, 2015

VIA E-MAIL & PERSONAL DELIVERY

Mr. John St. Croix, Executive Director
San Francisco Ethics Commission
25 Van Ness Ave., Ste. 220
San Francisco, CA 94102-6053

RE: Requested "Forfeiture" from Mark Farrell for District 2 Supervisor 2010 Committee

Dear Mr. St. Croix:

This letter responds to your December 9, 2014 letter requesting that our client, the Mark Farrell for District 2 Supervisor 2010 committee ("Farrell Committee"), forfeit funds to the City stemming from a stipulation entered into last November by the FPPC, the Common Sense Voters committee ("CSV"), and Chris Lee. The letter also follows up the meetings which you were willing to have with us to discuss some of the issues raised by your letter. We understand that the full Commission will discuss this matter at its meeting on March 23, 2015, and would appreciate you forwarding a copy of this letter to the Commissioners before that meeting.

In short, pursuant to its authority under section 1.114(f) of the Campaign & Governmental Conduct Code, the Commission should completely waive this "forfeiture request," for the reasons set forth below.

Supervisor Farrell and the Farrell Committee have done nothing wrong.

Supervisor Farrell never coordinated with CSV. He had no involvement with CSV's mailers. He never authorized his campaign consultant Chris Lee to interact with CSV. Neither Supervisor Farrell nor any of his other campaign staff knew that Mr. Lee was doing so. The Farrell Committee never received any funds from CSV.

Supervisor Farrell went to great lengths to make certain that the political committee set up for his 2010 election (and the committee for his 2014 re-election) abided by all legal and ethical requirements. After a comprehensive investigation spanning over two years, which included interviews of Supervisor Farrell, everyone who worked on his campaign, and everyone involved with CSV, as well as the review of hundreds of e-mails produced by

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Tel: 415/732-7700 ▫ Fax: 415/732-7701 ▫ www.campaignlawyers.com

Supervisor Farrell and the Farrell Committee, the FPPC completely exonerated Supervisor Farrell and the Farrell Committee of any wrongdoing. The FPPC stipulation confirmed that, "The evidence supports the finding that Mark Farrell did not authorize Respondent Lee, as an agent of the Farrell Committee, to coordinate with Respondent CSV." (In the Matter of Common Sense Voters, SF 2010 and Chris Lee (11/14) FPPC No. 10/973.)

After being apprised of the results of the FPPC's investigation (and participating in some of the interviews), staff of the Ethics Commission evidently agreed with the FPPC's conclusion, because they told the FPPC that they would not take any action against the Farrell Committee. No subsequent investigations or findings of fact contradict the conclusions of the FPPC's two-plus year investigation.

The Commissioners may not agree with staff's decision to not take any action – but that is not a basis to now penalize Supervisor Farrell or the Farrell Committee. Supervisor Farrell and the Farrell Committee did nothing wrong. Levying any type of penalty against them four and a half years after the campaign ended, and after a comprehensive investigation completely cleared them of any wrongdoing, would be completely unjust and unprecedented.

Forfeiture is barred by the statute of limitations.

The forfeiture is unwarranted, as a matter of law, because of the four-year statute of limitations in the City's campaign law. (S.F. Camp. & Govt. Conduct Code section 1.168(c)(3).) The four-year statute has long passed. You sent the forfeiture letter in December 2014, but the activities of CSV which form the basis for the request took place in October 2010 – almost four and a half years and two election cycles ago.

Commission staff was fully aware of the possible issues involving CSV as early as December 2010, and could have reached its own conclusions within the time limitations set out in its official Forfeiture Policy. Specifically, the Commission received the original complaint letter from the Reillys' attorney alleging possible coordination between CSV and the Farrell Committee in December 2010, and Commission staff participated in the FPPC interviews of several people involved with the two committees in 2012. Although the FPPC did not finalize its investigation until last year, the actions of an independent state agency can of an independent state agency do not trump the statute of limitations of City law – especially when the Commission could have acted earlier.

The Commission's official Forfeiture Policy (discussed more fully below) explicitly states that the Commission will abide by the four-year statute of limitations when deciding whether to pursue forfeitures:

> **"Statute of limitations regarding late fines and forfeitures – the legal limitations period is four years."**

(3/4/08 staff memorandum, attached to separate letter to Commissioners.) Just as the City Attorney's office evidently concluded that the statute of limitations barred it from pursuing any action against the Farrell Committee, the statute of limitations also requires the Commission to waive the forfeiture request.

The assertion by the Reillys' attorney that the statute of limitations has been tolled because of "fraudulent concealment" is unfounded. Courts have consistently held that this doctrine is only applicable if the government is not aware of the potential violation during the time period, and if the government bears no fault for failing to discover the violation during the time period. (See, e.g., Community Cause v. Boatwright (1981) 124 Cal. App. 3d 888.) Here, the Commission was put on notice of possible issues involving CSV in 2010, and actively participated in gathering information about these issues in 2012. The Commission therefore cannot claim that it was not aware of the potential issue involving CSV until the FPPC issued its stipulation, and has no excuse for not acting within the four-year statute of limitations.

Forfeiture is also barred by the Commission's official Forfeiture Policy.

The forfeiture is also unwarranted because of the official Policy which the Commission adopted to regulate forfeiture requests. (Commission's Forfeiture Policy, outlined in 3/4/08 and 8/12/08 staff memorandum, attached to separate letter to Commissioners.) The Forfeiture Policy explicitly states that the Commission will not pursue forfeiture unless Commission staff has delivered a notice to the political committee within one year from the date that the applicable campaign report is due:

> **"If the Commission fails to send a [forfeiture assessment notice] to a committee assessing a forfeiture within one year of the filing deadline or the date that the defective report was received by the Commission, the Commission will not seek forfeiture."**

(8/12/08 staff memorandum; emphasis added.) The Forfeiture Policy underscores the importance of the Commission acting in a timely manner when seeking forfeiture, stating

that "the Commission has an obligation to let candidates and committees know that 'the clock is ticking' at the earliest possible occasion." (3/4/08 staff memorandum.) Your letter requesting forfeiture from the Farrell Committee of course arrived years after CSV and the Farrell Committee filed their campaign reports, well beyond this one-year rule.

Not only does the Forfeiture Policy not provide for any exceptions to this one-year rule, there is no reason in this case why Commission staff could not have sent such a notice to the Farrell Committee on a timely basis. As mentioned above, Commission staff was put on notice of the possible issues involving CSV in 2010 and then participated in FPPC interviews in 2012, so the Commission could have easily acted within the time limitation set out in its official Forfeiture Policy.

In sum, the Commission could have determined whether forfeiture was warranted within the Forfeiture Policy's one-year deadline, and certainly within the four-year statute of limitations. More to the point, if it wanted to pursue forfeiture against the Farrell Committee, it was legally required to act years ago, and is legally barred from requesting forfeiture at this time.

The Farrell Committee does not have funds to forfeit.

The Farrell Committee was closed in March 2013, so therefore does not legally exist, and has no funds to forfeit. Moreover, while in existence, the Farrell Committee never received any of the money that the City is now attempting to seize. The request that the Farrell Committee now "forfeit" any amount to the City, let alone $191,000, is therefore nonsensical.

Moreover, although neither the Commission nor any court has ever, to our knowledge, issued any interpretations of the forfeiture provision, the provision by its own wording seems to only apply to situations in which a committee actually receives money which does not comply with section 1.114. Nothing in the provision supports the position that the forfeiture requirement can apply to money spent by one committee which never makes it into the other committee's bank account (even though such expenditures can technically be interpreted to be "contributions" under the law). According to Commission records, it has asked a total of approximately 100 committees to forfeit funds to the City – and every one of these committees actually received and deposited the funds.

The Farrell Committee and Supervisor Farrell are inappropriate respondents.

Even though the FPPC stipulation only involved CSV, and even though the FPPC determined that Supervisor Farrell and the Farrell Committee did nothing wrong, your letter inexplicably demands forfeiture from the Farrell Committee, not CSV. Whether or not the Commission decides to pursue remedies against CSV, it is certainly not appropriate to now target the only person who had absolutely nothing to do with CSV's activities.

You informed us in one of our meetings that the Commission may consider looking to Supervisor Farrell's personal funds to satisfy this demand. This suggestion is absurd. Such an action would be wholly unprecedented and patently inequitable, especially in light of the fact that no governmental entity – not the FPPC, not the City, and not the Commission – has brought any action against Supervisor Farrell accusing him of any wrongdoing. In fact, only the opposite has happened – after a comprehensive investigation, the FPPC went out of its way to exonerate Supervisor Farrell. Asking Supervisor Farrell to personally pay any amount would be even more preposterous than making that demand of the Farrell Committee, as under no stretch of the law or facts did Supervisor Farrell ever receive any of the money in dispute (which would be a prerequisite for demanding that he now has to forfeit the funds to the City).

The Commission has no legal basis to request forfeiture.

You also told us in one of our meetings that asking a political committee to forfeit funds to the City is only appropriate when the committee's campaign reports reveal a *prima facie* violation of the law; i.e., when a violation can be discerned without any factual or legal investigation. In fact, in all of the approximately 100 prior forfeiture matters, the violation of section 1.114 was clear and undisputable on the face of the committee's campaign report – accepting a contribution from a corporation, not listing a contributor's occupation or employer, accepting a $600 contribution, etc.

The present situation could not be more different. Supervisor Farrell vehemently denies any wrongdoing, and never agreed that CVS could be characterized as his "controlled committee." The only way to reach the conclusion that the Farrell Committee violated section 1.114 would be to conduct an investigation into the relevant facts and law. Not only has the Commission never conducted such an investigation, but the appropriate result of such an investigation, should it conclude that a violation occurred, would be an administrative penalty levied pursuant to the enforcement procedures of the City Charter and Commission rules (Charter section C3.699-13; S.F. Camp. & Govt.

Conduct Code sections 1.168 et al.), not a conclusory demand that a defunct committee somehow pay hundreds of thousands of dollars to the City.

Moreover, there has not been any finding by the Commission, the FPPC, any other enforcement entity, or a court that the Farrell Committee actually received a contribution which exceeds the $500 limit or which does not otherwise comply with the requirements of section 1.114. Although your letter claims that the expenditures by CSV "have been treated as contributions to [Supervisor Farrell]," this claim is not stated in the FPPC stipulation or any other document. Instead, the FPPC stipulation only found that CSV made errors on its campaign reports and did not include the proper sender identification on its mass mailings, and does not reach the conclusion that CSV's mailers constituted contributions to the Farrell Committee; in fact, the stipulation does not make any findings about Supervisor Farrell or the Farrell Committee at all. The Commission therefore does not have the legal basis to request forfeiture from the Farrell Committee.

* * *

In sum, the Commission has no basis to demand any payment from the Farrell Committee. We therefore request a complete waiver of the December 2014 forfeiture demand. We also request -- four and a half years later, including a comprehensive, two-plus year investigation by the FPPC which specifically exonerated Supervisor Farrell -- that this issue be put to rest.

Please let us know if you need any additional information before next week's Commission meeting.

Sincerely,

James R. Sutton

cc: Supervisor Mark Farrell
JRS/lc
#1440.02

Exhibit G

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

PAUL A. RENNE
CHAIRPERSON

BRETT ANDREWS
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

BENEDICT Y. HUR
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

June 5, 2015

Supervisor Mark Farrell
c/o James Sutton
150 Post Street, Suite 405
San Francisco, CA 94108

Dear Supervisor Farrell:

On December 8, 2014 the Ethics Commission issued a letter to you requesting a forfeiture in the amount of $181,403.04 in relation to a stipulation adopted by the Fair Political Practices Commission on November 20,2014. The stipulation found that your campaign consultant, Christoper Lee, coordinated with the "Common Sense Voters, Vote for Mark Farrell" committee.

Your legal representation has argued to the Ethics Commission that this forfeiture request is invalid both because the statute of limitations has expired and because you have not been found to have been complicit in these coordination activities.

Arguments have been presented to the Ethics Commission that the statute of limitations has been tolled in this case due to the "doctrine of fraudulent concealment." The courts, in some instances, have granted estoppel to the statute of limitations in various cases where a defendant deliberately concealed evidence, in particular for the purposes of running the clock on the limitations statute. At present, it does not seem likely that a court would apply that doctrine in this case.

In reviewing this matter, the Ethics Commission is troubled by the circumstances of the coordination activities. However, the commission also realizes that you are not named as a respondent in the stipulation reached with the Fair Political Practices Commission based on the investigation they conducted and that the Commission does not have evidence before it that you committed an act of fraud.

Therefore, the Commission has decided to waive the demand of forfeiture presented to you in the December 8, 2014 letter.

Sincerely,

John St. Croix
Executive Director

25 Van Ness Avenue, Suite 220 • San Francisco, CA 94102-6053• Phone (415) 252-3100• Fax (415) 252-3112
E-Mail Address: ethics.commission@sfgov.org Web site: http://www.sfethics.org

James R. Sutton, Esq. (SBN 135930)
Bradley W. Hertz, Esq. (SBN 138564)
Matthew C. Alvarez, Esq. (SBN 301483)
THE SUTTON LAW FIRM, PC
150 Post Street, Suite 405
San Francisco, California 94108
Tel: 415/732-7700
Fax: 415/732-7701
Email: jsutton@campaignlawyers.com

Attorneys for Cross-Defendant
MARK FARRELL

ELECTRONICALLY
FILED
Superior Court of California, County of San Francisco
07/18/2016
Clerk of the Court
BY:CAROL BALISTRERI
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 and MARK FARRELL,

Petitioners and Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO ETHICS COMMISSION; CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR; and DOES 1 to 100, inclusive,

Respondents and Defendants.

CITY AND COUNTY OF SAN FRANCISCO, by and through its Ethics Commission,
Cross-complainant,

vs.

MARK FARRELL, an individual, and ROES 1 to 25, inclusive,

Cross-defendants.

Case No. CGC-16-551745

DECLARATION OF MATTHEW C. ALVAREZ IN SUPPORT OF SPECIAL MOTION TO STRIKE THE CITY AND COUNTY OF SAN FRANCISCO'S CROSS-COMPLAINT; EXHIBITS

PART 3 OF 4

Judge: Hon. Harold E. Kahn
Date: August 11, 2016
Reservation #: 07180811-01
Time: 9:30am
Dept: 302

Exhibit H

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

PAUL A. RENNE
CHAIRPERSON

BRETT ANDREWS
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

BENEDICT Y. HUR
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

June 15, 2015

Supervisor Mark Farrell
c/o James R. Sutton
The Sutton Law Firm
150 Post Street, Suite 405
San Francisco, CA 94108

RE: Referral of Forfeitures Due from 2010 Election to the San Francisco Bureau of Delinquent Revenues (BDR) – Mark Farrell for Supervisor 2010
ID # 1320480

Dear Supervisor Farrell:

Per the instructions of the Ethics Commissioners, your request for waiver of forfeiture dated March 15, 2015 has been denied.

By letter dated December 9, 2014, Supervisor Mark Farrell was notified of the Commission's decision to require the Committee, Mark Farrell for Supervisor 2010, to forfeit $190,903.04 in contributions. As of June 15, 2015, the forfeiture fees remain unpaid.

Consequently, we are referring your forfeiture fees in the amount of $190,903.04, to Bureau of Delinquent Revenue. The referral is effective on Monday, July 6, 2015.

If you wish to pay your $190,903.04 in fees before the referral is effective, please make sure that payment is received by the Ethics Commission on or before Thursday, July 2, 2015 by submitting a check payable to the City & County of San Francisco complete with your committee's name and FPPC ID; or making your payment online by clicking on the Payments Link on the Ethics Commission's Home Page at www.sfethics.org

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E-Mail Address: ethics.commission@sfgov.org Web site: http://www.sfethics.org

If you have questions on or before the Thursday, July 2, 2015 deadline, please contact Ernestine Braxton, Fines Collection Officer at (415) 252-3110. After July 6, please contact the Bureau of Delinquent Revenue at the Office of the Treasurer and Tax Collector at 554-4457.

Sincerely,

John St. Croix
Executive Director

Exhibit I

THE SUTTON LAW FIRM

June 4, 2015

VIA E-MAIL ONLY

Chair Paul Renne
Commissioner Benedict Hur
Commissioner Peter Keane
Commissioner Brett Andrews
Commissioner Beverly Hayon
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

RE: Revocation of Forfeiture Letter Sent to Supervisor Mark Farrell

Dear Chair Renne and Commissioners:

Executive Director John St. Croix has determined that asking Supervisor Farrell to "forfeit" $181,000 to the City (money which neither he nor his campaign committee ever actually received) is not appropriate for legal and equitable reasons. We agree, and on behalf of our client Supervisor Mark Farrell, respectfully request that you instruct Executive Director St. Croix to send out his letter revoking the prior forfeiture letter.[1]

The Commission should institute new procedures to give it better oversight of the enforcement process, rather than targeting Supervisor Farrell.

Some of you have expressed concern over staff's decision to not pursue a separate enforcement action in this matter. However, we respectfully submit that pursuing Supervisor Farrell is not the appropriate response to a disagreement with staff.

We would suggest that, rather than asking Supervisor Farrell to pay $181,000 to the City from his own personal funds (after he was fully exonerated by the FPPC), a more appropriate option would be to adopt procedures to give Commissioners more oversight of pending enforcement matters. For example, other local ethics commissions have their staffs present a "status report" on all pending enforcement matters in closed session every month, to ensure that the commissioners are aware of what actions staff is or is not taking

[1] This letter supplements our March 15, 2015 letters to Mr. St. Croix and Commissioner Hur about the forfeiture request.

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on all matters. Instituting this practice, or some other method to give Commissioners more information about pending enforcement matters, would seem to be a much more appropriate response to current concerns about this matter.

Staff's decision not to pursue Supervisor Farrell was reasonable and supported by the decisions of other enforcement entities.

Mr. St. Croix's decision that forfeiture is not appropriate in this case follows the similar decision by the City Attorney's office earlier this year, after its two-month review of the matter, that it could not pursue this matter because the four-year statute of limitations had run. Mr. St. Croix's decision also follows the conclusion reached by the FPPC, a state agency with over 30 years of experience investigating and prosecuting campaign finance violations, that Supervisor Farrell was not culpable in this matter after completing a detailed and thorough investigation spanning over two-and-a-half years.

Rather than "punt" on the matter, as asserted by the Reillys, staff's decision to defer to the FPPC was by all accounts thoughtful and considered. Ethics Commission staff sat in on several of the FPPC interviews, considered the hundreds of pages of e-mails and other evidence gathered in the case, saw the large fine levied by the FPPC against Chris Lee ($14,500), and ultimately agreed with the FPPC that it was not appropriate to penalize Supervisor Farrell for the actions of his rogue consultant.[2] In fact, staff's decision to defer to the FPPC is explicitly authorized by the Commission's enforcement regulations: "The Executive Director may dismiss the complaint if . . . the allegations in the complaint . . . have already been resolved by . . . another enforcement agency." (SFEC Regs. for Investigations & Enforcement Procedures (amended 2013) section IV(B)(4).)

[2]The Reillys also mis-characterize other aspects of the situation. They imply that the Ethics Commission and FPPC did something wrong by not contacting them or their attorney throughout the process – but it is of course standard practice for the Commission to not discuss a pending enforcement matter with a complainant or anyone else, unless the complainant happens also to be a witness; the Charter in fact requires the Commission to keep all investigations strictly confidential. (Section 3.669-13(a).) The Reillys also imply that the FPPC did something wrong by getting rid of the tapes of its interviews – though that is of course standard practice at the end of all enforcement matters.

Forfeiture is barred by the statute of limitations.

As has been extensively discussed, the activities at issue in this matter took place more than four-and-a-half years, and two election cycles, ago. The four-year statute of limitations contained in City law, and confirmed in a policy adopted by the Commission, therefore bars the Commission from seeking forfeiture, or taking any other action, at this time. (S.F. Camp. & Govt. Conduct Code section 1.168(c)(3) ["No administrative action alleging a violation of [the City's Campaign Finance Reform Ordinance] . . . shall be commenced more than four years after the date on which the violation occurred."]; 3/4/08 Staff Memorandum on "Ethics Commission Policy Changes" ["Statute of limitations regarding late fines and forfeitures – the legal limitations period is four years."].) Even if you do not agree with staff's decision to defer to the FPPC, the Commission was required by law to over-rule that decision by last October.

The Commission has an affirmative duty to not pursue forfeiture or any other enforcement action outside this four-year period, and may not, as has been suggested, absolve itself of this obligation by deferring to a court on the statute of limitations question. Just as the district attorney's office must take into account the applicable statute of limitations when deciding whether to file charges (and a public defender would certainly object strenuously if the district attorney did otherwise), you cannot ignore that the Ethics Commission – whether through staff or the Commission itself – was legally required to act by October 2014 if it wanted to pursue a separate enforcement action in this matter.

"Fraudulent concealment" does not apply in this matter.

The Reillys continue to claim that Supervisor Farrell and others have "fraudulently concealed" information from the Commission which prevented the Commission from taking action within four years. This claim is absurd. Supervisor Farrell did not keep information about Chris Lee's interactions with Common Sense Voters ("CSV") from the Commission – because he had no idea that Mr. Lee was interacting with CSV until he was told so by the FPPC years after the 2010 campaign ended. Supervisor Farrell could not withhold information which he never had. In fact, neither Supervisor Farrell nor anyone else did anything which hindered the ability of the Commission to file charges within the four years provided for in City law and Commission policy. The concept of "fraudulent concealment" therefore does not apply in this matter, and – although some

Commissioners may wish the situation was different – the Commission has no legal authority to request forfeiture from Supervisor Farrell at this time.[3]

The statute of limitations is only extended when a defendant intentionally hides information in such a way that the government does not have sufficient time to complete an investigation within the statute of limitations period. (See, e.g., Pashley v. Pacific Elec. Railway Co. (1934) 25 Cal.2d 226 [fraudulent concealment only applies if a defendant's fraudulent concealment "hindered the plaintiff from bringing an action within the statutory period"].) Despite the claims by the Reillys, the question is simply whether the Commission was made aware of the possibility that CSV and/or the Farrell Committee had violated the law in sufficient time to open an investigation, research the facts, and file charges. It clearly was. The complaint letter sent to the Commission in December 2010 made it aware of possible violations, by very specifically alleging "overlap between the Farrell candidate-controlled committee and [CSV]" and "possible involvement of Mark Farrell . . . in coordinating with [CSV] in the making of independent expenditures." The Commission then confirmed to the Reillys in January 2011 that it was already working with the FPPC on the investigation. It thus clearly had more than enough time to do what was necessary to file charges within the statute of limitations period.

The Reillys also attempt to argue that the statute of limitations did not start until Mr. Lee's interview in 2012, or Supervisor Alioto-Pier's interview in 2013, or until the FPPC finalized its stipulation against CSV in 2014. These arguments also lack merit. The law requires the Commission to complete investigations and formally file charges within four years of the date of a violation, not four years from the date that it learns about an incriminating fact.[4]

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[3] The "timeline" which the Reillys submitted to the Commission does not contain any evidence that Supervisor Farrell withheld any information from the Commission, but instead demonstrates both the breath and scope of the FPPC's investigation, and how extensively Ethics Commission staff was involved in the investigation from the very beginning.

[4] The cases cited by the Reillys in which courts have extended a statute of limitations because of fraudulent concealment differ markedly from what happened in this matter. For example, in Community Cause v. Boatwright (1981) 124 Cal. App. 3d 888, the defendant public official had wrongfully omitted a financial holding from a required public filing. The court allowed the plaintiff to file a lawsuit against the defendant even though more than two years had elapsed since the filing was due, because the financial holding was only revealed in a separate and unrelated lawsuit filed years later. Similarly,

Forfeiture is inappropriate for other reasons not mentioned in Mr. St. Croix's letter.

The Farrell Committee never received any funds which it could now "forfeit" to the City. Not only was the Farrell Committee closed in March 2013, it of course never received any of the money that the City previously attempted to seize. Forfeiture does not apply to money spent by one committee which never makes it into the other committee's bank account; in fact, every single one of the approximately 100 committees which have been asked to forfeit funds to the City actually received and deposited the funds in question.

The only committee which received funds which could be forfeited is CVS. If the Commission wanted to pursue forfeiture in this matter, it should have targeted CSV, not Supervisor Farrell. Not only did the FPPC stipulation only involve CSV, but it is the committee which actually received and spent the money in question. It is certainly not appropriate to demand money from the only person who had absolutely nothing to do with CSV's activities.

* * *

The Commission has now considered this matter at five meetings over the last six months. Every enforcement entity which has reviewed this matter – Commission staff, the City Attorney, and the FPPC – have all reached the same conclusions: namely, that

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in Baker v. Beech Aircraft Corp. (1974) 39 Cal. App. 3d 315, an airplane company intentionally hid a manufacturing defect which caused a plane crash killing a passenger. The court allowed the passenger's family to sue the company years later, after the statute of limitation had lapsed, when the defect was revealed in a newspaper expose, because there was no way for the family to otherwise know about the defect.

Unlike these cases, Supervisor Farrell did not do anything which made it impossible (or even difficult) for the Ethics Commission to act by October 2014. Moreover, in all of these cases, the plaintiff did not learn about the underlying factual issue until the applicable statute of limitations had already run; here, the Ethics Commission was made aware that Mr. Lee may have interacted with CSV years before the statute ran in October 2014, and therefore could have – and perhaps should have – brought an action on a timely basis.

Supervisor Farrell was not the responsible party for any wrongdoing, and that the Commission no longer has the legal authority to bring an action in this matter.

Supervisor Farrell has fully cooperated with the FPPC and the Commission at every step along this process, which has now stretched over five years. We respectfully request the Commission to authorize Mr. St. Croix to send out the letter revoking the prior forfeiture letter, and finally close this matter.

Sincerely,

James R. Sutton

cc: John St. Croix
Supervisor Mark Farrell
JRS/dfm
#1440.02

Exhibit J

THE SUTTON LAW FIRM

November 4, 2015

VIA E-MAIL & PERSONAL DELIVERY

Stephanie M. Profitt, Esq.
Office of the Treasurer & Tax Collector
1 Dr. Carlton B. Goodlett Pl., Rm. 140
San Francisco, CA 94102

RE: Demand for "Forfeiture" From Supervisor Mark Farrell

Dear Ms. Profitt:

This letter responds to your September 30, 2015 letter requesting that our client, Supervisor Mark Farrell, pay $190,903.04 to the Office of the Treasurer & Tax Collector stemming from a "forfeiture" demand made earlier this year by the Ethics Commission ("SFEC"). Supervisor Farrell wanted us to emphasize at the outset that he takes this matter very seriously and will of course fully cooperate with your office to bring this matter to a resolution, while at the same time strongly disagreeing with the underlying basis for the request. This letter explains why the request has no merit; we will follow up this letter to set up a time to meet in person to talk through these factual and legal issues.

Factual Background

The amount the City is demanding that Supervisor Farrell "forfeit" to the City was actually never received or spent by him or by his 2010 campaign committee ("Farrell Committee"). Instead, this amount was raised and spent by a political committee named "Common Sense Voters" ("CSV") which independently produced and disseminated mail pieces in mid-October 2010 supporting then-candidate Farrell's candidacy for District Two Supervisor.[1]

Immediately following the election, Janet Reilly, Supervisor Farrell's opponent in the race, sent a complaint to the SFEC and the California Fair Political Practices Commission

[1]Please note that CSV raised and spent these funds during the 2010 election cycle, when Supervisor Farrell first ran for office. The SFEC began its action against Supervisor Farrell over four years later, a month after his re-election in 2014. (CSV did not participate in the 2014 election.)

("FPPC"), the state agency charged with enforcing the state's campaign finance laws, alleging, among other things, that CSV had improperly coordinated its activities with the Farrell Committee. (12/23/10 letter from Chuck Bell to John St. Croix et. al; copy attached.) The FPPC opened an investigation into the activities of CSV and the Farrell Committee immediately thereafter, focusing on whether CSV had coordinated with the Farrell Committee's campaign manager, Chris Lee. After an extensive investigation spanning over three years, which included interviews of Supervisor Farrell, Mr. Lee, others who worked on his campaign, and several people involved with CSV, and the review of hundreds of e-mails produced by Supervisor Farrell and others, the FPPC found that CSV and Mr. Lee had violated the law and levied a $14,500 fine – and completely exonerated Supervisor Farrell and the Farrell Committee of any wrongdoing. The FPPC stipulation explicitly found that, "The evidence supports the finding that Mark Farrell did not authorize Respondent Lee, as an agent of the Farrell Committee, to coordinate with Respondent CSV." (In the Matter of Common Sense Voters, SF 2010 and Chris Lee (11/20/14) FPPC No. 10/973; copy attached.[2])

SFEC staff was involved in every step of the FPPC's investigation. They participated in some of the interviews (some of which were even held in the SFEC's office), had full access to all of the e-mails and other information gathered by the FPPC, and communicated regularly with the FPPC about its findings. After being appraised of the results of the investigation in mid-2014, SFEC staff agreed with the FPPC's conclusion to only fine CSV and Mr. Lee, and formally informed the FPPC that they would not take any action against Supervisor Farrell or the Farrell Committee. No subsequent investigations, findings of fact or legal analysis by the SFEC or any other City agency contradict the conclusions of the FPPC's investigation.

Despite the decision to not proceed with any investigation or penalty (and even though the four-year statute of limitations under the City's campaign law had lapsed, as discussed below), the SFEC inexplicably sent Supervisor Farrell a letter on December 9, 2014 demanding that he personally "forfeit" to the City the money that was raised and spent by CSV. We requested a waiver of this forfeiture request and met with SFEC staff to explain that forfeiture was inappropriate and legally barred. Former SFEC Executive Director John St.

[2]There is a reason why the FPPC went out of its way to exonerate Supervisor Farrell: because he did nothing wrong. He never spoke with any of the people involved with CSV; he had no idea what CSV was doing until its mailers showed up in mail boxes in the District; and he had no idea that his campaign manager had interactions with the people behind CSV, and certainly did not authorize him to do so.

Croix ultimately granted the request and completely waived the forfeiture demand, for several reasons: (1) because the City was legally barred by the statute of limitations from taking any action after October 2014; (2) because Supervisor Farrell was "not named as a respondent in the [FPPC] stipulation"; and (3) because "the Commission does not have any evidence before it that you committed an act of fraud." (6/5/15 letter from St. Croix to Supervisor Farrell; copy attached.) This letter – which supports our position that the forfeiture demand has no legal or factual basis – is the only written document produced by the City about the merits of this matter. Nevertheless, and even though City law explicitly grants the SFEC Executive Director sole discretion to determine whether to grant or deny forfeiture waiver requests (S.F. Camp. & Govt. Conduct Code section 1.168(c)(4)[3]), the Commissioners later instructed Mr. St. Croix to withdraw his waiver grant. (6/15/15 letter from St. Croix to Supervisor Farrell; copy attached.)

We then attempted to engage the Commissioners to determine the basis for this action, but were rebuffed at every point. In fact, the Commissioners have never provided us or Supervisor Farrell with any written or even verbal basis for re-instating the forfeiture demand. We submitted letters to the Commission (12/16/14 letter to Chair Ben Hur; 3/15/15 letter to Chair Hur; 3/15/15 letter to St. Croix; 6/4/15 letter to Paul Renne; copies attached) and made presentations at the SFEC's April 27, 2015 and June 5, 2015 meetings – but the Commissioners never responded to our arguments; never explained why they overturned the Executive Director's grant of the waiver request; never explained why the statute of limitations did not bar their action; never explained how they could ask someone who had never received any funds to forfeit them to the City; and never issued any findings of fact or conclusions of law.

Request

For the reasons set forth herein, the amount requested is uncollectible and we ask that your office cease its collection attempt and immediately close this matter.

[3]Unless otherwise noted, all further citations are to the San Francisco Campaign and Governmental Conduct Code.

Legal Analysis

1. Forfeiture is barred by the statute of limitations.

The forfeiture is unwarranted, as a matter of law, because of the four-year statute of limitations in the City's campaign law. (Section 1.168(c)(3); see also SFEC Forfeiture Policy, found in 3/4/08 SFEC staff memorandum regarding "Ethics Commission Policy Changes" at p.1 ["Statute of limitations regarding late fines and forfeitures – the legal limitations period is four years."]; copy attached.[4]) The four-year statute in this matter has long passed. The activities which form the basis for the request (Mr. Lee's e-mails to CSV and CSV's mailers) took place in October 2010, over four years before the SFEC sent the forfeiture letter in December 2014. If the City wanted to pursue forfeiture or any other enforcement action against Supervisor Farrell or the Farrell Committee, it therefore was legally required to act by October 2014. It did not do so, so is now legally barred from requesting forfeiture.

The question is simply whether the City was made aware of the possibility that CSV and/or the Farrell Committee had violated the law in sufficient time to open an investigation, research the facts, and file charges by October 2014. It clearly was. The original complaint letter sent in December 2010 made the City aware of possible violations, by very specifically alleging an "overlap between the Farrell candidate-controlled committee and [CSV]" and "possible involvement of Mark Farrell . . . in coordinating with [CSV] in the making of independent expenditures." The FPPC copied the SFEC on its letter to the complainant in January 2011; the SFEC informed the complainant that the FPPC would take the lead on the

[4]The Forfeiture Policy also states that the Commission will not pursue forfeiture unless staff has delivered a notice to the political committee within one year from the date that the applicable campaign report is due: "If the Commission fails to send a [forfeiture assessment notice] to a committee assessing a forfeiture within one year of the filing deadline or the date that the defective report was received by the Commission, the Commission will not seek forfeiture." (8/12/08 SFEC staff memorandum regarding "New Policies and Procedures" at p. 3; copy attached.) The Forfeiture Policy underscores the importance of the City acting in a timely manner, stating that "the Commission has an obligation to let candidates and committees know that "the clock is ticking" at the earliest possible occasion." (3/4/08 SFEC staff memorandum at p. 1.) The forfeiture demands to Supervisor Farrell of course arrived years after CSV and the Farrell Committee filed their campaign reports, well beyond this one-year rule (as well as beyond the four-year statute of limitations).

investigation and that the SFEC would monitor; the SFEC participated in the FPPC interviews of several people involved with the two committees in 2012; and the SFEC and FPPC spoke about the matter throughout 2013 and 2014. There was no reason why the City could not have reached its own conclusions and levied its own fine by October 2014.

In short, the City's failure to act by October 2014 bars the Tax Collector from seeking forfeiture from Supervisor Farrell at this time.

2. Neither Supervisor Farrell nor the Farrell Committee ever received any funds which they could now "forfeit" to the City.

Inherent in the legal concept of "forfeiture" is the notion that the person forfeiting the property actually obtained possession of the property at some point. (See, e.g., U.S. v. Bajakajian (1998) 524 U.S. 321.) In fact, the forfeiture provision in the City's campaign law, by its own wording, only applies to situations in which a political committee actually receives money that does not comply with the law. (Section 1.114(e) ["each committee that receives a contribution which exceeds the limits imposed by this Section . . . shall pay promptly the amount received or deposited in excess of the amount permitted by this Section to the City . . ."]; emphasis added.) Nothing in this provision supports the position that forfeiture can apply to money spent by one political committee which never makes it into the other committee's bank account. According to SFEC records, it has issued approximately 100 forfeiture letters since the provision went into effect; every one of these committees actually received and deposited the funds in question.

The Farrell Committee was closed in March 2013. It has not existed for over two years, and of course has no funds to forfeit. Moreover, while in existence, the Farrell Committee never received any of the money that the City is now attempting to seize. Suggesting that a political committee must now "forfeit" money to the City which it did not raise, receive, spend, or in any way control defies all logic.

To the extent that the City is demanding that Supervisor Farrell use his personal funds for this amount, this suggestion is even more absurd. Under no stretch of the law or facts did Supervisor Farrell ever receive any of the money in dispute, which would be a legal prerequisite for demanding that he now has to forfeit the funds to the City. The City is asking Supervisor Farrell to do the impossible: hand over to the City something he never had in the first place. Moreover, the forfeiture provision by its own terms only applies to "committees" which receive campaign funds, so the City has no legal basis to demand that he use his

personal funds for this amount. In short, the forfeiture request is both nonsensical and not supported by the law.

3. Supervisor Farrell and the Farrell Committee are inappropriate respondents.

The FPPC stipulation only involved CSV and Mr. Lee. And the FPPC determined that Supervisor Farrell and the Farrell Committee did nothing wrong. The City is nevertheless now pursuing money from Supervisor Farrell, not from CSV, the political committee which actually raised and spent the money in question. If the City believes that the $191,000 was somehow raised or spent improperly and that the person or persons who raised and spent this money should be required to pay a fine or turn this amount over to the City, then it should contact that person or persons. In any case, it is certainly not appropriate to attempt to penalize someone who had absolutely nothing to do with CSV's activities.

4. The City has no legal basis to request forfeiture.

Neither the SFEC nor any other City agency has followed the procedures required before the government may seek a monetary penalty from a citizen. The SFEC never opened its own investigation into the matter (as required by Charter section 3.699-13(a) and SFEC Regulations for Investigations and Enforcement Proceedings section V), never presented Supervisor Farrell with a Probable Cause Report or other written explanation of the evidence and law (as required by Charter section 3.699-13(b) and SFEC Enforcement Regulations section VII), and never held a hearing to review the facts and evidence (as required by Charter section 3.699-13(c) and SFEC Enforcement Regulations sections VIII-XII).[5] This forfeiture demand therefore violates every concept of due process and fair government. In contrast, the FPPC followed all legal requirements for governmental investigations and enforcement matters (see Cal. Govt. Code sections 83115 et. seq., Cal. Govt. Code sections 91000 et. seq. & 2 Cal. Code of Reg. sections 18360 et. seq.) -- and, after a full investigation, in a formal, written decision approved unanimously by the full Commission stated clearly that Supervisor Farrell did not violate the law.

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[5]Not only did the SFEC not follow its own enforcement regulations, but the appropriate result of such an investigation, should it have concluded that a violation occurred, would have been an administrative penalty levied pursuant to the enforcement procedures of City law (i.e., a monetary fine), not a conclusory demand that a sitting Supervisor or a defunct political committee somehow pay hundreds of thousands of dollars to the City.

Conclusion

In sum, the City has no basis – legal or otherwise – to demand any payment from Supervisor Farrell or the Farrell Committee at this time. An exhaustive investigation by the FPPC specifically concluded that Supervisor Farrell did nothing wrong, and there has never been any type of administrative or civil proceeding which concluded that Supervisor Farrell violated any law. The action by the SFEC and any action by your office is completely barred by the statute of limitations, and the forfeiture demand is not supported by any findings of fact or conclusions of law. We therefore request a dismissal of the September 30, 2015 letter issued by your office demanding $190,903.04 and ask that the City formally close this matter.

* * *

Please let us know if you have any additional questions or if you would like any other documentation related to this matter.

Sincerely,

James R. Sutton

cc: Supervisor Mark Farrell
Attachments
MCA/lc
#1440.02

Exhibit K

SHARE

Minutes -

May 23, 2016

Minutes of the Regular Meeting of
The San Francisco Ethics Commission
May 23, 2016
Room 400 – City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

1. Call to order and roll call.

Chairperson Renne called the meeting to order at 5:30 PM.

COMMISSION MEMBERS PRESENT: Paul Renne, Chairperson; Brett Andrews, Vice-Chairperson; Daina Chiu, Commissioner; Beverly Hayon, Commissioner; and Peter Keane, Commissioner.
STAFF PRESENT: LeeAnn Pelham, Executive Director; Catherine Argumedo, Investigator/Legal Analyst.
OFFICE OF THE CITY ATTORNEY: Andrew Shen, Deputy City Attorney (DCA); Joshua White, DCA.
OTHERS PRESENT: Bob Planthold; Ray Hartz; Charles Marsteller; Elena Schmid; Zack; Morgan; David; Tyler; Karin; Hulda Garfolo; Peter Cohen; Alex Kaplan; Anita Mayo; Greg Ryan; and other unidentified members of the public.

MATERIALS DISTRIBUTED:
- May 16, 2016 staff memorandum re: AGENDA ITEM 3 – Election of Commission Vice-Chair;
- May 19, 2016 staff memorandum re: AGENDA ITEM 4 – Request from Julienne Christensen for waivers from post-employment restrictions in San Francisco Campaign & Governmental Conduct Code sections 3.234(a)(2), 3.234(b)(1), and 3.234(a)(3), and attachments;
- May 9, 2016 letter and supporting documentation from Ms. Christensen;
- Chapter II of San Francisco Campaign & Governmental Conduct Code and Ethics Commission Regulations Related to Conflicts of Interest;
- May 18, 2016 staff memorandum re: AGENDA ITEM 5 – Proposal regarding a possible November 2016 ballot measure to restrict gifts, campaign contributions, and bundling by lobbyists, and attachments;
- Complaint in matter: Mark Farrell for District 2 Supervisor 2010, et al. v. City and County of San Francisco, et al, Case No. CGC-16-551745, S.F. Superior Court (filed April 29, 2016).
- San Francisco Campaign and Governmental Conduct Code section 3.230(a);
- Executive Director's Report for the May 23, 2016 Commission Meeting;
- Draft minutes of the April 25, 2016 Ethics Commission Regular Meeting;
- Public comment on Agenda Items 4 and 5.

2. Public comment on matters appearing or not appearing on the agenda.

Bob Planthold, spokesperson for the Friends of Ethics, stated that a poll was completed about matters about the Ethics Commission and potential ethics matters in the City. He stated that there was support for the Commission and a ban on contributions from lobbyists.

Ray Hartz submitted a complaint against Luis Herrera and Sue Blackman. He stated that Mr. Herrera was found in violation by the FPPC and that the Library spent a year withholding documents. He stated that private individuals raise and spend funds for the Library.

The following written summary was provided by the speaker, Ray Hartz, the content of which is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission:

> This, my second complaint with Ethics, is against City Librarian Luis Herrera and Library Commission Secretary Sue Blackman, who have been found by the SOTF to have violated my rights under the Sunshine Ordinance on no less than seven specific occasions! There have actually been dozens, if not hundreds, of such violations! "The Friends of the San Francisco Public Library," a group of private individuals, has been allowed to raise and expend funds in the name of the SFPL and the City of San Francisco. They have been allowed to do so without oversight from the library or any other city agency. Luis Herrera and Sue Blackman have engaged in a policy relating to this group that I describe as: "you don't tell and we don't ask!" From December 2012 until earlier this ear, more than 40 months passed without "The Friends" appearing on the Library Commission agenda.

3. Election of Officers.

Chairperson Renne stated that he had been advised by Vice-Chairperson Andrews that he would resign his seat on the Commission as of the end of the meeting. He expressed his gratitude for his work, assistance, and wisdom on the Commission, and stated that he was sad that he would not be at the Commission's meeting in June.

Commissioner Keane echoed Chairperson Renne's comments and stated that Vice-Chairperson Andrews has been a great colleague and will be missed. Commissioner Hayon stated that he has added so much to the discussion and asked that he not go. Commissioner Chiu echoed everyone's comments and wished him luck.

Motion 160523-01 (Hayon/Chiu): Moved, seconded, and passed (5-0) that the Commission elect Commissioner Keane as Vice-Chairperson for the remainder of the year.

Public Comment:

Ray Hartz stated that three of the Commissioners had approved the budget decisions to keep the Commission's budget flat for a number of years. He stated that Supervisor Farrell will abuse his position as Chair of the Budget and Finance Committee to keep the Commission from getting any money.

The following written summary was provided by the speaker, Ray Hartz, the content of which is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission:

> As you deliberate filling the position of Vice Chair of the Ethics Commission I would like you to keep in mind all of the recent discussions related to your budget. The fact that the budget was flat for a number of years was repeatedly remarked upon as a failure by the former Executive Director. I would however remind you that three commissioners, former Chair Ben Hur, current Chair Paul Renne and current Commissioner Beverly Hayon, constituted a majority of the commission during that period. As documented by the current ED, these budget choices resulted in serious deficiencies in how this commission operated, particularly as relates to a serious backlog of

complaints and related investigations. While John St. Croix proposed the budget the members of the commission those years actually approved the budget. This being so, commissioners Keene and Hayon have forfeited their right to serve in any leadership position!

Charles Marsteller thanked Commissioner Andrews for his service and for the outstanding choice of Executive Director.

4. Discussion and possible action on request for waivers from local post-employment restrictions, submitted by Julienne Christensen, a former member of the Board of Supervisors.

Executive Director LeeAnn Pelham stated that Ms. Christensen indicated that she would be present for the meeting. She introduced the item and stated that staff's memorandum outlines the requests received regarding the post-employment restrictions.

Julienne Christensen stated that she was being considered for the position and stated that she did not want to have a negative impact on the search for the position. She stated that the position calls upon her 20 years of experience in a unique way. She stated that she does not plan on using the knowledge that she gained while she was a member of the Board of Supervisors. She stated that the district's budget is fixed with an agreement with the City. She stated that it was difficult to understand how her taking the position would have potential for any undue influence. She stated that she was asking to be able to continue her public service.

The Commissioners questioned Ms. Christensen regarding her request and potential employment. Chairperson Renne stated that the Commission does not want someone exiting the Board of Supervisors and then advocating their former colleagues on something. He stated that Ms. Christensen would bring great experience to the organization. Commissioner Keane stated that he was reluctant to grant waivers to someone who sat on the Board of Supervisors, as a person may use their knowledge and power to gain advantage. He stated, however, that he is convinced that Ms. Christensen should get the waiver, as she is not someone who is going to become a lobbyist and work for developers.

Motion 160523-02 (Keane/Hayon): Moved, seconded, and passed (5-0) that the Commission waive the post-employment restrictions in SF C&GCC sections 3.234(a)(2), 3.234(b)(1), and 3.234(a)(3), as requested by Ms. Christensen.

Public Comment:

Bob Planthold stated that staff's memorandum was inconsistent in its logic and suggested that the Commission either grant both or deny both.

5. Discussion and possible action regarding a possible November 2016 ballot measure to restrict lobbyists' ability to provide gifts to City officers, make campaign contributions to local candidates, and bundle contributions.

Executive Director Pelham stated that staff held two Interested Persons meetings and introduced the item. She stated that it would be helpful to have more discussion and then staff could come back to the Commission at its next regular meeting with language for a proposal. She stated that some of the proposals in staff's memorandum differ from the proponents' language submitted for the April 2016 meeting.

Commissioner Keane stated that staff's language clarified a number of things in terms of all three areas on pages 3, 4, and 5. He stated that staff's alternative language is superior to the proposal. He stated that he would be prepared to vote now on the language of the measure. Executive Director Pelham stated the deadline for submission is August 5, 2016. DCA Shen stated that the Commission must create a legislative record regarding the impact on contributions and campaign activity. He also asked whether the Commission would like to include language to allow further amendments without voter approval. Chairperson Renne suggested that the language be included and the Commission would decide at its next meeting whether to include or delete.

Public Comment:

Bob Planthold stated that he attended both IP meetings and he did not agree with the omission of the proposal applying to expenditure lobbyists.

Elena Schmid thanked Commissioner Andrews for his service and suggested that the proposed law apply to both contract and expenditure lobbyists.

Executive Director Pelham stated that it was a conscious decision to leave expenditure lobbyists out. She stated that there were no registered expenditure lobbyists. She stated that the justification for restricting these individuals may not be as persuasive. DCA Shen stated that it would be difficult to develop a legislative record regarding this issue and expenditure lobbyists, given that there are none. He stated that it would be difficult for the Commission to demonstrate that expenditure lobbyists are having an influence.

Zack from Represent.Us stated that lobbyists serve a valuable purpose and supported the proposal.

Morgan from Represent.Us stated that the IP meetings were productive and SF residents support this measure.

David from Represent.Us thanked the Commission for considering the proposal. He stated that both types of lobbyists should be included even if there is no local precedent.

Tyler from Represent.Us stated that the initiative would allow lobbyists to donate, just at a smaller level. He stated that the law makes sense.

Charles Marsteller stated that this area is the simplest one to do right now and the Commission could do more complex items like campaign finance. He suggested applying the law to both contract and expenditure lobbyists.

Karin from Represent.Us stated that there have been some positive comments and the proposals help level the playing field so that there is a sense of fair play.

Hulda Garfolo stated that there is a strong pattern of the same sort of sister city visits financed by non-profit groups.
A San Francisco resident stated that fixing corruption is important and he is excited to vote for the proposal.

Peter Cohen, Council of Community Housing Organizations, submitted a letter with detailed comments on the draft. He supported staff's recommendation to take comment and come back with a draft in June.

Alex Kaplan, Policy Director for Represent.Us, thanked the Commission for its consideration and its staff for two IP meetings. He stated that the proposed measure addresses a problem and there is an interest to create reasonable exemptions.

Anita Mayo provided a written letter. She stated that the current limit is so low already - $25. She stated that the California Supreme Court invalidated a law in 1979 that banned contributions from lobbyists.

Ray Hartz stated that Luis Herrera was accepting money and lied about it many times. He stated that there should be no difference between

expenditure and contact lobbyists.

Greg Ryan from Represent.Us stated that earmarking should be included and that the $50 limit is only a limit, not a ban.

Commissioner Renne announced that the Commission would move to Agenda Item 8, as Agenda Items 6 and 7 both call for the possibility of closed session. He stated that the Commission would hear the rest of the agenda in advance so that people do not wait until after the Commission meets in possible closed session.

6. Discussion and possible action regarding Mark Farrell for District 2 Supervisor 2010, et al. v. City and County of San Francisco, et al, Case No. CGC-16-551745, S.F. Superior Court (filed April 29, 2016).

Agenda Item heard after Agenda Items 8, 9, and 10.

7. Discussion and possible action regarding complaints received or initiated by the Ethics Commission concerning: San Francisco Campaign and Governmental Conduct Code section 3.230(a) (prohibition on knowingly, directly or indirectly, soliciting political contributions from other City officers or employees).

Agenda Item heard after Agenda Items 8, 9, 10, and 6.

8. Discussion and possible action on items for future meetings.

Public Comment:
None.

9. Discussion of Executive Director's Report.

Executive Director Pelham stated that COIT will fund the E-Filing Conversion Project for the next two years, including staffing to assist. She stated that the Mayor is expected to announce a proposed budget on May 31. She stated that the Commission had received over 120 applications for the Deputy Director position and hoped to have someone in the position in the early part of the new fiscal year. She expressed regret that Garrett Chatfield was no longer with the Commission and stated that he was a great person to work with.

Public Comment:

Ray Hartz acknowledged the rearrangement of the agenda. He stated that now the investigators were down to one part-time position. He stated that they will take money away if you did not use it.

10. Discussion and possible action on draft minutes for the Commission's April 25, 2016 regular meeting.

Motion 160523-03 (Keane/Chiu): Moved, seconded, and passed (5-0) that the Commission adopt the minutes of the Commission's regular meeting on April 25, 2016, as written.

Public Comment:

Ray Hartz stated that he did not want to be censored by the Library Commission.

Continuation of Agenda Item 6 - Discussion and possible action regarding Mark Farrell for District 2 Supervisor 2010, et al. v. City and County of San Francisco, et al, Case No. CGC-16-551745, S.F. Superior Court (filed April 29, 2016).

Motion 160523-04 (Andrews/Chiu): Moved, seconded, and passed (5-0) that the Commission move into closed session.

Public Comment:

Ray Hartz raised objections about this item. He stated that people do not believe that people are honorable and reasonable anymore. He stated that the perception is that the Commission is cooking the books.

Charles Marsteller stated that he invites Supervisor Farrell to appear before the Commission. He asked whether the Commission had the ability to find someone in contempt. He stated that his standard of behavior should be higher than the average citizen.

Continuation of Agenda Item 7 - Discussion and possible action regarding complaints received or initiated by the Ethics Commission concerning: San Francisco Campaign and Governmental Conduct Code section 3.230(a) (prohibition on knowingly, directly or indirectly, soliciting political contributions from other City officers or employees).

Motion 160523-05 (Andrews/Hayon): Moved, seconded, and passed (5-0) that the Commission move into closed session.

Public Comment:

None.

The Commission entered a break at 7:28 PM. The Commission resumed from break in closed session at 7:36 PM. All Commissioners, DCA Shen, DCA White, Executive Director Pelham, and staff member Argumedo remained in the hearing room. DCA Shen left the hearing room at 7:56 PM. The Commission returned into open session at 8:14 PM.

Chairperson Renne announced the following disclosure relating to Agenda Item 6. He stated that the Commission instructed the City Attorney to vigorously respond to the complaint that was filed by Supervisor Farrell and to file a cross-complaint seeking to recover the moneys of the subject matter of the forfeiture letter.

Chairperson Renne announced that, with respect to Agenda Item 7, the Commission had entered into proposed stipulations regarding violations of SF C&GCC section 3.230(a) with Respondents George Gascón, Cristine Soto DeBerry, and Michael Swart. The approved stipulations are currently available at the Commission's office and on its website.

Commissioner Keane announced that he has had professional contacts, over the years, with District Attorney Gascón on various matters dealing with the City's criminal justice system. He stated the contacts were purely professional dealing with the criminal justice system.

Public Comment:

None.

Commissioner Andrews stated that it has been an honor for him to serve on the Commission for the past three years. He thanked the Commission for its patience when he first started and he stated that he is impressed with the new Executive Director. He stated that, during the search, he had some time to spend with Commission staff and he recognizes the level of dedication and skill they have for their work. He stated that he was sorry he would not be able to work with Commissioner Chiu, but thanked her in advance for her service. He stated that he stands down with a heavy heart and looks forward to sitting in the audience at future meetings.

11. Additional opportunity for public comment on matters appearing or not appearing on the agenda pursuant to Ethics Commission Bylaws Article VII Section 2.

None.

12. Adjournment.

Motion 160523-06 (Keane/Chiu): Moved, seconded, and passed (5-0) that the Commission adjourn.

Public Comment:

None.

The Commission adjourned at 8:27 PM.

Exhibit L

SHARE

Minutes -

April 27, 2015

Minutes of the Regular Meeting of
The San Francisco Ethics Commission
April 27, 2015
Room 400, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

I. Call to order and roll call.

Chairperson Renne called the meeting to order at 5:30 PM.

COMMISSION MEMBERS PRESENT: Paul Renne, Chairperson; Brett Andrews, Vice-Chairperson; Beverly Hayon, Commissioner; Ben Hur, Commissioner (arrived at 5:50 PM); Peter Keane; Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Jesse Mainardi, Deputy Executive Director; Garrett Chatfield, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Josh White, Deputy City Attorney (DCA).

OTHERS PRESENT: David Pilpel; Larry Bush; Bob Planthold; Charlie Marsteller; Bob Dockendorf; Paula Datesh; Douglas Yip; Marc Solomon; Janet Reilly; Charles Bell; Greg Brian; James Sutton; Joe Kelly Jr.; Rebekah Krell; Brent Lewis; and other unidentified members of the public.

MATERIALS DISTRIBUTED:
- Friends of Ethics Poll;
- Letter from the Executive Director to Mark Farrell, dated December 9, 2014, regarding Forfeitures due from 2010 election;
- Draft letter from the Executive Director to Mark Farrell regarding December 9, 2014 letter;
- Staff Memorandum to Ethics Commission members regarding Hearing on Ethics Complaint 03-150127, Report and Recommendation on Ethics Complaint 03-150127 and attachments, Complainant's Response, Respondent's Response, Letter from the Office of the City Attorney to Ethics Commission regarding Ethics Complaint 03-150127, dated April 20, 2015, Letter from David Pilpel to Ethics Commission regarding Ethics Complaint 03-150127;
- Letter of Resignation from Executive Director to Ethics Commission members, dated April 27, 2015;
- Draft Minutes of the Ethics Commission's Regular Meeting of March 23, 2015;
- Executive Director's Report.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Chair Renne stated that he intends to move general public comment to different places depending on each meeting's agenda. He stated that general public comment should occur after several agenda items are heard to allow the public to gather more information on items if they want to make comment.

David Pilpel stated that the Commission should refrain from putting general public comment on the agenda after any closed session items.

Chair Renne responded stating that general public comment will occur prior to closed session items.

Larry Bush stated that the Commission previously discussed reinstating laws to regulate expenditure lobbyists. He stated that expenditure lobbyist provisions were removed from the Lobbyist Ordinance in 2010. He stated that other jurisdictions continued to require disclosure from expenditure lobbyists, and that the Commission should try to amend the Lobbyist Ordinance to include expenditure lobbyist regulation by sponsoring a ballot measure in the November 2015 election. He stated that his group, the Friends of Ethics, completed a poll that shows there is public sentiment for these changes in the law.

Chair Renne responded to Mr. Bush stating that the Commission will consider the Friends of Ethics proposals, but a ballot measure would most likely not be ready for this election.

Bob Planthold stated that the Commission should work to get an expenditure lobbyist amendment on the November 2015 ballot. He stated that members of the public attended a Department of Building Inspection meeting for the purpose of expressing support for Airbnb, and stated that demonstrates that expenditure lobbying is occurring. He stated that the Commission used to hold many special meetings and that there are many options for hearing rooms in City Hall.

Charlie Martsteller stated that some Commission members disagreed with the removal of expenditure lobbyist regulation from the Lobbyist Ordinance in 2009. He stated that there are many more lobbyists who are registered now and that the time is right to reinstate expenditure lobbyist regulations. He stated that the Commission should hold public hearings regarding the hiring of a new Executive Director.

A member of the Friends of Ethics stated that the Commission should reenact the regulations on expenditure lobbyists.

Bob Dockendorf stated that he was an Ethics Commissioner from 1996 to 2000 and that the Commission had previously sponsored two ballot measures. He stated that lobbying is an insidious way to influence and pass legislation. He stated that special interests can also influence public opinion.

Paula Datesh stated that David Pilpel is an active member of the Sunshine Ordinance Task Force and that he has a history of representing himself during public comment as speaking on his own behalf, but uses information gained from being a member of the Task Force. She stated that Mr. Pilpel has had four ethics complaints against him and that he has a long history of interjecting on matters for which he has no information.

Douglas Yip stated that he got permission to attend this meeting, and he thanked the Commission for scheduling item six on this agenda. He stated that Mr. St. Croix's resignation is long overdue. He stated that when you get out of the shower and you look in the mirror, you should ask yourself how much honesty you see from head to toe. He stated that if you do not see any honesty then you should not be involved in ethics. He stated that there is a San Francisco branch of the FBI's public corruptions office and that it is free. He stated that he wondered if agenda item six had any connection with Mayor Ed Lee. He stated that the Commission should hire a new Executive Director from outside of San Francisco so there is no local political influence.

Marc Solomon stated that the Commission should put a ballot measure on the November 2015 ballot to regulate expenditure lobbyists. He stated

that he received a twenty-minute push poll from Airbnb. He stated that the Commission finds money to prosecute individuals who are not politically powerful.

III. Discussion and possible action regarding forfeiture letter sent to Supervisor Mark Farrell on December 9, 2014.

Deputy Executive Director Mainardi recused himself from this item and sat with the public.

Chair Renne explained that this item is on the agenda because the matter was not resolved at the last Commission meeting. He stated that the Commission members should decide whether or not to send a letter from the Executive Director which waives the forfeiture amount requested in December 2014.

Commissioner Keane stated that Supervisor Farrell took an illegal campaign contribution of almost $200,000 through a committee coordinated by Mr. Farrell's campaign chair. He stated that with respect to the statute of limitations issue, that a court would ultimately decide its propriety, and that the Commission should not waive the forfeiture amount based on a statute of limitations issue. He stated that there some members of the Commission who are not lawyers and that he has practiced law for over 30 years and has been the dean of a law school, and that in his opinion the statute of limitations has not run because the demand for the forfeiture occurred within four years of the final accounting which had been due on January 31, 2011, and that fraudulent concealment has tolled the statute of limitations. He stated that Supervisor Farrell has asserted that the California Fair Political Practices Commission (FPPC) has exonerated him and that Supervisor Farrell should be ashamed to have made that statement. He stated that campaign contribution limits imposed on candidates is the last area of regulation left after the Citizen's United decision, and that violations of those limits is egregious.

Commissioner Hur stated that he is concerned regarding the apparent change from the Commission's policy of allowing the Executive Director to handle waiver requests to instead having the Commission members make waiver request decisions without having some procedure in place.

DCA White explained the referral process to the Bureau of Delinquent Revenue (BDR) regarding non-payment. Responding to Commissioner Hur, DCA White stated that if Supervisor Farrell brought an action in court to contest collection of the forfeiture, the Treasurer would be the party-in-interest because BDR is a division of that office.

Chair Renne stated that he believes forfeiture was not the appropriate route to take and that an enforcement action would have been more appropriate. He stated that when the complaint was filed, the FPPC asked the Ethics Commission to not investigate the complaint because the complaint had also been filed with that body and that they were going to investigate. He stated that deferring to the FPPC was a mistake.

Responding to a question from Commissioner Hayon, DCA White explained that the Ethics Commission's practice is to defer an investigation to the FPPC if they so request, but that there is no legal requirement prohibiting the Commission from investigating a complaint contemporaneously with the FPPC.

Commissioner Hur agreed that it was a mistake to defer the investigation to the FPPC, but also acknowledged that it is not good public policy to conduct redundant investigations if the FPPC is looking into a matter. He stated that staff could have independently pursued violations of local law in this matter that would not have overlapped with any state law violations.

Vice-Chair Andrews stated that staff could do a better job partnering with other enforcement entities when a complaint is received.

The Commission members engaged in a discussion on whether or not the Commission members should approve or deny waiver requests by changing the current policy in which the Executive Director makes waiver request decisions. The Commission members agreed to hear public comment before making a determination

Public Comment:
Charlie Marsteller stated that any decision regarding waiving the forfeiture will be accountable to the Commission members. He stated that the Commission does not necessarily need to approve waiver requests granted by the Executive Director, but that it should closely monitor those requests.

Larry Bush stated that the Commission members are accountable for its decisions in a way that staff is not, because staff is protected by civil service rules and commissioners can be removed or recalled. He stated that in the past, waivers that were questionable have been granted for powerful individuals who said they had no money to pay a forfeiture, but in fact did have enough money.

Janet Reilly stated that she ran to be the District Two supervisor in 2010 against Supervisor Farrell. She stated that she put a team together and met with District Two residents, raised money, and participated in debates. She stated that false attack pieces were distributed in District Two by a committee that, as it turns out, was not independent from the Farrell campaign. She stated that it was cheating, and it worked.

Charles Bell stated that Commissioner Keane accurately explained what occurred and that there is no statute of limitations issue regarding collecting the forfeiture amount. He stated that any question on the statute of limitations issue should be resolved by a court, and that the Ethics Commission should not waive the forfeiture and vigorously enforce the law.

Greg Brian stated that there is a clear violation of law and the Ethics Commission must enforce its own ethics rules.

Mark Solomon stated that this is like 2003, and that this is a criminal conspiracy. He stated that the Ethics Commission's job is to ensure future candidates cannot defraud the electorate.

James Sutton stated that the FPPC was very thorough with its investigation and it levied a fine against the individual it believed was responsible. He stated that Supervisor Farrell did not conceal information and that the FPPC stipulation states that Supervisor Farrell was not involved in the coordination.

David Pilpel stated that the agenda item description is not sufficient. He stated that if the Ethics Commission thinks that a violation of law occurred, that it should bring the matter to a probable cause hearing.

Joe Kelly, Jr. stated that the Ethics Commission should attempt to collect the forfeiture and let a court determine if that it was improper.

Commissioner Hur stated that if the Ethics Commission is going to decide on whether to grant or deny a forfeiture waiver, then a policy should be in place. He stated that he would not approve the waiver letter at issue here because there is no legal basis outlined in the letter to grant the waiver.

Vice-Chair Andrews agreed that the letter insufficiently explains why the waiver should be granted and that he would not support its approval.

Motion 15-04-27-01: (Keane/Andrews) Moved, seconded, and passed (4-1, Hur dissenting) to "not authorize [the Executive Director] to

send out the letter saying that the matter is waived because of the statute of limitations – that [the Ethics Commission] not approve the attached letter."

Commission Hur stated that he opposed the motion on the basis that the letter contained insufficient legal reasons to waive the forfeiture. Commissioner Hur proposed a motion to allow staff 30 days to submit additional reasons to waive the forfeiture request.

Commissioner Keane stated that Commissioner Hur is actually moving to reconsider and that to do so is improper because Commissioner Hur voted against the motion.

DCA White stated that the motion does not prohibit the Commission from allowing the Executive Director to resubmit the waiver request with an additional legal basis for the waiver.

Commissioner Keane stated he disagreed with DCA White and that the motion to deny the letter to be sent means that the forfeiture request that was made to Supervisor Farrell in December 2014 is still outstanding.

Motion 15-04-27-02: (Hur/Andrews) Moved, seconded, and passed (4-1, Keane dissenting) that "If the staff is inclined to recommend a waiver and truly believes that a waiver should be issued then [the Ethics Commission] should suspend the forfeiture proceedings for a short period of time [30 days] to allow the staff to justify the rationale. If the staff is no longer interested in going forward with the forfeiture then it should go forward after that brief period of time for the staff to evaluate. But [if the Ethics Commission does] consider a waiver request, that the staff should justify their position and the forfeiture should be briefly suspended for them to provide such justification."

IV. Discussion and possible action regarding a complaint received or initiated by the Ethics Commission concerning San Francisco Campaign and Governmental Conduct Code section 1.114. Closed Session.

The Ethics Commission did not hear this matter and did not go into closed session.

V. Discussion and possible action on a matter submitted under Chapter Three of the Ethics Commission Regulations for Violations of the Sunshine Ordinance. Ethics Complaint No. 03-150127, hearing regarding alleged violation of the Sunshine Ordinance. Complainant: Paula Datesh Respondent: Rebekah Krell, Arts Commission Deputy Director

Deputy Executive Director Mainardi returned to the well.

Commissioner Keane requested that the Commission grant that he be recused from this item as he has a personal relationship with two individuals mentioned in the supporting documents submitted by the complainant.

Motion 15-04-27-03: (Hur/Hayon) Moved, seconded, and passed (4-0, Keane abstained) to recuse Commissioner Keane from this item.

Commissioner Keane left the dais.

Paula Datesh, the complainant, presented her case and stated that the email at issue should be released.

Rebekah Krell, the respondent, presented her case.

Ms. Datesh presented her rebuttal and stated that Ms. Krell read the email at issue to her over the telephone and that Ms. Krell should have given her a copy of the email.

Ms. Krell denied that the email was read to Ms. Datesh over the telephone and stated that if that had occurred, she would have provided a copy. She stated that the person who made the complaint to the Arts Commission requested confidentiality.

Ms. Datesh stated that she also saw a copy of the email at issue because the mother of the individual who wrote the email to showed it to her.

Chair Renne stated that the City Attorney's Office provided a memo that disagreed with staff's position that the Sunshine Ordinance does not allow City agencies to rely on California Evidence Code, sections 1040 and 1041 privileges. He stated that reliance on the confidential information and informant privileges appear to allow a City agency to deny any record by simply assert that it is protecting confidential information or an informant's identity.

Commissioner Hur expressed his frustration that staff had not provided the email at issue to the Commission.

Public Comment:
David Pilpel stated that he agreed with the City Attorney's position that the evidence code privileges are allowable under the Sunshine Ordinance. He stated that he did not think that this matter was properly before the Commission.

Responding to a question from Vice-Chair Andrews, Ms. Krell stated that she is not the regular staff member who responds to records requests, and that in this mater, she was covering for someone who was on leave.

Deputy Executive Director Mainardi stated that staff concluded that the email at issue was properly withheld under the state law evidence code privileges, but that staff also concluded that the Sunshine Ordinance appeared to prohibit reliance on those state law privileges. He stated that because all Sunshine Ordinance matters must be heard in open session, staff concluded that it could not provide the email at issue because there is no provision to allow for closed session review of the document.

DCA White stated that it may be possible to conduct a closed session review of the document.

Commissioner Hur stated that if Ms. Krell had read the email to Ms. Datesh, the privilege was waived. He stated that if Ms. Datesh knows the content of the email, even if from a source outside the City, then there is no basis for the Arts Commission to withhold the email.

DCA White stated that Ms. Datesh also testified that she was provided a copy of the email by someone outside of the City. He stated that the City has no obligation to confirm the existence of a confidential document upon a member of the public's assertion that she has already seen the document. He stated that the Commission must make a credibility determination based on the testimony it heard from the parties.

Ms. Krell reiterated that she did not read the email to Ms. Datesh and had no knowledge of another individual providing the email to Ms. Datesh.

Motion 15-04-27-04: (Hur/Andrews) Moved, seconded, and passed (4-0, Keane recused) to find that that Ms. Krell committed a violation of Sunshine Ordinance, section 67.27(a), and to continue the hearing until the Commission can review the evidence in camera.

Commissioner Keane returned to the dais.

VI. Discussion and possible action on beginning a recruitment process. Executive Director John St. Croix has tendered his resignation and will be leaving his post on August 27, 2015.

Deputy Executive Director Mainardi left the well because he stated that he intended to apply for the Executive Director position.

Chair Renne thanked Executive Director St. Croix for his service.

Brent Lewis from the Department of Human Resources presented to the Commission its options for recruiting a new Executive Director. He stated that an external recruiter has been used in the past to fill the position. He stated that the Commission can choose various levels of service from the recruiter.

Commissioner Hur stated that the Executive Director position is a "lighting rod" in the City and he stated that he wants to ensure that the process is as inclusive as possible with members of the public.

Responding to Vice-Chair Andrews, Mr. Lewis stated that the cost to recruit for the position will be from $15,000 to $40,000 depending on the level of service.

Commissioner Keane stated that hiring a new Executive Director is one of the most important decisions the Commission will make. He stated that the Commission should try to get supplemental funding for the cost of recruitment.

Executive Director St. Croix stated that there is some money in the current financial year's budget that can be used for the cost of recruitment.

Vice-Chair Andrews stated that it is important that members of the public weigh in on what the Executive Director's job description should include. He stated that conducting an executive search with a recruiter will greatly assist the Commission to find suitable candidates.

Chair Renne stated that he and Vice-Chair Andrews will be an ad hoc committee to work with the recruiter.

Public Comment:
Larry Bush stated that public input is critical and that the public should define the Executive Director duties. He stated that the Ethics Commission Executive Director job is a nuanced role and the search process should ensure that the candidate understand that.

Douglas Yip stated that the Commission should schedule a public hearing and invite critics of the current Executive Director to comment on what the next Director should focus on. He stated that the current Deputy Executive Director should not be hired to be the new Executive Director because he would have been too influenced by the current Executive Director. He stated that the Commission should hire someone from outside the City with no local ties so that the individual is free from local political influence.

David Pilpel stated that the Commission should take input from the public and that any non-exempt public records generated should be available to the public.

VII. Discussion and possible action regarding a complaint received or initiated by the Ethics Commission concerning California Government Code sections 84107 (failure to properly identify opposition to a ballot measure in a committee's name) and 84504(c) (failure to include committee's name on campaign advertisements). Closed Session.

Motion 15-04-27-05: (Hur/Hayon) Moved, seconded, and passed (5-0) to go into closed session.

Public Comment:
Larry Bush asked when the Commission would discuss the expenditure lobbyist issues expressed by members of the public during general public comment.

Chair Renne responded by stating that Commissioner Keane will make a presentation of the issue at a future meeting.

Commissioner Keane stated that he will address the issue of whether or not it is feasible to put a measure on the ballot regarding expenditure lobbyists for the next election.

DCA White cautioned the Commission that it was discussing an item not on the agenda and that this is public comment on a motion to go into closed session.

Commissioner Keane stated that he would finish, and then his comment could be stricken from the record.

The Commission went into closed session at 9:20 PM. All members of the public left the hearing room. The Commission members, Executive Director St. Croix, Deputy Executive Director Mainardi, DCA White, and staff member Chatfield remained in the hearing room during closed session.

The Commission retuned from closed session at 9:53 PM.

Motion 15-04-27-06: (Keane/Andrews) Moved, seconded, and passed (5-0) not to disclose its closed session discussion.

Public Comment:
David Pilpel asked if there was any actions taken in closed session that needed to be disclosed.

VIII. Discusston and possible action on the Commission's March 23, 2015 draft meeting minutes.

Public Comment:
David Pilpel noted several typographical errors.

Motion 15-04-27-07: (Andrews/Keane) Moved, seconded, and passed (5-0) to approve the minutes for the Commission's meeting of March 23, 2015, as amended.

IX. Discussion of Executive Director's Report.

Public Comment:
David Pilpel stated that the report should contain a status update on various staff projects.

X. Items for future meetings.

Commissioner Hur stated that he had requested that staff provide updates of its progress on various projects.

Deputy Executive Director Mainardi advised the Commission of the timeline for various projects.

Commissioner Keane stated that he will present a report on the issue of whether or not it is feasible to put a measure on the ballot regarding expenditure lobbyists for the next election.

Public Comment:
David Pilpel asked if the next meeting will be moved to a different day due to the Memorial Day holiday. Executive Director St. Croix confirmed that the next meeting will be held on May 27, 2015.

XI. Adjournment.

Motion 15-04-27-08: (Keane/Hayon) Moved, seconded and passed (5-0) that the Ethics Commission adjourn.

Public Comment:
None.

The Ethics Commission adjourned the meeting at 10:01 PM.

Exhibit M

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

SUSAN J. HARRIMAN
CHAIRPERSON

EMI GUSUKUMA
VICE-CHAIRPERSON

EILEEN HANSEN
COMMISSIONER

JAMIENNE S. STUDLEY
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: March 4, 2008

To: Members, Ethics Commission

From: John St. Croix, Executive Director

Re: Ethics Commission Policy Changes

As you know, in recent months the Commission has received critical commentary from both the California Political Treasurers Association and the California Political Attorneys Association regarding methods and policies used by the Commission staff in dealing with the regulated community. Staff initiated several conversations with people in the regulated community, including an interested persons meeting. Based on the feedback received and subsequent managerial staff discussions, staff is planning to initiate a number of policy changes and is also planning to initiate an annual policy review to discuss other appropriate updates and alterations in order to achieve an environment of fairness and continuity and to gain more even-handed administration. As part of these policy changes, staff has also included recommendations to provide some administrative simplicity which will primarily benefit "small filers" and grassroots campaigns that have also expressed concerns about Commission policies. At this time, staff recommends the following policy changes:

1. Early selection of audits – staff proposes to set an annual March deadline for audit selection so that committees chosen for audits are aware as early as possible that they must keep their committees "open" until the audits are complete. Staff also proposes that, to the extent it is practical in light of the Commission's resources, audits must be completed within two years of audit selection. Because officeholders usually are available and their committees tend to remain open for years after an election, staff will audit those persons whose bids for office were successful *last* in each cycle.

2. Statute of limitations regarding late fines and forfeitures – the legal limitations period is four years. However, staff believes that the Commission has an obligation to let candidates and committees know that "the clock is ticking" at the earliest possible occasion. Candidates are required by law to pay off all campaign debts within 180 days, but it has at times taken considerably longer for the Commission to notify committees of filing and other obligations. Staff proposes adopting an internal one-year limitations period regarding late fines and forfeitures. Under this policy, the Commission would not enforce late fines or forfeitures against any committee if the staff has failed to send a notice to

notify that committee of its delinquent filing or forfeitures within one year of the actual filing deadline.

3. Contributor Information -- State law requires certain information from donors to campaigns, including street addresses and complete employer information. Contributions without such information are subject to forfeiture. Staff proposes that except during the pre-election and late filing periods, upon discovery of incomplete or inaccurate donor information, the Commission should notify the corresponding committee and allow the committee thirty days to cure the information, thus negating the need for forfeiture.

4. Separation of forfeiture process from fines process – Under current staff practices, notices of forfeitures are issued from the Campaign Finance Division, from the Audit Division and occasionally the Enforcement Division. In order to add both continuity and due process, staff proposes that all forfeiture activity be referred to the Enforcement Division. Forfeitures that are enforced will become part of the public record and situations when investigation reveals that no violation has occurred will remain confidential, as required under the Charter for all enforcement matters. In addition, all referrals to the Bureau of Delinquent Revenues will now be handled and managed by the Enforcement Staff.

5. Waivers – each year following the annual policy discussion, the Commission should issue a copy of its waiver policy along with any other policy changes or announcements that it makes.

6. Specific Written Notice -- Staff generally sends out three notices of violations: Non-specific written notice, one phone call, and then Specific Written Notice. Under the law, the Commission cannot grant a waiver if a filer does not respond within ten days after Specific Written Notice has been sent. This ties the hands of the Commission, most notably for some committees who raise very little money but incur huge fines. Staff recommends terminating the practice of sending Specific Written Notice in all but the most egregious circumstances.

7. Non-filer list – The Commission posts a non-responsive filer list on its website. Staff recommends continuing to do so. However, staff also recommends removing names after the four-year statute of limitations has been reached. Further, staff recommends that any name posted to the list be temporarily removed for ten days under the following conditions: the person whose name is posted requests removal and the requestor is attempting to come into compliance.

8. Self-correction – Some members of the regulated community have suggested that candidates and committees are reluctant to report their own mistakes because the Commission will then impose fees/fines. Self-reporting should be added as a factor in the waiver consideration process as a separate factor from "cooperation."

9. Postmarks – except where law specifically provides otherwise, the Commission should accept documents as "on time" if they are postmarked by the due date.

10. Materiality Standard – Although the Commission is charged with enforcing CFRO for all filers, staff recognizes that there are de minimis infractions and also very "small" filers. Staff recommends that candidates and committees who raise or spend less than $5,000 in any election cycle not be included in audit pools or subject to late fines except in those instances where such committees refuse to file appropriate forms. Further, staff also recommends that the Commission consider total infractions of less than 10% of revenues or expenditures as "not material" and so not use staff resources to assess fines, fees or forfeitures.

11. Time to File Amendments or Provide Information – When staff requires the filing of amendments or additional information, current practice is to allow ten days to respond. Unless otherwise required, staff recommends that this period generally be extended to 30 days.

S:\Commission\Interested Persons Meetings\policy recoms 3.10.08.doc

Exhibit N

Statement of Organization
Recipient Committee

1332919

R41

Type or print in ink

STATEMENT OF ORGANIZATION

CALIFORNIA FORM 410

For Official Use Only

Date Stamp

RECEIVED AND FILED
in the office of the Secretary of State
of the State of California

OCT 13 2010

DEBRA BOWEN
Secretary of State

Statement Type ☒ Initial — Not yet qualified ☒ or ☐ Amendment — List I.D. number: # ____ ☐ Termination – See Part 5 — List I.D. number: # ____

Date qualified as committee: ____/____/____

Date qualified as committee (if applicable): ____/____/____

Date of Termination: ____/____/____

1. Committee Information

NAME OF COMMITTEE

Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

STREET ADDRESS (NO PO. BOX)
41 Corto Lane

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Woodside, CA 94062			(650) 868-1614

MAILING ADDRESS (IF DIFFERENT)

OPTIONAL: FAX / E-MAIL ADDRESS

commonsensevoters@gmail.com

COUNTY OF DOMICILE	COUNTY WHERE COMMITTEE IS ACTIVE IF DIFFERENT THAN COUNTY OF DOMICILE
San Mateo	San Francisco

Attach additional information on appropriately labeled continuation sheets.

2. Treasurer and Other Principal Officers

NAME OF TREASURER

Ms. Stacy Owens

STREET ADDRESS

5940 College Avenue

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland, CA 94618			(510) 652-1000

NAME OF ASSISTANT TREASURER, IF ANY

Mr. Henry C. Levy

STREET ADDRESS
5940 College Avenue

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland, CA 94618			(510) 652-1000

NAME AND POSITION OF OTHER PRINCIPAL OFFICER(S), IF APPLICABLE

Mr. Jack Helfand

MAILING ADDRESS
41 Corto Lane

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Woodside, CA 94062			(650) 868-1614

3. Verification

I have used all reasonable diligence in preparing this statement and to the best of my knowledge the information contained herein is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 10/12/2010 (DATE) By _____ (SIGNATURE OF TREASURER OR ASSISTANT TREASURER)

Executed on _____ (DATE) By _____ (SIGNATURE OF CONTROLLING OFFICEHOLDER, CANDIDATE, OR STATE MEASURE PROPONENT)

Executed on _____ (DATE) By _____ (SIGNATURE OF CONTROLLING OFFICEHOLDER, CANDIDATE, OR STATE MEASURE PROPONENT)

Executed on _____ (DATE) By _____ (SIGNATURE OF CONTROLLING OFFICEHOLDER, CANDIDATE, OR STATE MEASURE PROPONENT)

0256

Statement of Organization
Recipient Committee

STATEMENT OF ORGANIZATION
CALIFORNIA FORM 410

INSTRUCTIONS ON REVERSE

COMMITTEE NAME
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER

4. Type of Committee Complete the applicable sections.

Controlled Committee

- List the name of each controlling officeholder, candidate, or state measure proponent. If candidate or officeholder controlled, also list the elective office sought or held, and district number, if any, and the year of the election.
- List the political party with which each officeholder or candidate is affiliated or check "non-partisan."
- If this committee acts jointly with another controlled committee, list the name and identification number of the other controlled committee.

NAME OF CANDIDATE/OFFICEHOLDER/STATE MEASURE PROPONENT	ELECTIVE OFFICE SOUGHT OR HELD (INCLUDE DISTRICT NUMBER IF APPLICABLE)	YEAR OF ELECTION	PARTY
			☐ Non-Partisan
			☐ Non-Partisan

- List the financial institution where the campaign bank account is located (controlled "candidate election" committees only)

NAME OF FINANCIAL INSTITUTION	AREA CODE/PHONE	BANK ACCOUNT NUMBER

ADDRESS	CITY	STATE	ZIP CODE

Primarily Formed Committee Primarily formed to support or oppose specific candidates or measures in a single election. List below:

CANDIDATE(S) NAME OR MEASURE(S) FULL TITLE (INCLUDE BALLOT NO. OR LETTER)	CANDIDATE(S) OFFICE SOUGHT OR HELD OR MEASURE(S) JURISDICTION (INCLUDE DISTRICT NO., CITY OR COUNTY, AS APPLICABLE)	CHECK ONE	
		SUPPORT	OPPOSE
Mr. Mark Farrell	County Supervisor City & County of San Francisco Dist. No: 2	X	
		SUPPORT	OPPOSE

0257

Statement of Organization
Recipient Committee

INSTRUCTIONS ON REVERSE

STATEMENT OF ORGANIZATION
CALIFORNIA FORM 410
3 of 3

COMMITTEE NAME
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER

4. Type of Committee (Continued)

General Purpose Committee Not formed to support or oppose specific candidates or measures in a single election. Check only one box:
☐ CITY Committee ☐ COUNTY Committee ☐ STATE Committee

PROVIDE BRIEF DESCRIPTION OF ACTIVITY

Sponsored Committee List additional sponsors on an attachment.

NAME OF SPONSOR			INDUSTRY GROUP OR AFFILIATION OF SPONSOR		
STREET ADDRESS	NO. AND STREET	CITY		STATE	ZIP CODE

Small Contributor Committee ☐ ____/____/____ Date qualified — Check box and provide the date this committee qualified as a small contributor committee. If the committee qualified as a small contributor committee on January 1, 2001, enter 1/1/01.

5. Termination Requirements

By signing the verification, the treasurer, assistant treasurer and/or candidate, officeholder, or proponent certify that all of the following conditions have been met:

- This committee has ceased to receive contributions and make expenditures;
- This committee does not anticipate receiving contributions or making expenditures in the future;
- This committee has eliminated or has no intention or ability to discharge all debts, loans received, and other obligations;
- This committee has no surplus funds; and
- This committee has filed all campaign statements required by the Political Reform Act disclosing all reportable transactions.
  - -- There are restrictions on the disposition of surplus campaign funds held by elected officers who are leaving office and by defeated candidates. Refer to Government Code Section 89519.
  - -- Additional filing obligations will be incurred if, after terminating, the committee receives or spends any funds, or receives the forgiveness of a loan, repayments of loans made to others, or any other receipts.

0258

Recipient Committee Campaign Statement Cover Page

(Government Code Sections 84200-84216.5)

SEE INSTRUCTIONS ON REVERSE

Type or print in ink

COPY

COVER PAGE

CALIFORNIA FORM 460

Page 1 of 4

For Official Use Only

Date Stamp

FILED
2010 OCT 22 AM 9:25
SAN FRANCISCO ETHICS COMMISSION

Statement covers period
from 01/01/2010
through 10/16/2010

Date of election if applicable: (Month, Day, Year)
11/02/2010

1. Type of Recipient Committee: All Committees – Complete Parts 1, 2, 3, and 4.

- ☐ Officeholder, Candidate Controlled Committee
  - ○ State Candidate Election Committee
  - ○ Recall
  - *(Also Complete Part 5)*
- ☐ General Purpose Committee
  - ○ Sponsored
  - ○ Small Contributor Committee
  - ○ Political Party/Central Committee
- ☒ Primarily Formed Ballot Measure Committee
  - ○ Controlled
  - ○ Sponsored
  - *(Also Complete Part 6)*
- ☐ Primarily Formed Candidate/ Officeholder Committee
  - *(Also Complete Part 7)*

2. Type of Statement:

- ☒ Preelection Statement
- ☐ Semi-annual Statement
- ☐ Termination Statement (Also file a Form 410 Termination)
- ☐ Amendment (Explain below)
- ☐ Quarterly Statement
- ☐ Special Odd-Year Report
- ☐ Supplemental Preelection Statement - Attach Form 495

BY PM 10/21/10

ENTERED

3. Committee Information

I.D. NUMBER: 1332919

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)

Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

STREET ADDRESS (NO P.O. BOX)

41 Corto Lane

CITY | STATE | ZIP CODE | AREA CODE/PHONE

Woodside, CA 94062 (650) 868-1614

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX

CITY | STATE | ZIP CODE | AREA CODE/PHONE

OPTIONAL: FAX / E-MAIL ADDRESS

commonsensevoters@gmail.com

Treasurer(s)

NAME OF TREASURER

Ms. Stacy Owens

MAILING ADDRESS

5940 College Avenue

CITY | STATE | ZIP CODE | AREA CODE/PHONE

Oakland, CA 94618 (510) 652-1000

NAME OF ASSISTANT TREASURER, IF ANY

Mr. Henry C. Levy

MAILING ADDRESS

5940 College Avenue

CITY | STATE | ZIP CODE | AREA CODE/PHONE

Oakland, CA 94618 (510) 652-1000

OPTIONAL: FAX / E-MAIL ADDRESS

4. Verification

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 10/21/2010 (Date) By _____ (Signature of Treasurer or Assistant Treasurer)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

0259

Campaign Disclosure Statement
Summary Page

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

Statement covers period
from 01/01/2010
through 10/16/2010

SUMMARY PAGE
CALIFORNIA FORM 460
Page 3 of 4

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

Contributions Received

		Column A TOTAL THIS PERIOD (FROM ATTACHED SCHEDULES)	Column B CALENDAR YEAR TOTAL TO DATE
1. Monetary Contributions	Schedule A, Line 3	$ 30,500.00	$ 30,500.00
2. Loans Received	Schedule B, Line 3	0.00	0.00
3. SUBTOTAL CASH CONTRIBUTIONS	Add Lines 1 + 2	$ 30,500.00	$ 30,500.00
4. Nonmonetary Contributions	Schedule C, Line 3	0.00	0.00
5. TOTAL CONTRIBUTIONS RECEIVED	Add Lines 3 + 4	$ 30,500.00	$ 30,500.00

Expenditures Made

6. Payments Made	Schedule E, Line 4	$ 0.00	$ 0.00
7. Loans Made	Schedule H, Line 3	0.00	0.00
8. SUBTOTAL CASH PAYMENTS	Add Lines 6 + 7	$ 0.00	$ 0.00
9. Accrued Expenses (Unpaid Bills)	Schedule F, Line 3	0.00	0.00
10. Nonmonetary Adjustment	Schedule C, Line 3	0.00	0.00
11. TOTAL EXPENDITURES MADE	Add Lines 8 + 9 + 10	$ 0.00	$ 0.00

Current Cash Statement

12. Beginning Cash Balance	Previous Summary Page, Line 16	$ 0.00
13. Cash Receipts	Column A, Line 3 above	30,500.00
14. Miscellaneous Increases to Cash	Schedule I, Line 4	0.00
15. Cash Payments	Column A, Line 8 above	0.00
16. ENDING CASH BALANCE	Add Lines 12 + 13 + 14, then subtract Line 15	$ 30,500.00

If this is a termination statement, Line 16 must be zero.

17. LOAN GUARANTEES RECEIVED — Schedule B, Part 2 — $ 0.00

Cash Equivalents and Outstanding Debts

18. Cash Equivalents	See instructions on reverse	$ 0.00
19. Outstanding Debts	Add Line 2 + Line 9 in Column B above	$ 0.00

To calculate Column B, add amounts in Column A to the corresponding amounts from Column B of your last report. Some amounts in Column A may be negative figures that should be subtracted from previous period amounts. If this is the first report being filed for this calendar year, only carry over the amounts from Lines 2, 7, and 9 (if any).

Calendar Year Summary for Candidates Running in Both the State Primary and General Elections

	1/1 through 6/30	7/1 to Date
20. Contributions Received	$	$
21. Expenditures Made	$	$

Expenditure Limit Summary for State Candidates

22. Cumulative Expenditures Made*
(If Subject to Voluntary Expenditure Limit)

Date of Election (mm/dd/yy)	Total to Date
___/___/___	$
___/___/___	$

*Amounts in this section may be different from amounts reported in Column B.

Schedule A
Monetary Contributions Received

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

Statement covers period
from 01/01/2010
through 10/16/2010

SCHEDULE A
CALIFORNIA FORM 460
Page 4 of 4

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)	PER ELECTION TO DATE (IF REQUIRED)
10/08/2010	Sam W. Humphreys 2305 Scott Street San Francisco, CA 94115	[X] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC	CEO London Bay Capital, LLC	7,500.00	7,500.00	G 10 7,500.00
10/02/2010	David Lamond 2840 Green Street San Francisco, CA 94123	[X] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC	Business Manager Artis Capital Management	2,000.00	2,000.00	G 10 2,000.00
10/08/2010	Mark R. Malcoun 2875 Jackson Street #4 San Francisco, CA 94115	[X] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC	Analyst Zazove Associates	5,000.00	5,000.00	G 10 5,000.00
10/02/2010	Kamran Moghtaderi 52 West 87th Street # 2A New York, NY 10024	[X] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC	Investment Advisor Apis Capital Advisors, LLC	15,000.00	15,000.00	G 10 15,000.00
10/08/2010	Raj Venkatesan 3414 Washington Street San Francisco, CA 94118	[X] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC	Business Manager Standard Pacific Capital	1,000.00	1,000.00	G 10 1,000.00
			SUBTOTAL $	30,500.00		

Schedule A Summary

1. Amount received this period – itemized monetary contributions. (Include all Schedule A subtotals.) ..... $ 30,500.00
2. Amount received this period – unitemized monetary contributions of less than $100 ..... $ 0.00
3. Total monetary contributions received this period. (Add Lines 1 and 2. Enter here and on the Summary Page, Column A, Line 1.) ..... TOTAL $ 30,500.00

*Contributor Codes
IND – Individual
COM – Recipient Committee (other than PTY or SCC)
OTH – Other (e.g., business entity)
PTY – Political Party
SCC – Small Contributor Committee

0261

Recipient Committee Campaign Statement Cover Page

(Government Code Sections 84200-84216.5)

Type or print in ink.

COVER PAGE

Date Stamp

CALIFORNIA FORM 460

Page 1 of 15

For Official Use Only

SEE INSTRUCTIONS ON REVERSE

Statement covers period
from 10/17/2010
through 12/31/2010

Date of election if applicable: (Month, Day, Year)
11/02/2010

1. Type of Recipient Committee: All Committees – Complete Parts 1, 2, 3, and 4.

- ☐ Officeholder, Candidate Controlled Committee
  - ○ State Candidate Election Committee
  - ○ Recall
  - *(Also Complete Part 5)*
- ☐ General Purpose Committee
  - ○ Sponsored
  - ○ Small Contributor Committee
  - ○ Political Party/Central Committee
- ☒ Primarily Formed Ballot Measure Committee
  - ○ Controlled
  - ○ Sponsored
  - *(Also Complete Part 6)*
- ☐ Primarily Formed Candidate/ Officeholder Committee
  - *(Also Complete Part 7)*

2. Type of Statement:

- ☒ Preelection Statement
- ☐ Semi-annual Statement
- ☐ Termination Statement (Also file a Form 410 Termination)
- ☐ Amendment (Explain below)
- ☐ Quarterly Statement
- ☐ Special Odd-Year Report
- ☐ Supplemental Preelection Statement - Attach Form 495

3. Committee Information

I.D. NUMBER
1332919

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

STREET ADDRESS (NO P.O. BOX)

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Woodside	CA	94062	(650) 868-1614

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX

CITY	STATE	ZIP CODE	AREA CODE/PHONE

OPTIONAL: FAX / E-MAIL ADDRESS
commonsensevoters@gmail.com

Treasurer(s)

NAME OF TREASURER
Ms. Stacy Owens

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

NAME OF ASSISTANT TREASURER, IF ANY
Mr. Henry C. Levy

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

OPTIONAL: FAX / E-MAIL ADDRESS

4. Verification

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 01/31/2011 (Date) By Stacy Owens (Signature of Treasurer or Assistant Treasurer)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

0262

Schedule E
Payments Made

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

Statement covers period
from 10/17/2010
through 12/31/2010

SCH
CALIFORNIA FORM 460

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP campaign paraphernalia/misc.
CNS campaign consultants
CTB contribution (explain nonmonetary)*
CVC civic donations
FIL candidate filing/ballot fees
FND fundraising events
IND independent expenditure supporting/opposing others (explain)*
LEG legal defense
LIT campaign literature and mailings
MBR member communications
MTG meetings and appearances
OFC office expenses
PET petition circulating
PHO phone banks
POL polling and survey research
POS postage, delivery and messenger services
PRO professional services (legal, accounting)
PRT print ads
RAD radio airtime and production costs
RFD returned contributions
SAL campaign workers' salaries
TEL t.v. or cable airtime and production costs
TRC candidate travel, lodging, and meals
TRS staff/spouse travel, lodging, and meals
TSF transfer between committees of the same candidate/sponsor
VOT voter registration
WEB information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Henry C Levy & Co. Oakland CA 94618	PRO			$1,849.63
Henry C Levy & Co. Oakland CA 94618	PRO			$1,541.00
MSHC Partners, Inc. Washington DC 20005	IND		Mailer in opposition to Janet Reilly for San Francisco Supervisor, District 2.	$3,306.96

* **Payments that are contributions or independent expenditures must also be summarized on Schedule D.**

SUBTOTAL $ $6,697.59

Schedule E Summary

1. Itemized payments made this period. (Include all Schedule E subtotals.) ..... $ $213,774.15
2. Unitemized payments made this period of under $100 ..... $ $0.00
3. Total interest paid this period on loans. (Enter amount from Schedule B, Part 1, Column (e).) ..... $ $0.00
4. Total payments made this period. (Add Lines 1, 2, and 3. Enter here and on the Summary Page, Column A, Line 6.) ..... **TOTAL** $ $213,774.15

0263

Schedule E (Continuation Sheet) Payments Made

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

Statement covers period
from 10/17/2010
through 12/31/2010

CALIFORNIA FORM 460

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP campaign paraphernalia/misc.
CNS campaign consultants
CTB contribution (explain nonmonetary)*
CVC civic donations
FIL candidate filing/ballot fees
FND fundraising events
IND independent expenditure supporting/opposing others (explain)*
LEG legal defense
LIT campaign literature and mailings
MBR member communications
MTG meetings and appearances
OFC office expenses
PET petition circulating
PHO phone banks
POL polling and survey research
POS postage, delivery and messenger services
PRO professional services (legal, accounting)
PRT print ads
RAD radio airtime and production costs
RFD returned contributions
SAL campaign workers' salaries
TEL t.v. or cable airtime and production costs
TRC candidate travel, lodging, and meals
TRS staff/spouse travel, lodging, and meals
TSF transfer between committees of the same candidate/sponsor
VOT voter registration
WEB information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Pineda Consulting Pasadena CA 91104	POL			$6,000.00
San Francisco Republican County Central Committee (#890605) San Francisco CA 94119-3303	CTB			$5,000.00
Winning Directions South San Francisco CA 94080	IND		Doorhanger in support of Mark Farrell for Supervisor, District 2.	$35,000.00

* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

SUBTOTAL $ $46,000.00

Recipient Committee Campaign Statement Cover Page

(Government Code Sections 84200-84216.5)

SEE INSTRUCTIONS ON REVERSE

Type or print in ink.

E-filed on: 07/30/2011 16:12:46

Statement covers period	Date of election if applicable: (Month, Day, Year)	Date Stamp
from 01/01/2011 through 06/30/2011		

COVER PAGE

CALIFORNIA FORM 460

Page 1 of 4

For Official Use Only

1. Type of Recipient Committee: All Committees – Complete Parts 1, 2, 3, and 4.

- ☐ Officeholder, Candidate Controlled Committee
  - ○ State Candidate Election Committee
  - ○ Recall *(Also Complete Part 5)*
- ☐ General Purpose Committee
  - ○ Sponsored
  - ○ Small Contributor Committee
  - ○ Political Party/Central Committee
- ☒ Primarily Formed Ballot Measure Committee
  - ○ Controlled
  - ○ Sponsored *(Also Complete Part 6)*
- ☐ Primarily Formed Candidate/ Officeholder Committee *(Also Complete Part 7)*

2. Type of Statement:

- ☐ Preelection Statement
- ☒ Semi-annual Statement
- ☐ Termination Statement (Also file a Form 410 Termination)
- ☐ Amendment (Explain below)
- ☐ Quarterly Statement
- ☐ Special Odd-Year Report
- ☐ Supplemental Preelection Statement - Attach Form 495

3. Committee Information

I.D. NUMBER: 1332919

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

STREET ADDRESS (NO P.O. BOX)

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Woodside	CA	94062	(650) 868-1614

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX

CITY	STATE	ZIP CODE	AREA CODE/PHONE

OPTIONAL: FAX / E-MAIL ADDRESS
commonsensevoters@gmail.com

Treasurer(s)

NAME OF TREASURER
Ms. Stacy Owens

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

NAME OF ASSISTANT TREASURER, IF ANY
Mr. Henry C. Levy

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

OPTIONAL: FAX / E-MAIL ADDRESS

4. Verification

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 08/01/2011 (Date) By Stacy Owens (Signature of Treasurer or Assistant Treasurer)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

0265

Schedule E
Payments Made

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

Statement covers period
from 01/01/2011
through 06/30/2011

SCHEDULE
CALIFORNIA FORM 460
Page 4 of 4

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP campaign paraphernalia/misc.
CNS campaign consultants
CTB contribution (explain nonmonetary)*
CVC civic donations
FIL candidate filing/ballot fees
FND fundraising events
IND independent expenditure supporting/opposing others (explain)*
LEG legal defense
LIT campaign literature and mailings
MBR member communications
MTG meetings and appearances
OFC office expenses
PET petition circulating
PHO phone banks
POL polling and survey research
POS postage, delivery and messenger services
PRO professional services (legal, accounting)
PRT print ads
RAD radio airtime and production costs
RFD returned contributions
SAL campaign workers' salaries
TEL t.v. or cable airtime and production costs
TRC candidate travel, lodging, and meals
TRS staff/spouse travel, lodging, and meals
TSF transfer between committees of the same candidate/sponsor
VOT voter registration
WEB information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Henry C Levy & Co. Oakland CA 94618	PRO			$1,159.16
Henry C Levy & Co. Oakland CA 94618	PRO			$828.85

* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

SUBTOTAL $ $1,988.01

Schedule E Summary

1. Itemized payments made this period. (Include all Schedule E subtotals.) ..... $ $1,988.01
2. Unitemized payments made this period of under $100 ..... $ $90.00
3. Total interest paid this period on loans. (Enter amount from Schedule B, Part 1, Column (e).) ..... $ $0.00
4. Total payments made this period. (Add Lines 1, 2, and 3. Enter here and on the Summary Page, Column A, Line 6.) ..... TOTAL $ $2,078.01

0266

Recipient Committee Campaign Statement Cover Page

(Government Code Sections 84200-84216.5)

SEE INSTRUCTIONS ON REVERSE

Type or print in ink.

E-filed on: 12/06/2011 12:27:07

Statement covers period	Date of election if applicable: (Month, Day, Year)	Date Stamp
from 07/01/2011 through 12/06/2011		

COVER PAGE

CALIFORNIA FORM 460

Page 1 of 5

For Official Use Only

1. Type of Recipient Committee: All Committees – Complete Parts 1, 2, 3, and 4.

- ☐ Officeholder, Candidate Controlled Committee
  - ○ State Candidate Election Committee
  - ○ Recall
  - *(Also Complete Part 5)*
- ☐ General Purpose Committee
  - ○ Sponsored
  - ○ Small Contributor Committee
  - ○ Political Party/Central Committee
- ☒ Primarily Formed Ballot Measure Committee
  - ○ Controlled
  - ○ Sponsored
  - *(Also Complete Part 6)*
- ☐ Primarily Formed Candidate/ Officeholder Committee
  - *(Also Complete Part 7)*

2. Type of Statement:

- ☐ Preelection Statement
- ☐ Semi-annual Statement
- ☒ Termination Statement (Also file a Form 410 Termination)
- ☐ Amendment (Explain below)
- ☐ Quarterly Statement
- ☐ Special Odd-Year Report
- ☐ Supplemental Preelection Statement - Attach Form 495

3. Committee Information

I.D. NUMBER: 1332919

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

STREET ADDRESS (NO P.O. BOX)

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Woodside	CA	94062	(650) 868-1614

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX

CITY	STATE	ZIP CODE	AREA CODE/PHONE

OPTIONAL: FAX / E-MAIL ADDRESS
commonsensevoters@gmail.com

Treasurer(s)

NAME OF TREASURER
Ms. Stacy Owens

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

NAME OF ASSISTANT TREASURER, IF ANY
Mr. Henry C. Levy

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

OPTIONAL: FAX / E-MAIL ADDRESS

4. Verification

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 12/06/2011 (Date) By Stacy Owens (Signature of Treasurer or Assistant Treasurer)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

0267

Schedule E
Payments Made

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

Statement covers period
from 07/01/2011
through 12/06/2011

SCHED
CALIFORNIA FORM 460

Page 4 of 5

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR DESCRIPTION OF PAYMENT	AMOUNT PAID
City and County of San Francisco San Francisco CA 94120		Payment regarding stipulation agreement	$500.00
Jack Hefland, Esq. Woodside CA 94062	PRO		$2,180.50
Henry C Levy & Co. Oakland CA 94618	PRO		$673.85

* **Payments that are contributions or independent expenditures must also be summarized on Schedule D.**

SUBTOTAL $ $3,354.35

Schedule E Summary

1. Itemized payments made this period. (Include all Schedule E subtotals.) ..... $ $5,647.84
2. Unitemized payments made this period of under $100 ..... $ $0.00
3. Total interest paid this period on loans. (Enter amount from Schedule B, Part 1, Column (e).) ..... $ $0.00
4. Total payments made this period. (Add Lines 1, 2, and 3. Enter here and on the Summary Page, Column A, Line 6.) ..... **TOTAL $** $5,647.84

0268

Schedule E
(Continuation Sheet)
Payments Made

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

SCHEDULE E (C...

Statement covers period
from 07/01/2011
through 12/06/2011

CALIFORNIA FORM 460

Page 5 of 5

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
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IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Henry C Levy & Co. Oakland CA 94618	PRO			$2,293.49

* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

SUBTOTAL $ $2,293.49

0269

James R. Sutton, Esq. (SBN 135930)
Bradley W. Hertz, Esq. (SBN 138564)
Matthew C. Alvarez, Esq. (SBN 301483)
THE SUTTON LAW FIRM, PC
150 Post Street, Suite 405
San Francisco, California 94108
Tel: 415/732-7700
Fax: 415/732-7701
Email: jsutton@campaignlawyers.com

Attorneys for Cross-Defendant
MARK FARRELL

ELECTRONICALLY
FILED
Superior Court of California, County of San Francisco
07/18/2016
Clerk of the Court
BY:CAROL BALISTRERI
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 and MARK FARRELL,

Petitioners and Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO ETHICS COMMISSION; CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR; and DOES 1 to 100, inclusive,

Respondents and Defendants.

CITY AND COUNTY OF SAN FRANCISCO, by and through its Ethics Commission,
Cross-complainant,

vs.

MARK FARRELL, an individual, and ROES 1 to 25, inclusive,

Cross-defendants.

Case No. CGC-16-551745

DECLARATION OF MATTHEW C. ALVAREZ IN SUPPORT OF SPECIAL MOTION TO STRIKE THE CITY AND COUNTY OF SAN FRANCISCO'S CROSS-COMPLAINT; EXHIBITS

PART 4 OF 4

Judge: Hon. Harold E. Kahn
Date: August 11, 2016
Reservation #: 07180811-01
Time: 9:30am
Dept: 302

Exhibit O

Recipient Committee Campaign Statement Cover Page

(Government Code Sections 84200-84216.5)

Type or print in ink.

Date Stamp

CALIFORNIA FORM 460

For Official Use Only

SEE INSTRUCTIONS ON REVERSE

Statement covers period
from 01/01/2010
through 06/30/2010

Date of election if applicable: (Month, Day, Year)
11/02/2010

1. Type of Recipient Committee: All Committees – Complete Parts 1, 2, 3, and 4.

- [X] Officeholder, Candidate Controlled Committee
  - ○ State Candidate Election Committee
  - ○ Recall
  - *(Also Complete Part 5)*
- [ ] General Purpose Committee
  - ○ Sponsored
  - ○ Small Contributor Committee
  - ○ Political Party/Central Committee
- [ ] Primarily Formed Ballot Measure Committee
  - ○ Controlled
  - ○ Sponsored
  - *(Also Complete Part 6)*
- [ ] Primarily Formed Candidate/ Officeholder Committee
  - *(Also Complete Part 7)*

2. Type of Statement:

- [ ] Preelection Statement
- [X] Semi-annual Statement
- [ ] Termination Statement (Also file a Form 410 Termination)
- [X] Amendment (Explain below)
- [ ] Quarterly Statement
- [ ] Special Odd-Year Report
- [ ] Supplemental Preelection Statement - Attach Form 495

The committee has changed expense designation descriptions for some payments to Margaux Kelly.

3. Committee Information

I.D. NUMBER
1320480

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)
Mark Farrell for District 2 Supervisor 2010

STREET ADDRESS (NO P.O. BOX)

CITY	STATE	ZIP CODE	AREA CODE/PHONE
San Francisco	CA	94104	(415) 254-8874

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX

CITY	STATE	ZIP CODE	AREA CODE/PHONE

OPTIONAL: FAX / E-MAIL ADDRESS

Treasurer(s)

NAME OF TREASURER
Ms. Stacy E. Owens

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

NAME OF ASSISTANT TREASURER, IF ANY
Mr. Henry C. Levy

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

OPTIONAL: FAX / E-MAIL ADDRESS

4. Verification

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 09/14/2010 (Date) By Stacy Owens (Signature of Treasurer or Assistant Treasurer)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

0272

Schedule E (Continuation Sheet) Payments Made

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

Statement covers period
from 01/01/2010
through 06/30/2010

CALIFORNIA FORM 460

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Mark Farrell for District 2 Supervisor 2010

I.D. NUMBER
1320480

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Facebook Palo Alto CA 94301	WEB			$35.00
Facebook Palo Alto CA 94301	WEB			$2.53
Facebook Palo Alto CA 94301	WEB			$20.00
James Haramis San Francisco CA 94123	OFC			$3,808.00
Henry C Levy & Co. Oakland CA 94618	PRO			$1,188.30

0273

* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

SUBTOTAL $ $5,053.83

Schedule E
(Continuation Sheet)
Payments Made

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

Statement covers period
from 01/01/2010
through 06/30/2010

CALIFORNIA FORM 460

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Mark Farrell for District 2 Supervisor 2010

I.D. NUMBER
1320480

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
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LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Henry C Levy & Co. Oakland CA 94618	PRO			$1,200.95
Henry C Levy & Co. Oakland CA 94618	PRO			$1,700.92
Henry C Levy & Co. Oakland CA 94618	PRO			$1,861.80
iPrint Technologies Larkspur CA 94939	OFC			$109.50
iPrint Technologies Larkspur CA 94939	OFC			$85.81

0274

* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

SUBTOTAL $ $4,958.98

Schedule E (Continuation Sheet) Payments Made

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

Statement covers period
from 01/01/2010
through 06/30/2010

CALIFORNIA FORM 460

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Mark Farrell for District 2 Supervisor 2010

I.D. NUMBER
1320480

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Studios 4thirteen Watsonville CA 95076	WEB			$1,065.00
Studios 4thirteen Watsonville CA 95076	WEB			$536.25
The Blue Deal LLC Annandale VA 22003	CMP			$397.50
Winning Directions South San Francisco CA 94080	CMP			$8,003.49
Witham & Dickey Inc Portland OR 97218	CMP			$1,519.00

0275

* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

SUBTOTAL $ $11,521.24

Recipient Committee Campaign Statement Cover Page

(Government Code Sections 84200-84216.5)

SEE INSTRUCTIONS ON REVERSE

Type or print in ink **ORIGINAL**

Date Stamp

FILED
2010 OCT 20 PM 2:05
SF ETHICS COMMISSION

COVER PAGE

CALIFORNIA FORM 460

Page 1 of 39

For Official Use Only

Statement covers period
from 07/01/2010
through 09/30/2010

Date of election if applicable: (Month, Day, Year)
11/02/2010

1. Type of Recipient Committee: All Committees – Complete Parts 1, 2, 3, and 4.

- [X] Officeholder, Candidate Controlled Committee
  - ○ State Candidate Election Committee
  - ○ Recall *(Also Complete Part 5)*
- [ ] General Purpose Committee
  - ○ Sponsored
  - ○ Small Contributor Committee
  - ○ Political Party/Central Committee
- [ ] Primarily Formed Ballot Measure Committee
  - ○ Controlled
  - ○ Sponsored *(Also Complete Part 6)*
- [ ] Primarily Formed Candidate/ Officeholder Committee *(Also Complete Part 7)*

2. Type of Statement:

PM 10/19/10 TS

- [X] Preelection Statement
- [ ] Semi-annual Statement
- [ ] Termination Statement (Also file a Form 410 Termination)
- [X] Amendment (Explain below)
- [ ] Quarterly Statement
- [ ] Special Odd-Year Report
- [ ] Supplemental Preelection Statement - Attach Form 495

An accrued expense to Henry C Levy & Co. was mistakenly left off the original filing.

3. Committee Information

I.D. NUMBER: 1320480

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)
Mark Farrell for District 2 Supervisor 2010

STREET ADDRESS (NO P.O. BOX)
220 Montgomery, Suite 411

CITY | STATE | ZIP CODE | AREA CODE/PHONE
San Francisco, CA 94104 (415) 254-8874

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX

CITY | STATE | ZIP CODE | AREA CODE/PHONE

OPTIONAL: FAX / E-MAIL ADDRESS

Treasurer(s)

NAME OF TREASURER
Ms. Stacy E. Owens

MAILING ADDRESS
5940 College Avenue

CITY | STATE | ZIP CODE | AREA CODE/PHONE
Oakland, CA 94618 (510) 652-1000

NAME OF ASSISTANT TREASURER, IF ANY
Mr. Henry C. Levy

MAILING ADDRESS
5940 College Avenue

CITY | STATE | ZIP CODE | AREA CODE/PHONE
Oakland, CA 94618 (510) 652-1000

OPTIONAL: FAX / E-MAIL ADDRESS

4. Verification

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____ (Date) By _____ (Signature of Treasurer or Assistant Treasurer)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

0276

Schedule E (Continuation Sheet) Payments Made

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

Statement covers period
from 07/01/2010
through 09/30/2010

CALIFORNIA FORM 460

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Mark Farrell for District 2 Supervisor 2010

I.D. NUMBER
1320480

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR DESCRIPTION OF PAYMENT	AMOUNT PAID
James Haramis 2030 Union St. #206 San Francisco, CA 94123	OFC	Rent.	1,650.00
James Haramis 2030 Union St. #206 San Francisco, CA 94123	OFC	Rent	1,650.00
James Haramis 2030 Union St. #206 San Francisco, CA 94123	OFC	Rent	1,650.00
Scott Hart 1318 Larkin St San Francisco, CA 94109	OFC	Reimbursed expenses under the $500 Schedule G threshold.	182.92
Henry C Levy & Co. 5940 College Ave. #F Oakland, CA 94618	PRO		987.40

0277

*Payments that are contributions or independent expenditures must also be summarized on Schedule D.

SUBTOTAL $ 6,120.32

Schedule E
(Continuation Sheet)
Payments Made

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

Statement covers period
from 07/01/2010
through 09/30/2010

CALIFORNIA FORM 460

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Mark Farrell for District 2 Supervisor 2010

I.D. NUMBER
1320480

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
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CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Winning Directions 1366 San Mateo Avenue South San Francisco, CA 94080	CMP			1,642.50
Witham & Dickey Inc 4824 NE 42nd Ave Portland, OR 97218	CMP			787.50

0278

*Payments that are contributions or independent expenditures must also be summarized on Schedule D.

SUBTOTAL $ 2,430.00

COVER PAGE

Recipient Committee Campaign Statement Cover Page

(Government Code Sections 84200-84216.5)

Type or print in ink.

Date Stamp

CALIFORNIA FORM 460

Page 1 of 29

For Official Use Only

SEE INSTRUCTIONS ON REVERSE

Statement covers period
from 10/01/2010
through 10/16/2010

Date of election if applicable: (Month, Day, Year)
11/02/2010

1. Type of Recipient Committee: All Committees – Complete Parts 1, 2, 3, and 4.

- [X] Officeholder, Candidate Controlled Committee
  - ○ State Candidate Election Committee
  - ○ Recall
  - *(Also Complete Part 5)*
- [ ] General Purpose Committee
  - ○ Sponsored
  - ○ Small Contributor Committee
  - ○ Political Party/Central Committee
- [ ] Primarily Formed Ballot Measure Committee
  - ○ Controlled
  - ○ Sponsored
  - *(Also Complete Part 6)*
- [ ] Primarily Formed Candidate/ Officeholder Committee
  - *(Also Complete Part 7)*

2. Type of Statement:

- [X] Preelection Statement
- [ ] Semi-annual Statement
- [ ] Termination Statement (Also file a Form 410 Termination)
- [ ] Amendment (Explain below)
- [ ] Quarterly Statement
- [ ] Special Odd-Year Report
- [ ] Supplemental Preelection Statement - Attach Form 495

3. Committee Information

I.D. NUMBER
1320480

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)
Mark Farrell for District 2 Supervisor 2010

STREET ADDRESS (NO P.O. BOX)

CITY	STATE	ZIP CODE	AREA CODE/PHONE
San Francisco	CA	94104	(415) 254-8874

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX

CITY	STATE	ZIP CODE	AREA CODE/PHONE

OPTIONAL: FAX / E-MAIL ADDRESS

Treasurer(s)

NAME OF TREASURER
Ms. Stacy E. Owens

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

NAME OF ASSISTANT TREASURER, IF ANY
Mr. Henry C. Levy

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

OPTIONAL: FAX / E-MAIL ADDRESS

4. Verification

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 10/21/2010 (Date) By Stacy Owens (Signature of Treasurer or Assistant Treasurer)

Executed on 10/21/2010 (Date) By Mark Farrell (Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

0279

Schedule E
(Continuation Sheet)
Payments Made

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

Statement covers period
from 10/01/2010
through 10/16/2010

CALIFORNIA FORM 460

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Mark Farrell for District 2 Supervisor 2010

I.D. NUMBER
1320480

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
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CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Commerce Printing Services Sacramento CA 95814	LIT			$2,071.22
Commerce Printing Services Sacramento CA 95814	LIT			$939.44
Commerce Printing Services Sacramento CA 95814	POS		See Schedule G for sub-vendor payments of $500 or more.	$4,807.00
Henry C Levy & Co. Oakland CA 94618	PRO			$1,687.45
Subal Smith Santa Cruz CA 95062	WEB			$450.00

0280

* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

SUBTOTAL $ $9,955.11

COVER PAGE

Recipient Committee Campaign Statement Cover Page

(Government Code Sections 84200-84216.5)

Type or print in ink.

Date Stamp

CALIFORNIA FORM 460

Page 1 of 59

For Official Use Only

SEE INSTRUCTIONS ON REVERSE

Statement covers period
from 10/17/2010
through 12/31/2010

Date of election if applicable: (Month, Day, Year)
11/02/2010

1. Type of Recipient Committee: All Committees – Complete Parts 1, 2, 3, and 4.

- [X] Officeholder, Candidate Controlled Committee
  - ◯ State Candidate Election Committee
  - ◯ Recall
  - *(Also Complete Part 5)*
- [ ] General Purpose Committee
  - ◯ Sponsored
  - ◯ Small Contributor Committee
  - ◯ Political Party/Central Committee
- [ ] Primarily Formed Ballot Measure Committee
  - ◯ Controlled
  - ◯ Sponsored
  - *(Also Complete Part 6)*
- [ ] Primarily Formed Candidate/ Officeholder Committee
  - *(Also Complete Part 7)*

2. Type of Statement:

- [ ] Preelection Statement
- [X] Semi-annual Statement
- [ ] Termination Statement (Also file a Form 410 Termination)
- [ ] Amendment (Explain below)
- [ ] Quarterly Statement
- [ ] Special Odd-Year Report
- [ ] Supplemental Preelection Statement - Attach Form 495

3. Committee Information

I.D. NUMBER: 1320480

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)
Mark Farrell for District 2 Supervisor 2010

STREET ADDRESS (NO P.O. BOX)

CITY	STATE	ZIP CODE	AREA CODE/PHONE
San Francisco	CA	94104	(415) 254-8874

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX

CITY	STATE	ZIP CODE	AREA CODE/PHONE

OPTIONAL: FAX / E-MAIL ADDRESS

Treasurer(s)

NAME OF TREASURER
Ms. Stacy E. Owens

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

NAME OF ASSISTANT TREASURER, IF ANY
Mr. Henry C. Levy

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

OPTIONAL: FAX / E-MAIL ADDRESS

4. Verification

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 01/31/2011 (Date) By Stacy Owens (Signature of Treasurer or Assistant Treasurer)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

0281

Schedule E (Continuation Sheet) Payments Made

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

Statement covers period
from 10/17/2010
through 12/31/2010

CALIFORNIA FORM 460

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Mark Farrell for District 2 Supervisor 2010

I.D. NUMBER
1320480

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
H&H Imaging San Francisco CA 94103	CMP			$219.00
James Haramis San Francisco CA 94123	OFC		Rent.	$1,650.00
Henry C Levy & Co. Oakland CA 94618	PRO			$1,835.54
Henry C Levy & Co. Oakland CA 94618	PRO			$2,153.00
iPrint Technologies Larkspur CA 94939	OFC			$109.50

0282

* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

SUBTOTAL $ $5,967.04

COVER PAGE

Recipient Committee Campaign Statement Cover Page

(Government Code Sections 84200-84216.5)

Type or print in ink.

E-filed on: 08/01/2011 15:22:27

Date Stamp

CALIFORNIA FORM 460

Page 1 of 35

For Official Use Only

SEE INSTRUCTIONS ON REVERSE

Statement covers period
from 01/01/2011
through 06/30/2011

Date of election if applicable: (Month, Day, Year)
11/02/2010

1. Type of Recipient Committee: All Committees – Complete Parts 1, 2, 3, and 4.

- [X] Officeholder, Candidate Controlled Committee
  - ◯ State Candidate Election Committee
  - ◯ Recall *(Also Complete Part 5)*
- [ ] General Purpose Committee
  - ◯ Sponsored
  - ◯ Small Contributor Committee
  - ◯ Political Party/Central Committee
- [ ] Primarily Formed Ballot Measure Committee
  - ◯ Controlled
  - ◯ Sponsored *(Also Complete Part 6)*
- [ ] Primarily Formed Candidate/ Officeholder Committee *(Also Complete Part 7)*

2. Type of Statement:

- [ ] Preelection Statement
- [X] Semi-annual Statement
- [ ] Termination Statement (Also file a Form 410 Termination)
- [ ] Amendment (Explain below)
- [ ] Quarterly Statement
- [ ] Special Odd-Year Report
- [ ] Supplemental Preelection Statement - Attach Form 495

3. Committee Information

I.D. NUMBER: 1320480

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)
Mark Farrell for District 2 Supervisor 2010

STREET ADDRESS (NO P.O. BOX)

CITY	STATE	ZIP CODE	AREA CODE/PHONE
San Francisco	CA	94104	(415) 254-8874

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX

CITY	STATE	ZIP CODE	AREA CODE/PHONE

OPTIONAL: FAX / E-MAIL ADDRESS

Treasurer(s)

NAME OF TREASURER
Ms. Stacy E. Owens

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

NAME OF ASSISTANT TREASURER, IF ANY
Mr. Henry C. Levy

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

OPTIONAL: FAX / E-MAIL ADDRESS

4. Verification

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 08/01/2011 (Date) By Stacy Owens (Signature of Treasurer or Assistant Treasurer)

Executed on 08/01/2011 (Date) By Mark Farrell (Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

0283

Schedule E (Continuation Sheet) Payments Made

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

Statement covers period
from 01/01/2011
through 06/30/2011

CALIFORNIA FORM 460

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Mark Farrell for District 2 Supervisor 2010

I.D. NUMBER
1320480

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Hayes Street Grill San Francisco CA 94102 Charged on USAA credit card, payment to: 10750 McDermott Fwy, San Antonio, TX 78288	MTG		06/13/11 Meeting with District 2 Constituent regarding fall ballot initiatives. Candidate in attendance.	$34.27
Hayes Street Grill San Francisco CA 94102 Charged on USAA credit card, payment to: 10750 McDermott Fwy, San Antonio, TX 78288	MTG		06/22/11 Meeting with District 2 Constituent to discuss planning commission. Candidate in attendance.	$55.79
Hayes Street Grill San Francisco CA 94102 Charged on USAA credit card, payment to: 10750 McDermott Fwy, San Antonio, TX 78288	MTG		6/29/11 Meeting with District 2 Constituent regarding King Edward II project. Candidate in attendance.	$36.37
Henry C Levy & Co. Oakland CA 94618	PRO			$968.16
Henry C Levy & Co. Oakland CA 94618	PRO			$2,595.73

0284

* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

SUBTOTAL $ $3,690.32

Schedule E (Continuation Sheet) Payments Made

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

SCHEDULE E (CONT.)

Statement covers period
from 01/01/2011
through 06/30/2011

CALIFORNIA FORM 460

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Mark Farrell for District 2 Supervisor 2010

I.D. NUMBER
1320480

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Henry C Levy & Co. Oakland CA 94618	PRO			$1,616.45
IMPark San Francisco CA 94158 Charged on USAA credit card, payment to: 10750 McDermott Fwy, San Antonio, TX 78288	TRC		01/06/11 Candidate Parking at City Hall	$12.00
IMPark San Francisco CA 94158 Charged on USAA credit card, payment to: 10750 McDermott Fwy, San Antonio, TX 78288	TRC		01/10/11 Candidate Parking at City Hall	$24.00
IMPark San Francisco CA 94158 Charged on USAA credit card, payment to: 10750 McDermott Fwy, San Antonio, TX 78288	TRC		01/22/11 Candidate Parking at City Hall	$12.00
IMPark San Francisco CA 94158 Charged on USAA credit card, payment to: 10750 McDermott Fwy, San Antonio, TX 78288	TRC		03/11/11 Candidate Parking at City Hall	$15.00

0285

* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

SUBTOTAL $ $1,679.45

Recipient Committee Campaign Statement Cover Page

(Government Code Sections 84200-84216.5)

SEE INSTRUCTIONS ON REVERSE

Type or print in ink.

E-filed on: 01/29/2012 22:46:31

Date Stamp

CALIFORNIA FORM 460

For Official Use Only

Statement covers period	Date of election if applicable: (Month, Day, Year)
from 07/01/2011	11/02/2010
through 12/31/2011	

1. Type of Recipient Committee: All Committees – Complete Parts 1, 2, 3, and 4.

- [X] Officeholder, Candidate Controlled Committee
  - ◯ State Candidate Election Committee
  - ◯ Recall
  - *(Also Complete Part 5)*
- [ ] General Purpose Committee
  - ◯ Sponsored
  - ◯ Small Contributor Committee
  - ◯ Political Party/Central Committee
- [ ] Primarily Formed Ballot Measure Committee
  - ◯ Controlled
  - ◯ Sponsored
  - *(Also Complete Part 6)*
- [ ] Primarily Formed Candidate/ Officeholder Committee
  - *(Also Complete Part 7)*

2. Type of Statement:

- [ ] Preelection Statement
- [X] Semi-annual Statement
- [ ] Termination Statement (Also file a Form 410 Termination)
- [ ] Amendment (Explain below)
- [ ] Quarterly Statement
- [ ] Special Odd-Year Report
- [ ] Supplemental Preelection Statement - Attach Form 495

3. Committee Information

I.D. NUMBER: 1320480

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)
Mark Farrell for District 2 Supervisor 2010

STREET ADDRESS (NO P.O. BOX)

CITY	STATE	ZIP CODE	AREA CODE/PHONE
San Francisco	CA	94104	(415) 254-8874

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX

CITY	STATE	ZIP CODE	AREA CODE/PHONE

OPTIONAL: FAX / E-MAIL ADDRESS

Treasurer(s)

NAME OF TREASURER
Mr. Mark Farrell

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
San Francisco	CA	94104	(510) 652-1000

NAME OF ASSISTANT TREASURER, IF ANY
Mr. Henry C. Levy

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

OPTIONAL: FAX / E-MAIL ADDRESS

4. Verification

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 01/31/2012 (Date) By Mark Farrell (Signature of Treasurer or Assistant Treasurer)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

0286

Schedule E (Continuation Sheet) Payments Made

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

SCHEDULE E (CONT.)

Statement covers period
from 07/01/2011
through 12/31/2011

CALIFORNIA FORM 460

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Mark Farrell for District 2 Supervisor 2010

I.D. NUMBER
1320480

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
GoDaddy Scottsdale AZ 85260 Charged on USAA credit card, payment to: 10750 McDermott Fwy, San Antonio, TX 78288	WEB			$323.19
Henry C Levy & Co. Oakland CA 94618	PRO			$1,250.00
IMPark San Francisco CA 94158 Charged on USAA credit card, payment to: 10750 McDermott Fwy, San Antonio, TX 78288	TRC		10/18/11 Candidate Parking for meeting with District 2 constituent regarding Doyle Dr. Candidate in attendance.	$15.50
Margaux Kelly San Francisco CA 94115	OFC		Reimbursed expense under $500 Schedule G limit	$70.66
Margaux Kelly San Francisco CA 94115	OFC		Reimbursed expenses under $500 Schedule G limit	$20.00

0287

* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

SUBTOTAL $ $1,679.35

Exhibit P

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

SUSAN J. HARRIMAN
CHAIRPERSON

EMI GUSUKUMA
VICE-CHAIRPERSON

EILEEN HANSEN
COMMISSIONER

JAMIENNE S. STUDLEY
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: August 12, 2008

To: Ethics Commission Staff

From: John St. Croix, Executive Director

Re: New Policies and Procedures

At its March 24, 2008 meeting, the Ethics Commission approved several policy directives, which are discussed below. Commission staff will implement these policies immediately. These policies are subject to further clarification and refinement.

I. Random Selection of Committees for Audit

A. No later than the March meeting of each year, the Commission will endeavor to conduct a random selection of political campaign committees that were active in the previous calendar year for audits. The pool of committees subject to the random selection process will not include the committees of candidates certified to receive public funds. All candidates certified to receive public funds will be subject to audits (public financing audits) and will not be part of the random selection pool. Committees that have been designated by enforcement staff for audits (targeted audits) will also not be part of the random selection pool.

B. The Commission will not include candidates or committees that raise less than or equal to $5,000 and spend less than or equal to $5,000 per election cycle in the audit pool for random selection. (For example, a committee that raises $8,000 and spends $4,000 will qualify for the audit pool; a committee that raises $5,000 and spends $5,000 will not qualify for the audit pool.) An election cycle generally covers activity through December 31 of the election year. Staff may recommend, and the Commission may approve, that candidates or committees that raise and spend less than or equal to $10,000 be excluded from the audit pool in a given year.

C. Of the randomly selected committees, the Commission will conduct the audits of committees of candidates who were elected after it conducts the audits of committees of candidates who were not elected.

D. Following selection by the Commission, staff will notify all selected committees that they must preserve their records until the audits are completed. During its training sessions and in its manuals, staff will remind committees that state law requires committees to retain their records for four years.

E. The Commission will endeavor to complete randomly selected audits within two years of selection.

F. In general, when audits reveal that the total infractions constitute less than ten percent of contributions or expenditures for the auditing period, or less than

25 Van Ness Avenue, Suite 220 • San Francisco, CA 94102-6053• Phone (415) 252-3100• Fax (415) 252-3112
E-Mail Address: ethics.commission@sfgov.org Web site: http://sfgov.org/ethics

$10,000, whichever is lower ("**materiality standard for audits**") staff will not institute any enforcement action against the committee. At its discretion, staff may institute actions arising out of infractions below this threshold. (For example, if the records show that a candidate raises $50,000, but $5,000 is from a single contributor, staff may deem the violation to be material.) Findings not deemed material will not be forwarded to any enforcement authority for follow-up.

II. Forfeitures of corporate contributions to candidates for City elective office, contributions that exceed the contribution limits or contributions that are not disclosed properly

A. Enforcement staff will handle all forfeiture activities, beginning on August 1, 2008 with the semi-annual report due on July 31, 2008. Enforcement staff will also handle any forfeiture matters arising from violations of law revealed in audits of committees active in 2007. The fines collection staff will continue to handle any forfeiture matters arising from violations of law revealed in audits of committees active in 2006.

B. Twice a year, within 45 days after the semi-annual campaign filing deadlines, audit staff will endeavor to screen all contributions that may be subject to forfeiture. Contributions for which complete contributor information is not disclosed, contributions that exceed the contribution limits ("excess contributions"), and contributions received by candidates for City elective office from corporations ("corporate contributions") may result in forfeiture. After audit staff completes its review of filings for possible forfeitures, enforcement staff will send a notice to cure ("NTC") to committees, in order to provide committees the opportunity to correct contributor disclosure problems within thirty (30) calendar days. (*Note:* Corporate and excess contributions cannot be cured.) Enforcement staff will endeavor to send all NTCs to the affected committees within 60 days of the semi-annual filing deadline. If more than 60 days have elapsed, staff may send still send a NTC, but the time period for cure will extend from the date of the NTC.

Example:
For the July 31, 2008 semi-annual deadline, audit staff will attempt to screen all filings for potential forfeitures by September 14 and enforcement staff will attempt to send all NTCs by September 30.

C. Audit staff will attempt to screen Form 496 and 497 pre-election campaign filings within one week of their receipt. Within 72 hours of such screening, enforcement staff will attempt send a NTC to committees to provide them an opportunity to cure any contributor disclosure problems within five (5) calendar days. If staff fails to screen or send a NTC under these deadlines, the screening and/or sending out of the NTC will occur in conjunction with staff's activities under II.B, and the time to cure will be thirty (30) calendar days of the NTC.

D. Audit staff will attempt to screen Form 496 and 497 campaign filings received during the late reporting periods on a daily basis. By the next business day, enforcement staff will attempt to send a NTC to committees to cure any contributor disclosure problems identified by audit staff within 48 hours. If staff fails to screen or send a NTC under these deadlines, the screening and/or sending out of the NTC will occur in conjunction with staff's activities under II.B, and the time to cure will be thirty (30) calendar days of the NTC.

E. For section 1.113 and quarterly disclosure reports, staff will follow the procedures set forth in this section II.B.

F. If a committee cures any contributor disclosure problems identified by the NTC within the time frame specified, the committee will not be subject to forfeitures for any such reporting defects.

G. If a committee does not cure, or cannot cure because the contribution(s) violated the contribution limits or were corporate contributions to candidates for City elective office, enforcement staff will handle as follows:

1. Enforcement staff will attempt to send out a forfeiture assessment notice ("FAN") within one year of the filing deadline or the date the campaign statement was filed, whichever is later.
2. If the Commission fails to send a FAN to a committee assessing a forfeiture within one year of the filing deadline or the date that the defective report was received by the Commission, the Commission will not seek forfeiture.

Example:
Committee ABC files its report by the applicable deadline, July 31, 2008. The report fails to list the occupations for several contributors. On September 15, 2008, Commission staff notifies the committee to cure its report. If the committee fails to cure the defect within the timeline provided, Commission staff must seek forfeiture. If Commission staff fails to send the FAN to Committee ABC to assess the forfeitures by July 30, 2009 – within one year of the filing deadline – the Commission may continue to seek amendments to the report but will no longer pursue forfeitures.

Example:
The applicable filing deadline is July 31, 2008, and Committee ABC does not file its report until August 10, 2008. The report fails to list the occupations for several contributors. If Commission staff fails to send a FAN to Committee ABC to assess the forfeitures by August 9, 2009, the Commission may continue to seek amendments but may no longer seek forfeitures. ***See Section III below for the handling of late fees against Committee ABC.***

H. The FAN will provide twenty-one (21) calendar days for the committee to cure any defects, seek a waiver of the assessed forfeitures, and/or pay any forfeitures.

I. If the committee seeks a waiver, enforcement staff will offer its recommendation to the Executive Director using the following factors:

1. If the forfeiture results from a violation of applicable contribution limits or a corporate contribution to a candidate for City elective office, no waiver may be granted. The committee must forfeit any funds identified as a corporate or excess contribution. However, if a committee returns a corporate or excess contribution to the donor prior to the issuance of a FAN or any other action by the Commission, the returned contribution is not subject to forfeiture if it is properly reported as a returned contribution on a timely basis.
2. If the forfeiture results from inaccurate or incomplete information about the contributor(s), staff should determine whether the filer is a "small" filer, which is a filer who has never reported more than $15,000 of contributions or expenditures or cash on hand in any single calendar year. If the filer is a small filer, staff may recommend the granting of a full waiver, if the contributor(s)' information is corrected or completed within the time frame set forth in the FAN.

3. If the forfeiture is due to inaccurate or incomplete information about the contributor(s), and the committee is not a small filer under section II.I.2, staff may make its recommendation based on the following factors: the amount of funds subject to forfeiture may be reduced by 20 percent for each of the following factors for which an affirmative response is made (meeting any five or all six of the factors below will result in a recommendation of 100 percent waiver):
    a. Does the contributor have a history of filing campaign statements on a timely manner?
    b. Is the contributor a first-time treasurer or candidate?
    c. Is the filing a semi-annual or quarterly report?
    d. Did the committee cure defects within the time set forth in the FAN?
    e. Does committee demonstrate financial hardship if forfeitures must be paid in full?
    f. Did the committee self-report the error(s)? (*see* Section VIII).

J. If the Executive Director reduces a forfeiture based upon a request for a waiver and the committee fails to pay the reduced forfeiture according to the schedule or deadline prescribed, staff may revoke the reduced forfeiture and staff may pursue the matter as set forth below in subsections K-N.

K. If the committee does not seek waiver, pay the assessed forfeitures, or enter into a payment schedule with staff within the time period prescribed in the FAN, or if the committee fails to pay the reduced forfeiture according to the schedule or deadline prescribed, enforcement staff will determine whether to refer the matter to BDR or file an Ethics complaint against the committee.

L. If staff refers the matter to BDR, enforcement staff will notify the committee of the date of the referral. In most instances, staff will endeavor to provide such notification on the 91st day after the date that the staff sends the FAN to the committee, or as soon as possible after revocation of the reduced forfeiture.

M. If staff decides to file an Ethics complaint, staff will endeavor to notify the committee of its decision no later than 60 days after the date that the staff sends the FAN to the committee, or as soon as possible after revocation of the reduced forfeiture.

III. Late fees which may be assessed based on late receipt of campaign finance filings when either (1) the committee files late and staff assesses late filing fees; or (2) the committee fails to file a report, the committee files its report upon staff's notification of the failure to file, and committee is assessed late filing fees.

A. In situation (1), within one year of the Commission's receipt of the late report, fines collection staff will endeavor to send a written late fee notice ("LFN") to the late filer.

B. The LFN will provide the committee with twenty-one (21) calendar days to pay its late fines, enter into a payment schedule to pay the late fees, or to request a waiver of the late fees.

C. If the committee seeks a waiver, the fines collection staff will offer a recommendation on the waiver to the Executive Director, using the six factors discussed above in section II.I.3a-f.

D. If the committee does not seek a waiver, pay the late fees, or enter into a payment schedule with Ethics staff within the time period prescribed in the LFN, the fines collection staff will

refer the matter to enforcement staff for handling. Enforcement staff will determine whether to refer the matter to BDR.

1. Enforcement staff will notify committee of the date of the referral to BDR. In most instances, staff will make its referrals on the 91st day after the date the LFN is sent to the committee.

E. In situation (2), within one year of the date that the filing was due, staff will endeavor to send a notice to file ("NTF") to inform a non-filer know of its filing obligations. Except for NTFs regarding pre-election reports, the notice will inform the non-filer that it has ten (10) days to file its report or its name will be posted as a non-filer on the Commission's website. Staff will endeavor to send a second notice to file ("NTF2") once the 10 days have elapsed and the non-filer has not filed. The NTF2 will provide ten (10) days for the non-filer to file. For missing pre-election reports, the NTF and NTF2 will provide five (5) days for the non-filer to file. If the non-filer fails to file, the fines collection staff will refer the matter to enforcement.

F. In general, if staff fails to send a NTF to the non-filer within a year of the applicable filing deadline, staff will not impose more than one year of late fees.

Example:
Committee XYZ filed its pre-election reports for the November 2008 election and fails to file a second semi-annual report by January 31, 2009. On June 1, 2010, Ethics staff sends a NTF to Committee XYZ to apprise it of its missing report. Committee XYZ files the report on June 30, 2010, approximately seventeen months after the report was due. When Ethics staff sends a LFN, it will limit the time period subject to late fees to 365 days because Ethics did not send a NTF until after a year after the filing deadline.

Example:
Committee XYZ filed pre-election reports for the November 2008 election and fails to file a second semi-annual report by January 31, 2009. On June 1, 2009, Ethics staff sends a NTF to Committee XYZ to apprise it of its missing report. Committee XYZ files the report on June 30, 2010, approximately seventeen months after the report was due. When Ethics staff sends a LFN, it will not limit the time period subject to late fees to 365 days because Ethics sent a NTF within a year of the January 31, 2009 filing deadline.

IV. De Minimis Standards for Late Fees and Forfeitures for Incomplete Contributor Information

In general, a candidate or committee that raises and spends less than or equal to $5,000 in any election cycle (or calendar year for general purpose committees) will not be subject to fees for failing to file required campaign statements in a timely manner. Nor will such a committee be subject to forfeitures for failing to disclose complete contributor information.

V. Specific Written Notice

Except in unusual circumstances, the Commission will no longer issue specific written notice pursuant to Government Code section 91013.

VI. Bureau of Delinquent Revenues

Enforcement staff will handle all referrals to and matters currently pending at the Bureau of Delinquent Revenues (BDR).

Exhibit Q

SHARE

Minutes -

June 5, 2015

Minutes of the Special Meeting of
The San Francisco Ethics Commission
June 5, 2015
Room 400, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

I. Call to order and roll call.

Chairperson Renne called the meeting to order at 1:04 PM.

COMMISSION MEMBERS PRESENT: Paul Renne, Chairperson; Brett Andrews, Vice-Chairperson; Beverly Hayon, Commissioner; Ben Hur, Commissioner; Peter Keane; Commissioner. Chairperson Renne stated that Executive Director St. Croix was absent from the meeting.

STAFF PRESENT: Jesse Mainardi, Deputy Executive Director; Catherine Argumedo, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Andrew Shen, Deputy City Attorney (DCA).

OTHERS PRESENT: Robert Stern, former Director of the Center for Governmental Studies; Corey Cook, Ph.D., Associate Professor, Department of Politics, University of San Francisco; Charles Marsteller; Larry Bush; Anita Mayo, Pillsbury Winthrop Shaw Pittman; David Pilpel; Bob Planthold; Robert van Ravenswaay; Ken Miller; Vince Courtney; Jim Maxwell; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- Staff Memorandum re: Further Proposed Changes to C.F.R.O. Amendments, dated June 3, 2015, including proposed amendment;
- Chart provided by Corey Cook, PhD.;
- Spreadsheet provided by Larry Bush;
- Recruitment Proposal from Alliance Resource Consulting;
- Forfeiture letter to Supervisor Mark Farrell, dated December 9, 2014;
- Draft letter to Supervisor Mark Farrell;
- Letters from Charles Bell;
- E-mail from Michael Garcia, dated June 4, 2015;
- Letter from James Sutton re: Revocation of Forfeiture Letter Sent to Supervisor Mark Farrell, dated June 4, 2015.

II. Presentation regarding the potential need for, and implications of, imposing limitations on candidate-controlled ballot measure committees and/or legal defense funds. Presenters include: Robert M. Stern, Former Director of the Center for Governmental Studies, Principal co-author of the Political Reform Act; and Corey Cook, Ph.D., Associate Profession, Department of Politics, University of San Francisco; Director, Leo T. McCarthy Center for Public Service and the Common Good.

Deputy Director Jesse Mainardi introduced the item and introduced both speakers, Bob Stern and Corey Cook. He stated the following:

"Good afternoon, Commissioners. Jesse Mainardi, Deputy Director. You will recall that earlier this year, the Commission resolved to investigate whether to propose a ballot measure imposing limitations on committees controlled by City candidates and officeholders which are not directly related to their campaigns for office.

These types of committees include:

1. Candidate controlled ballot measure committees, which raise and spend funds in support of, or in opposition to, particular ballot measures;
2. Candidate controlled general purpose ballot measure committees, which raise and spend funds in support of, or in opposition to, various, generally unspecified measures, usually over a number election cycles; and
3. Legal defense funds, which allow a candidate to raise funds to pay for legal expenses associated with litigation resulting from his or her candidacy.

By way of background, there are generally no limits on how much these committees may raise from any particular donor, although certain City contractors may be prohibited from contributing. Also, unlike with City candidate campaigns, corporations may generally make contributions to these candidate-controlled committees.

This item today is a part of the Commission's due diligence and further exploration of this issue. We are very lucky to have two experts today who will tell us more about these types of committees, how they are used by candidates, and whether, as a policy matter, certain restrictions may be advisable.

Our first speaker today is Bob Stern. Bob has been called the "godfather of modern political reform in California." He was a principal co-author of Proposition 9, otherwise known as the Political Reform Act of 1974, which continues to form the basis of California's campaign disclosure, ethics and lobbying laws. He was also a principal drafter of the City of Los Angeles' Ethics and Public Campaign Financing laws.

Bob served as the first general counsel of the Fair Political Practices Commission and later was the President of the Center for Governmental Studies, based in Los Angeles.

Bob has been honored for his public service by a number of good government groups including the League of Women Voters of Los Angeles, Common Cause California, Pomona College, and the Council on Governmental Ethics Laws. Bob is a graduate of Pomona College and Stanford Law School.

Our next speaker will be Corey Cook. For the last six years, Corey has been an Associate Professor in the Department of Politics at the University of San Francisco, where he has also served as the Director of the Leo T. McCarthy Center for Public Service and the Common Good.

Corey teaches courses in American Politics specializing in political institutions, urban and state politics, and the dynamics of political representation. His early work concerned campaign finance reform and his current research focuses on election results and political geography in California."

Robert M. Stern
Mr. Stern stated his experience and research at the Center for Governmental Studies ("CGS") of the field, including working for the Fair Political Practices Commission for nine years. He stated that he had studied campaign finance, redistricting, and the initiative process and written a series of reports and recommendations to improve campaign finance laws. He stated that one report in 1990 studied 18 cities and counties and recommended major changes in the law. He stated he was now semi-retired and working as a consultant and speaker.

Mr. Stern stated that CGS came out with a report about 12 years ago that urged the FPPC to adopt a regulation requiring contribution limits on candidate-controlled ballot measure committees. He stated that the court later invalidated the adopted regulation by stating that the FPPC exceeded its authority in adopting the regulation, but did not address the constitutionality of the regulation.

Mr. Stern stated that the purpose of contribution limits was to reduce the appearance of corruption when candidates receive campaign money. He stated that there is no difference in a candidate raising money for his or her own campaign and money for his or her ballot measure committee. Mr. Stern stated that a donor does not care how a contribution is used; the donor only cares about the gratitude of the officeholder. He stated that the donor at the very least wants access to the official; at the most, the donor wants a decision by the officeholder. He estimated that 90% of campaign money comes from people who want something from government. He cited the example of labor unions negotiating contracts, developers seeking a permits or variances, businesses seeking tax breaks or contracts. He stated that all want the support, or at least the ear, of the official.

Mr. Stern stated that allowing unlimited contributions to candidate controlled ballot measure committees allows for the circumvention of contribution limits for other candidate-controlled committees. He stated that officeholders get involved with ballot measure committees for various reasons: e.g., promote an issue, enhance their standing, to raise more money from special interests. He stated that a contributor may not care about the ballot measure, but he or she cares about his or her relationship with the City official. He stated that, in some instances, the contributor may be from out of town and have no idea what the measure is about, but contributes because the official asks for it.

Mr. Stern recognized that limits on candidate controlled ballot measure committees may seem unfair because other ballot measure committees will have no limits per a Supreme Court ruling from the 1980s. He stated that it is also unfair that officials can raise money from people who merely want to influence the candidate or official, as opposed to support or oppose the measure.

Mr. Stern stated that he was less concerned with legal defense funds, as the FPPC has rules on how they can be used: you must have a pending case against you. He again stated that it is unfair that an officeholder has access to money that a member of the public does not have. He stated that special interests would be interested in supporting legal defense funds for officeholders. He stated that fundraising should be strictly limited and have the same limits as candidate committees.

Mr. Stern stated that the bottom line was that if the Commission wanted to support meaningful limits for candidates, the Commission adopt contribution limits on both candidate-controlled ballot measure committees and legal defense funds. He stated that any committee that the officeholder or candidate controls should have contribution limits. He stated that no other jurisdiction has adopted limits on candidate-controlled ballot measure committees, but he thinks they should.

The Commissioners asked Mr. Stern various questions about the proposed limits on these committees.

Chairperson Renne asked whether a candidate controlled committee has to be focused on a specific ballot measure, or whether it can be a general fund supporting many measures. Mr. Stern stated that limits should apply to either type. He confirmed that a committee is candidate controlled because the candidate can help direct how the funds are spent.

Commissioner Hur asked if Mr. Stern would be comfortable with different limits for legal defense funds, campaign committees, and ballot measure committees. Mr. Stern stated that he would prefer the same limit for all based on the prior determination of what was the right limit, but would certainly prefer different limits to no limits. Mr. Stern also stated that he did not think that limits on legal defense funds would not deter people from running for office. Mr. Stern "guessed" that candidates would no longer control ballot measure committees if limits were imposed.

In response to Commissioner Andrews' question, Mr. Stern stated that there should be contribution limits on any committee controlled by any candidate. Mr. Stern provided an example of a candidate-controlled ballot measure committee controlled by former Mayor Villaraigosa. He stated that the former Mayor had raised hundreds of thousands of dollars from the same people who would have contributed to his candidate committee. He also gave the example of Governor Schwarzenegger raising well above the limits for his ballot measure committees from special interests. He stated that, although not true in all cases, these contributors would not be giving to these ballot measure committees except for the fact that the officeholder was involved.
In response to a question from Commissioner Renne, Mr. Stern stated that, if an officeholder asked a donor to give money to a committee that s/he did not control, the candidate would not control the funds and may not get the benefit of the expenses paid by the committee which might help the candidate. Mr. Stern said there was a difference between controlled and non-controlled committees. Mr. Stern stated that it is not common that these types of committees are created and that mayors and governors have been creating them, and there will be more if there are no restrictions.

Public Comment:
Charles Marsteller stated that Mr. Stern was his political mentor. He stated that an analogy could be made between regulating these types of committee and the need to impose loan limits on candidates. He stated that, after winning an election, an officeholder would have more cachet to raise money and pay back their loans.

Larry Bush stated that he had provided the Commissioners with spreadsheets. He stated that these types of committees provide an advantage to candidates because they allow a candidate to maintain a political infrastructure. He also noted that the contributions to the Mayor's committee mostly exceeded limits. He supported Mr. Stern's suggestion to place contribution limits on these committees.

Anita Mayo, Pillsbury Winthrop Shaw Pittman, provided documents to the Commissioners. She stated that case law has held that these types of limits are unconstitutional. She stated that free speech and freedom of association would be diluted and cited the state appellate case which struck down the FPPC's regulation. She stated that this case suggested that the limit would be unconstitutional. She stated that limits on legal defense funds may impact the quality of legal representation.

Mr. Stern stated that there was a constitutional question and he could not predict what the Supreme Court would do, but stated there is a difference between controlled and non-controlled committees. He stated he thought the Court would uphold it. The Commission thanked Mr. Stern for his testimony.

Corey Cook, Ph.D.
Dr. Cook stated the following:

"Mr. Chairman and Commissioners,

Thank you for the opportunity to address the commission. It is an honor to appear before you with Bob Stern, whose work I have admired for some time.

I began studying campaign finance issues in California in 1994 working for the California Research Bureau writing reports to the state legislature on campaign finance. That research was undertaken during the "wild west" period before Proposition 34 when California had few campaign finance regulations – between the passage of Propositions 68 and 73 in 1988 (which ultimately never took effect) and before Proposition 25 (which was defeated) and 208 (which was ruled unconstitutional) and California's current regulatory regime established by Proposition 34. Additionally, I've done research on public finance systems in Maine and Arizona as a graduate student and studied political reform efforts in California and San Francisco since becoming a professor in political science at San Francisco State and the University of San Francisco. I'm going to try to offer a political science perspective.

Beginning with Buckley vs. Valeo, the court has put the prevention of "corruption and the appearance of corruption" at the center of any efforts to regulate campaign financing.

In recent years, the court has interpreted "corruption" according to a narrow focus on bribery and quid pro quos rather distortion of the public interest and the undue influence of campaign contributors. I would dispute that narrow definition of corruption but nevertheless, the regulatory regime's primary focus has been on distinguishing between direct and indirect speech and regulating contributions to candidates and elected officials rather than direct spending.

For instance, in *Citizen United*, the Supreme Court held that "Independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.

The logic of San Francisco's contribution limits, set at $500, is to deal directly with this concern about "corruption and the appearance of corruption" stemming from contributions to candidates and officeholders. In my view, allowing, in essence, for unlimited and unregulated funds to flow through candidates and officeholders to use in ballot campaigns is a clear circumvention of these limits and a clear distortion or the purpose of campaign finance law. It is worth stating, though it is beyond the scope of this hearing, that in my view, behested payments directly solicited by officeholders also create such an appearance, but at least these have been made more transparent, which is not the case with candidate controlled ballot measure committees.

To be clear, I am not asserting that any of the candidates and officeholders in San Francisco or California who have created a candidate-controlled ballot measure committee has participated in a quid pro quo or engaged in corruption. But the appearance of corruption and the potential for corruption is present. And I would add, as importantly in my view, is the potential to increase the cynicism and disengagement of the public through these convoluted and non-transparent campaign funding mechanisms.

Candidate-controlled committees are now fairly widespread at the state level – In a 2009 report, the FPPC estimated that state and legislative candidates raised $150 million in candidate-controlled committees for ballot measures in the first 8 years since the passage of Proposition 34.

Governor Arnold Schwarzenegger had his "Citizens to Save California" which raised substantial sums, including one contribution over $1.5 million. His expenditures gained some public attention including a reported $523,000 on executive jet services. Now, FPPC regulations generally limit expenditures by state candidate-controlled ballot measure committees to purposes related to the qualification, passage, or defeat of ballot measures. Still, Schwarzenegger went to the ballot repeatedly, with some successes and some notable failures to advance his legislative agenda.

Governor Jerry Brown has taken this to new heights. He raised $17 million for his Propositions 1 and 2 in 2014 and $42 million on his Prop. 30 initiative in 2012. Again, the single largest contributor was $1.5 million.

As noted, in addition to concern about the appearance of corruption is that for voters, it is exceptionally difficult to track the various committees. For instance, one $1.5 million contribution from

Californians Working Together To Restore And Protect Public Schools, Universities And Public Safety

Went to Governor Brown's controlled committee:

Yes On Prop. 30 - To Protect Our Schools and Public Safety, A Broad Coalition Of Teachers, Business, Labor, Law Enforcement, And Governor

I have tried to sort some of this out at the local level and examined six candidate controlled committees (please see appendix below).

As the chart indicates, there is quite a bit of a range in the size and scope of the committees. Most were designed to contest a specific measure, but one is a more general committee. But in every case,

- The majority of donors gave more than the $500 limit
- The majority of donors also gave to the candidate's committee
- The donors could have made contributions directly to a ballot measure committees (and some of the contributors gave to both.
- And in most of these cases, the candidates then distributed the funds to other ballot committees.

Because contributors are able to give directly to ballot committees, it is clear that this is indirect rather than direct speech and ought to be subject to contribution limits.

And this practice raises legitimate public policy questions about the appearance of corruption and potential for quid pro quos, and ultimately the lack of transparency around these contributions.

There exists a substantial literature in political science on ballot propositions and this emerging phenomenon, really since the late 1980s of political actors – candidates and officeholders – turning to ballot measure campaigns to advance their own campaigns.

Ballot measures do influence vote choice in candidate races – have "spillover effects."

They set the agenda and prime voters.

Ballot measures have a priming effect – they raise the salience of issues that voters use in evaluating candidates. For example, gay marriage in 2004, illegal immigration, affirmative action.

These issues become important in evaluating candidates – even in cases where the issues are completely unrelated to the race.

And even when candidates are not on the same ballot, candidates can advance policy while advancing one's political career by taking stands on

issues and elevating their public profile. Seeing this around the country. And seeing this in San Francisco.

It is good policy to subject candidate-controlled ballot measure committees and/or legal defense funds to the City's limits for candidate contributions

Courts have expressed concerns about the free speech rights of donors. But in contributing to a candidate, they are not directly speaking and as such this could and should be regulated as indirect speech.

There is always the option of creating independent ballot committees that can accept unlimited contributions. But passing it through officeholders creates a clear appearance of corruption and has substantial potential for coordination with candidate activities, particularly in light of the lack of regulations mandating that the funds be limited to spending on qualification, passage, or defeat of ballot measures as at the state level.

And lastly, I'm not concerned that this would unfairly limit the ability of candidates to advocate for a City ballot measure. There exist plentiful opportunities for candidates and officeholders to promote measures through their official duties and to contribute their own funds and regulated campaign funds. And as we have seen in San Francisco, candidates have demonstrated a capacity to raise substantial sums to contest competitive campaigns while staying within the contribution restrictions.

The Commissioners asked Dr. Cook various questions about the proposed limits on candidate-controlled committees.

Commissioner Hur asked what else could be done if the proposed limit were unconstitutional. Dr. Cook said that disclosure would be the answer, as well as to ensure that the funds could only be used for advocacy regarding ballot measures. He stated that it is very difficult to discern where the money goes from these committees. He stated that no other jurisdiction has dealt with this issue well and was generally pleased with how San Francisco manages disclosure. He stated that most jurisdictions have not prioritized making data available in a clear manner.

In response to Commissioner Hayon's question, he also suggested that the Commission not ban candidate-controlled ballot measure committees altogether. Dr. Cook stated that he believes that contribution limits in San Francisco are sufficiently high that candidates can run well-financed, effective campaigns, but are also sufficiently low so as to avoid the appearance of corruption.

In response to Commissioner Andrews' question, Dr. Cook referenced the information on the chart he provided and stated that the majority of past donations to these types of committees would be in violation of this limit, if the limit had been in place in San Francisco.

Public Comment:
Larry Bush stated that the Commission could create a disclosure form for these types of committees, so that a donor could indicate what interest s/he has in the city and alert the public that the donor had an interest before the candidate. He also referenced the Oak project which bans an officer from making decisions affecting donors.

Mr. Stern clarified that the Oaks Project rules provide that if an officeholder votes on a project, the officeholder cannot receive a contribution or accept a job from the applicant for the next five years. He stated that this is an anti-incumbent provision, but that it has worked well in Pasadena even though it does not really deal with ballot measure committees.

Charles Marsteller thanked the Commission for allowing public comment after each speaker. He supported tying the limit to inflation, but agreed with the $500 limit.

David Pilpel stated that two approaches that have been discussed are to limit contributions or to ban contributions from certain individuals under certain circumstances. He stated that a third approach could be to prohibit an officeholder from taking certain actions following a contribution from an individual that would benefit them for a certain period of time.

III. Discussion and possible action regarding further changes to the San Francisco Campaign Finance Reform Ordinance amendments which were approved by the Commission at its meetings on January 26, 2015 and February 23, 2015.

Deputy Director Mainardi introduced the item. He stated that the Board would consider the amendments approved by the Commission on Tuesday, June 9, but that the Rules Committee meeting generated discussion on two issues. He stated that the first issue related to the 24-hour reporting requirement for electioneering communications. He stated that the Rules Committee asked the Commission to reconsider exempting the requirement for the committees to report vendor information in the 24-hour disclosure reports. Commissioner Hur asked about the amendment procedure and process before the Board. DCA Shen stated that whatever the Commission approved during this meeting would be before the Board when it meets on Tuesday. He stated that it was possible that the Board could send the whole matter back to the Commission with additional changes.

Motion 150605-01 (Hur/Hayon): Moved, seconded, and passed (3-2; Keane and Renne dissented) that the Commission approve the language previously sent to the Board, making it consistent with what the state requires.

Public Comment:
David Pilpel supported the motion. He questioned whether the Board would be able to consider the matter on Tuesday. DCA Shen stated that the draft ordinance has been available for a long time and the Board could consider it.

Bob Planthold stated that the motion should be defeated and the Commission should recommend the amendment.

Chairperson Renne stated that he did not realize that the Commission had removed this requirement and he was inclined to vote against any resolution that sends a message that information that was previously required would no longer be required in the 24-hour turnaround.

Deputy Director Mainardi stated that the second issue related to an exemption for communications sent by 501(c)(3) charity organizations. He stated that federal tax rules already preclude those organizations from influencing elections and that staff saw the rule as a trap for the unwary. Commissioner Andrews expressed support for this exemption.

Motion 150605-02 (Andrews/Hayon): Moved, seconded, and passed (5-0) that the Commission support this exemption within CFRO, thereby retaining the language contained in the proposed draft legislation.

Public Comment:
Larry Bush did not support the motion.

Robert van Ravenswaay stated that he did not understand parts of staff's memorandum.

David Pilpel supported the motion.

IV. Discussion and possible action on Executive Director recruitment process.

Deputy Director Mainardi recused himself from the next two agenda items.

Chairperson Renne stated that no other responses had been submitted. He stated that only Los Angeles County, four years ago, had used an outside recruiting firm to fill a vacant Executive Director position. He stated that he and Vice-Chairperson Andrews would soon meet with Alliance to discuss the proposal and decide whether that firm will adequately perform the job. He stated that any member of the public would be welcome to attend the meeting and provide input.

Public Comment:
David Pilpel encouraged the Commissioners to meet in City Hall, to avoid a 15-day notice requirement.

V. Discussion and possible action regarding staff's proposed revocation of a forfeiture letter sent to Supervisor Mark Farrell on December 9, 2014.

Chairperson Renne stated that the Commission must decide whether to take any action on the draft letter submitted by Executive Director St. Croix.

Commissioner Keane stated that the Commission has had an extended discussion on this matter once before and nothing has changed. He stated that the Supervisor was elected on the basis of an illegal $200,000 contribution and that forfeiture was an appropriate measure. He wondered why Supervisor Farrell never addressed the Commission directly. He stated that what he did is corrupt. Commissioner Hur stated that the process was not handled well.

Motion 150605-03 (Keane/Renne): Moved and seconded that the Commission overrule Executive Director St. Croix's request for waiver.

The Commissioners questioned both Mr. Bell and Mr. Sutton, regarding fraudulent concealment, the agency of Mr. Lee, the discovery rule, the statute of limitations, and Supervisor Farrell's knowledge of or involvement in the independent expenditure committee.

Public Comment:
Robert van Ravenswaay stated that staff was setting their own policy of when to seek forfeiture. He stated that money was used improperly and forfeiture is appropriate.

Larry Bush referenced an August 2014 e-mail from FPPC to Commission staff. He provided a copy of the e-mail to the Commissioners.

Ken Miller, resident of District 2, stated that he knew Supervisor Farrell's character and values. He stated that he is guided by the highest ethical standards.

Bob Planthold supported the withdrawal of the waiver letter.

David Pilpel wondered whether the independent expenditure committee was the entity found to have become a candidate-controlled committee and asked whether it would have to forfeit the amount requested as well.

Vince Courtney stated that he agreed with what a previous speaker stated about Supervisor Farrell. He stated that former Supervisor Alioto-Pier had been involved in the independent expenditure at the time and had more ability to fundraise from people in District 2 than Supervisor Farrell. He stated that former Supervisor Alioto-Pier had been raising money for Supervisor Farrell and against Ms. Reilly.

Jim Maxwell stated that he was a neighbor of Supervisor Farrell and had seen him grow up. He stated that he has worked with his office and he has done fabulous work for the city. He stated that Supervisor Farrell wants to make San Francisco a better place.

Charles Marsteller expressed disappointment that Supervisor Farrell was not present.

Commissioner Hur asked whether the Commission could seek advice from the City Attorney on this matter, on the legality of the statute. Chairperson Renne stated that the Commission could move into agenda item six in order to confer with the City Attorney. Commissioner Keane asked whether the Commission could seek advice in open session. DCA Shen requested that the Commission discuss the matter in closed session.

VI. Discussion and possible action regarding a complaint received or initiated by the Ethics Commission concerning San Francisco Campaign and Governmental Conduct Code section 1.114(a) (contribution limits). Closed Session.

Commissioner Keane asked whether the Commission was required to discuss the matter in closed session. DCA Shen stated that it was a requirement and that it was in the best interest of the city and the Commission to discuss the matter in closed session.

Motion 150605-04 (Hur/Andrews): Moved, seconded, and passed (3-2; Hayon and Keane dissented) that the Commission move into closed session.

Public Comment:
Bob Planthold agreed with Commissioner Keane. He asked the Commission to inform the public what issues would be discussed. Commissioner Hur stated that the topic was the statute of limitations.

Larry Bush stated that the City Attorney would say that a court will find that the statute has passed, but will represent the Commission.

Charles Marsteller stated that it would be a disaster to rescind this letter.

Chairperson Renne stated that the Commission would move into agenda item six and later return to agenda item five.

The Commission moved into closed session at 3:45 PM and took a 10-minute break. All members of the public left the hearing room. The Commission members, DCA Shen, and Ms. Argumedo remained in the hearing room during closed session. The Commission returned into open session at 4:18 PM.

Motion 150605-05 (Hur/Andrews): Moved, seconded, and passed (5-0) that the Commission not disclose its closed session deliberations re: anticipated litigation, except to state that no decision had been made in closed session.

Public Comment:
None.

The Commission then continued discussion and possible action on agenda item five.

CONTINUATION OF AGENDA ITEM V

Commissioner Keane restated the pending motion (Motion 150605-03).

Commissioner Hur stated that he did not think that the Commission was considering whether Supervisor Farrell committed fraud or wrongdoing. He stated that he did not want to impugn his integrity or character based on these allegations. He stated that there are reasonable legal and factual disputes related to the statute of limitations. Chairperson Renne added that he too was not making a finding that Supervisor Farrell did or did not violate various campaign finance laws named in the FPPC stipulation.

Motion 150605-03 (Keane/Renne): Passed (5-0) that the Commission overrule Executive Director St. Croix's request for waiver.

VII. Adjournment.

Public Comment:
None.

The Ethics Commission adjourned the meeting at 4:24 PM.

Exhibit R

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Examiner
Wednesday July 13, 2016

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Supervisor Mark Farrell requests dismissal of past-due $191K ethics fine



Supervisor Mark Farrell

By Joshua Sabatini on January 25, 2016 12:50 pm

San Francisco Supervisor Mark Farrell is refusing to pay a past-due $191,000 fine levied last year by the Ethics Commission for campaign violations and has asked The City to cease trying to collect the penalty, according to public records.

A debate over the penalty is expected at today's Ethics Commission. However it's unclear how much of the issue will be made public because the meeting agenda allows the body to discuss the matter in closed session, likely since Farrell's representation has previously threatened to sue over the fine.

Another interesting aspect of today's discussion is that the commission has a new executive director in LeeAnn Pelham, former Los Angeles Ethics Commission executive director. This month she took over the post vacated by retired John St. Croix. The fine was assessed by the commission during St. Croix's tenure.

It would be the first time Pelham has weighed in publicly on the issue.

In a November 2015 letter to the Tax Collector, which is seeking to collect the fine, Farrell's attorney Jim Sutton argued "the City has no basis – legal or otherwise – to demand any payment from Supervisor Farrell or the Farrell Committee." He requests the Tax Collector cease collection.

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"An exhaustive investigation by the FPPC specifically concluded that Supervisor Farrell did nothing wrong, and there has never been any type of administrative or civil proceeding which concluded that Supervisor Farrell violated any law," Sutton said in the letter.

Sutton continued: "The action by the [Ethics Commission] any action by your office is completely barred by the statute of limitations, and the forfeiture demand is not supported by any findings of

fined Farrell's 2010 campaign consultant $14,500 for illegally coordinating with an independent committee, called Common Sense Voters. The $191,000 fine amount was determined because the political committee received $141,000 from Republican Thomas Coates, a real estate investor, and $50,000 from socialite and philanthropist Dede Wilsey.

Campaign laws prohibit the coordination between independent and candidate committees. Candidate committees have $500 contribution limits and different reporting requirements while independent committees have unlimited contribution limits.

The FPPC's decision — that Lee was guilty of five violations of the Political Reform Act — appears to be the first time someone was assessed a penalty for coordination between the two different committee types in San Francisco politics.

According to the FPPC's decision, the "evidence supports the finding that Mark Farrell did not authorize" Lee to coordinate with Common Sense Voters.

At the time, Farrell, a little known political neophyte, beat out progressive Janet Reilly by 258 votes to represent the affluent Marina and Pacific Heights neighborhoods.

Farrell has since emerged as popular politician as he heads into his fourth consecutive year of chairing the Board of Supervisors Budget and Finance Committee, the most influential of committee seats.

The commission voted in June 2015 not to waive the fee as outgoing St. Croix had recommended at the time.

Ethics Commissioner Peter Keane back then grilled Sutton over the facts. "Can you represent with a straight face ... that Supervisor Farrell had no part in the solicitation of those funds?" Keane said.

Farrell told the FPPC during the more than three year investigation that "he had no knowledge of or interactions with any of the activities of the committee," Sutton responded.

To which Keane replied: "The idea that they would give that money to some little schlump like Chris Lee is absolutely absurd."

"The finding of the FPPC did demonstrate an egregious violation of the campaign ordinances and for us to say we are going to put it under the rug and waive it I am just not prepared to do," Commission Chair Paul Renne said at the time.

Sutton said in the November letter that "it is certainly not appropriate to attempt to penalize someone who had absolutely nothing to do with [Common Sense Voter's] activities."

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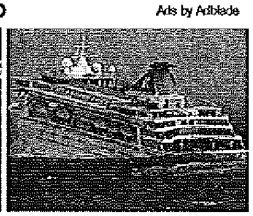

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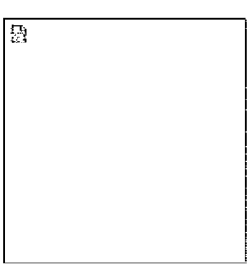

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Supervisor Farrell Won't Pay His Ethics Fine — Or Talk About It

By Jeremy Lybarger
Tuesday, Feb 2 2016

Comments (2)

What did Supervisor Mark Farrell know and when did he know it? That's the question before the city's Ethics Commission — and it's one Mayor Ed Lee's ally prefers to let his attorney and spokesman answer.

The trouble started in 2010, when Chris Lee, then a consultant with Farrell's first bid for the District 2 seat, launched an independent expenditure committee (or IE, the local version of a Super PAC) called Common Sense Voters. By law, a candidate's main campaign can't coordinate with IEs, but Lee did and banked hefty donations in the process: $141,000 from real estate magnate Thomas Coates, and $50,000 from Pacific Heights socialite Dede Wilsey. On Election Day, Farrell won in a squeaker over Janet Reilly by a scant 258 votes.

Reilly smelled a rat and asked the California Fair Political Practices Commission to investigate. The FPPC found Lee guilty of illegally coordinating with both campaigns and assessed a $14,500 fine. However, there was nothing to suggest Farrell had authorized Lee's extracurricular fundraising.

But according to city law, candidates are responsible for their campaign committees, which, per the FPPC's ruling, Common Sense Voters was. The Ethics Commission fined Farrell $191,000 — the amount the IE committee had collected.

Farrell has not only refused to pay the ethics fine, but has also refused to appear before the Ethics Commission. He's also remained mum about his involvement (or lack thereof) with Lee.

Unsurprisingly, he also refused to talk to *SF Weekly*, referring us instead to his spokesman, Nathan Ballard.

Ballard, a former press secretary for Mayor Gavin Newsom and now a flack for the Super

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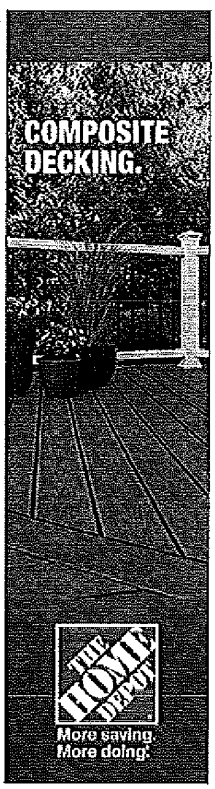

Bowl 50 Host Committee, calls the ethics inquiry into Farrell "frivolous" and insists Lee was a "rogue consultant" acting without the supervisor's knowledge.

But could a rogue consultant persuade donors to cut six-figure checks? That's unlikely, argues Ethics Commissioner Peter Keane, who told *SF Weekly* that Lee is "a minor character, some minimum-wage figure, who can't just call up people and get that kind of money."

Common Sense Voters formed a month before Election Day in 2010, when, according to Keane, Reilly was "way ahead" in the polls. Using money from the IE committee, Farrell's underdog campaign produced "hit pieces" against his opponent — all under Farrell's watch, Keane believes.

Of course, there's no paper trail connecting Farrell to Lee's work with Common Sense Voters, but that doesn't matter. All the Ethics Commission requires is "strong circumstantial evidence" that Farrell probably knew what his consultant was up to. "We don't need a videotaped confession, "Keane says.

Nor do they need to follow the FPPC's ruling that Farrell is innocent.

Larry Bush, a longtime City Hall observer and aide for former Mayor Art Agnos, notes Farrell's case may fall outside the FPPC's jurisdiction. Prohibiting campaign contributions of more than $500 is a San Francisco law, which means a municipal agency, such as the Ethics Commission, has more authority in this case than the state-level FPPC.

Then there's the matter of a statute of limitations. Since action against Farrell wasn't considered until 2014, prominent campaign lawyer Jim Sutton, the supervisor's attorney, argues the Ethics Commission waited too long to investigate alleged wrongdoing from 2010. Keane says that argument is bogus, and that Farrell has a "continuing obligation" to report irregularities in his campaign.

Farrell appeared in person before the FCCP to defend his innocence, and Sutton has cooperated with local inquiries, says Ballard. Once the FCCP exonerated him, Farrell apparently considered the matter closed.

When pressed to explain why the self-proclaimed innocent supervisor has declined to appear before the city's Ethics Commission, Ballard says there's "no reason for Farrell to waste his time."

Keane and Bush suggest Farrell's power as head of the Budget and Finance Committee insulates him from accountability, and the time has come for him to talk — or pay up. The Commission has asked the City Treasurer to pursue the claim, although Ballard vows Farrell and his attorney are prepared to fight the judgement all the way to the Supreme Court, if necessary.

Keane is unimpressed. "We have an open invitation to Farrell. All he has to do is call, and we'll calendar it. Or he can just write the city a check."

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STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION

INVESTIGATION REPORT

I CASE NO: 10/973 CASE NAME: COMMON SENSE VOTERS REPORT NO.: 9

REPORT DATE: 10/26/12 PAGE 1 of 3 pages

II REPORT TYPE: Interview Summary

III REPORT PREPARED BY: Lee Myers [redacted] DATE SIGNED: 10/31/12

IV DISTRIBUTION: Lee Myers, Galena West

V INTERVIEW SUMMARY ONLY:

Interview tape recorded: Yes (CD Attached)
Manner of interview: In-Person
Person(s) interviewed: Chris Lee
Work address: [redacted]
Work phone: [redacted]
Home address:
Home phone: [redacted]

VI NARRATIVE:

On 10/03/12 at 15:45, Senior Commission Counsel (SCC) Galena West and I interviewed Chris Lee, Partner at Town Square Consulting and campaign consultant to the Mark Farrell campaign, at the San Francisco Ethics Commission located at 25 Van Ness Avenue, San Francisco, CA 94102. Also present were Catherine Argumedo and Garrett Chatfield of the SF Ethics Commission. The following is a summary of this interview with Lee:

Lee created Town Square Consulting in 2009. He was in charge of direct mail and campaign strategy. When it was determined that the incumbent, Supervisor Michela Alioto-Pier (MAP), could not run again, it changed the entire makeup of the 2010 election. When MAP was still running, the Farrell campaign was thinking about dropping out due to low poll numbers. [redacted] The emails are attached to this report. The following is Lee's analysis of the emails:

- Exhibit 1- [redacted] According to Lee, Catherine Stefani and Bill Barnes worked for MAP and Margaux Kelly was Farrell's campaign manager. Schlackman is Rich Schlackman, a political consultant in SF. Lee does not recall the meeting. At this point, SCC West told Lee that perhaps it would help to jog his memory if she told him that the meeting took place at MAP's residence and that it was about campaign strategy. Lee responded that the Farrell campaign was going to do a mail piece with MAP's endorsement. Lee stated that he wrote the endorsement. Lee stated that he did

not have a lot of meetings with MAP, just a few when they were setting up the mailer. The list that the email from Margaux Kelly to Farrell and Lee references is a list of donors to the MAP campaign. The list was to be used to for the eblast to be sent out that Lee drafted to come from MAP.

- Exhibit 2- [redacted] Jack Helfand is a donor of Farrell. Lee then stated, *"I found out later that he was the Treasurer of the Independent Expenditure Committee."* SCC West says, "Is that Common Sense Voters (CSV)?" Lee then states, *"Is that the name of it? I think that was the name of it."*

- Exhibit 3- [redacted] Farrell did not ask Lee to contact Helfand. SCC West asked Lee if Helfand had any previous political experience in putting together an IE and Lee stated that Helfand "had contacted a couple of people on the peninsula about it." Lee thought it was odd for Helfand to contact people on the peninsula.

- Exhibit 4- [redacted] Lee stated that he did not mean that a consultant was chosen for Helfand even though Lee wrote, "We have a consultant on board that you will need to meet with and then I have to step out of the picture." Lee said that he really meant that there were many consultants that may do work for an IE committee, but the majority of which would probably be busy at that particular time. Lee said that he did not mention any specific San Francisco consultants to Helfand. Lee said that the list that he attached for Helfand was a list of donors who had already donated to the Farrell campaign. SCC West asked Lee if it was possible that the sentence about having a consultant on board was misspeak. Lee responded, *"Could have been, probably meant to say you should call consultants and there might have been someone that you could talk to."* (See Exhibit 6 below, the email on 09/13/10 contradicts this statement.)

- Exhibit 5- [redacted] Lee was unaware if those people donated to CSV. There were two additional email addresses that were not on the donor list: [redacted] and [redacted] Lee identified the first address as that of Rich Schlackman and the other address as Natalie Leblanc, an employee of Schlackman.

- Exhibit 6- [redacted]

[redacted]

Lee stated that he must have heard four days later that Schalckman was on board. Lee says he must have heard it from somewhere else because San Francisco is a small town. At this point Lee [redacted] said, *"So you can talk to Rich, don't talk to me."* SCC West asked Lee why he would send Helfand an email confirming who Helfand hired. Lee responded, *"You know I think I probably meant to say this is the guy who I have heard that will be running your campaign and it's Rich Schlackman. That's probably what I meant by that"* When informed that it appeared that Lee reached out to Schlackman, Lee stated, *"No I wouldn't have reached out to Rich, or I don't think I would have."* Lee was asked why he would want Helfand to call him as soon as he could. Lee stated, *"That was probably again to remind him that I'm out of this and you can't talk to me anymore once you form this committee I am no one to talk to."* Lee was sending Helfand an email to

tell him who he thought would be running his campaign and asked Helfand to call him so that Lee could tell Helfand not to call him anymore.

- Exhibit [redacted] Ren Riley was one of Farrell's donors. Helfand was aware that he could not talk or coordinate with the Farrell campaign. Lee said that he made Helfand aware that he could not coordinate with the Farrell campaign.

- Exhibit 8-[redacted] Lee said he meant for Kelly to send him Lamond's number and then he would forward it to Helfand. Lee then said, *"If I did, I did."*

Lee did not feel that Farrell was in contact with Helfand during the election cycle. Lee does not remember meeting Helfand face to face. He might have met Helfand before at a fundraiser. Helfand used to work with Farrell. Lee stated that MAP and her staff may have had conversations and contact with CSV, but he could not be certain. Farrell may have had conversations with MAP about the on goings of the Farrell campaign. Lee remembers seeing Schalckman at the Golden Gate Yacht Club but does not think that they spoke of CSV.

Exhibit U

STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION

INVESTIGATION REPORT

I CASE NO: 10/973 CASE NAME: COMMON SENSE VOTERS REPORT NO.: / /

REPORT DATE: 11/19/12 PAGE 1 of 3 pages

II REPORT TYPE: Interview Summary

III REPORT PREPARED BY: Lee Myers [redacted] DATE SIGNED: 12/6/12

IV DISTRIBUTION: Lee Myers, Galena West

V INTERVIEW SUMMARY ONLY:

Interview tape recorded: Yes
Manner of interview: In-Person
Person(s) interviewed: Jack Helfand
Work address: [redacted]
Work phone: [redacted]
Home address:
Home phone: [redacted]

VI NARRATIVE:

On 10/04/12 at 11:30, Senior Commission Counsel (SCC) Galena West and I interviewed Jack Helfand, Principal Officer of Common Sense Voters (CSV), at Vantage Point Capital located at the address above. A transcript is attached to this report. The following is a summary of this interview with Helfand:

Helfand's current job is General Counsel at Vantage Point Capital (VPC). He has been employed by VPC for a little over one year. He has never had anything to do with San Francisco politics before. Helfand was Farrell's supervisor at Wilson, Sonsini, Goodrich and Rosati. I asked Helfand how he became involved with CSV and Helfand replied, *"I think that I was trying to encourage people to support Mark who were sort of outside San Francisco, you know, sort of people we had worked with and stuff like that."* Some people that had donated to Farrell had discovered that there was a limit to how much they could contribute; so Helfand looked into seeing whether there was "anything that could be done."

SCC West asked Helfand if he was in-charge of strategy to which he replied, *"I mean that is a huge overstatement."* SCC West followed up with, "But deciding who spent the money that would be you, because they were your bookkeepers, right?" Helfand then stated, *"Well, I...I...I don't know how exactly how the arrangement work, my understanding was that the Treasurer actually had authority uh with respect to the committee, but yeah I certainly was you know involved in it."* Helfand was involved with the expenditures of CSV. When asked who would set up mailers or other expenditures, Helfand stated that it was the person that determined the strategy. Helfand was asked who that person was and he became slightly agitated and said that

he expected us to have more answers than him. He said we clearly know who the consultant was. SCC West responded that we know it was Richard Schlackman who was the political consultant of CSV. Helfand agreed that he was not dealing with the vendors. Schlackman would have been the person who would have picked out who printed mailers and what they would say.

[redacted] The emails are attached to this report. The following is Helfand's analysis of the emails:

- Exhibit 1- [redacted] Helfand does not remember who "Chris" is or what the email would have been about.

- Exhibit 2- [redacted] When informed that this email was sent by Chris Lee three hours later than the one in Exhibit 1, Helfand agreed that Chris Lee is the "Chris" from the first email. Helfand said that the information that Lee sent to him certainly was not requested by him at anytime. Helfand said, *"I don't recall asking anybody for help with this."* When informed that Lee had told us that Helfand had requested the information contained in the email attachment, Helfand said he still didn't remember but he must have since he received an email from Lee. Helfand may have said something to Farrell to the effect that he was "going to work on something separately from him."

- Exhibit 3- [redacted] Helfand did end up contacting Ren Riley. Riley was part of the 8-10 people that Helfand wanted to step up for Farrell. Helfand stated that Riley was at a company like Helfand's there in Palo Alto and that he knew Riley before CSV.

- Exhibit 4- [redacted] I pointed to the sentence in the email that said, [redacted] I told Helfand that that particular sentence made it seem as if Lee, or someone else, had picked the consultant for him. Helfand then stated, *"Hm, I don't take that from the email um, but..."* SCC West then asked him what he thought the sentence means, to which Helfand replied, *"I don't know, I never ever met with any of the consultants..."* Helfand insisted that Lee never told him who the consultant would be. Helfand was then asked how Rich Schlackman was hired as the consultant for CSV. Helfand said he did not know. Helfand was asked whether he did indeed call Lee as the email says. Helfand said he definitely spoke with Schlackman and, *"...may very well have followed up with Chris."* He does not remember details of the conversation. Helfand feels that it is possible that Lee said something to the effect that they could not have communications. Helfand thinks it is incredibly unlikely that Lee told him never to call him again.

- Exhibit 5- [redacted] Helfand's recollection of Schlackman becoming involved was not because Lee or anyone else said to hire Schlackman.

- Exhibit 6- [redacted] Helfand thinks that LeBlanc worked for Schlackman. Helfand was working with LeBlanc and Schlackman to determine activities of CSV. Helfand referred to himself as a political novice and that he deferred the name and the political message to people who had expertise. SCC West asked Helfand if he was paid for his position in CSV. Helfand replied, *"...to be entirely accurate about that, um, at the end shutting down the fund*

there was approximately $2,600 left or something like that. I charged or approved an expense to cover legal costs..." The legal costs had to do with a settlement with the San Francisco Ethics Commission. He felt that the issue and settlement was "B.S." Helfand said, "*...there was a little bit of legal time that I negotiated with San Francisco which I compensated myself for.*"

- Exhibit 7- [redacted] Money that was received by the Sutton Law Firm was then sent to the treasurer. He said that his committee was trying hard not to have any contact with the Farrell campaign. Even though the names of the recipients of the email are the same as the names on the list that Lee sent him on 09/12/10, Helfand did not agree that Lee brought up these names in specific. Helfand thinks that he knew all of the people that the email went out to before the election. Helfand reiterated that he was trying not to have any contact with the Farrell campaign at all. SCC West asked whether he felt that Lee was trying to influence CSV. Helfand responded that Lee had no effect on him. When asked whether he was contacted by Lee, Helfand stated that there was an exchange of emails.

- Exhibit 8- [redacted] Helfand said that it appeared that Riley said that he was going to contact Farrell and Helfand advised him against contacting Farrell.

- Exhibit 9- [redacted] Helfand stated that originally he put CSV together as an effort to raise a small amount of money to support Farrell. He then said that "two fairly well to do San Franciscans" ended up contributing. He said that CSV only received one six-figure check and that was from Tom Coates so that must be the check that Schlackman is referring to in the email.

- Exhibit 10- [redacted] This email references a conversation that Helfand had with Wilsey.

- Exhibit 11- [redacted] Helfand knows Artisan Capital but not necessarily David Lamond. Helfand does not know if Lamond gave CSV money. Helfand knew nothing about the email conversation between Lee and Kelly.

Helfand does not recall Supervisor Alioto-Pier working for CSV and he never met with her. The political consultants would have chosen who to do the printing and who to do the mailing. He would occasionally get a proof of a mailer before it went out. The consultants came up with the draft and would then send it to Helfand. Helfand had the final approval of the invoices. He did not deal with anyone else but Schlackman and LeBlanc. Schlackman never gave Helfand the impression that anyone was telling him how to run CSV.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 and MARK FARRELL,

Petitioners and Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO ETHICS COMMISSION; CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR; and DOES 1 to 100, inclusive,

Respondents and Defendants.

CITY AND COUNTY OF SAN FRANCISCO,

Cross-complainant,

vs.

MARK FARRELL, an individual, and ROES 1 to 25, inclusive,

Cross-defendants.

Case No. CGC-16-551745

THE CITY AND COUNTY OF SAN FRANCISCO'S OPPOSITION TO CROSS-DEFENDANT MARK FARRELL'S SPECIAL MOTION TO STRIKE THE CITY AND COUNTY OF SAN FRANCISCO'S CROSS-COMPLAINT

Judge:	Hon. Harold E. Kahn
Date:	August 11, 2016
Time:	9:30am
Dep't:	302
Date Action Filed:	April 29, 2016
Trial Date:	Not set

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INTRODUCTION

This case involves one of the largest—if not the largest—campaign contribution limit violations in the history of San Francisco elections. Cross-Defendant Mark Farrell ("Farrell") argues that the City and County of San Francisco ("City" or "CCSF") should not be able to pursue a remedy for this violation in a court of law because the illegal actions at issue in the case (the acceptance of funds considerably in excess of the legal limits) were undertaken in furtherance of Farrell's right to run for elected office. Accepting this argument would stretch the anti-SLAPP statute far beyond its intent and meaning—and far further than any court has ever stretched it before. The statute has *never* been applied to a government entity exercising its statutory right to enforce campaign finance laws and remedy an illegal acceptance of donations in excess of campaign contribution limits. Indeed, in the only case squarely presenting the question of whether such an action is subject to an anti-SLAPP motion, the Court of Appeal concluded that it is not. *City of Long Beach v. Cal. Citizens for Neighborhood Empowerment*, 111 Cal. App. 4th 302 (2003). And for good reason.

The statute was adopted by the California Legislature as a remedy for "lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." Code Civ. Pro. § 425.16(a). As such, it was specifically intended and drafted to apply only in certain limited circumstances. It does *not* apply where, as here, the action is brought by a public prosecutor (*see* Part I(A), *infra*), the action is based on activities that are illegal as a matter of law (*see* Part I(B), *infra*), and the wrongful acts underlying the claim were not undertaken in furtherance of the defendant's right of petition or free speech (*see* Part I(C), *infra*). Moreover, even if Farrell were correct that the anti-SLAPP statute applies here, he would not be entitled to the relief he seeks because the City is likely to prevail on the merits of its case. *See* Part II, *infra*.

FACTUAL BACKGROUND

In 2009 and 2010, Mark Farrell was running for District 2 Supervisor. Farrell Verified Complaint ¶12; CCSF Cross-Complaint ¶2; Farrell Verified Answer ¶2.[1] Farrell created a campaign committee—the Mark Farrell for District 2 Supervisor 2010 Committee ("Farrell Campaign")—which

[1] For the Court's convenience, all of the pleadings in this case are attached to the Declaration of Sara J. Eisenberg filed herewith.

hired Chris Lee ("Lee") of Town Square Consulting as the campaign consultant. Farrell Complaint ¶¶12-13. In September 2010, Jack Helfand (a former colleague of Farrell's from Wilson Sonsini who was serving on the fundraising committee of the Farrell Campaign) left the Campaign committee to form an "independent expenditure committee" called Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor ("Common Sense Voters"). Declaration of Andrew Shen in Support of CCSF's Opposition to Cross-Defendant Mark Farrell's Special Motion to Strike ("Shen Decl.") Exh. A [FPPC Stipulation] at Exhibit 1 p.1[2]; Cross-Complaint ¶8; Farrell Verified Answer ¶8.

Under state and local law, contributions made to such independent expenditure committees are not subject to the contribution limits applicable to candidates and candidate controlled committees—but only if those committees are truly independent. *See* SF Campaign & Gov. Conduct Code ("SF CGCC") §§ 1.104, 1.114(a) ; Gov. Code § 82016. Common Sense Voters was not.

In September 2010, Farrell Campaign consultant Lee "reached out to [Helfand] to assist [him] with the formation of [Common Sense Voters]." Shen Decl. Exh. A at Exhibit 1 p.1. He "coordinated" with Helfand and with Common Sense Voters "regarding the setup, fundraising, and initial campaign consultant" for the committee. *Id.* For example, Lee referred Helfand to a political consultant (stating in an email to Helfand "We have a consultant on board that you will need to meet with") and provided Helfand with a list of donors (who had already contributed the maximum to the Farrell Campaign) that Helfand could reach out to for additional contributions. Declaration of Matthew C. Alvarez in Support of Special Motion to Strike ("Alvarez Decl.") Exh. T at 2. As a result of this coordination, the state Fair Political Practices Commission ("FPPC") and the San Francisco Ethics Commission both determined that Common Sense Voters was not truly independent. Rather, it was a "controlled committee" of Mark Farrell subject to the myriad state and local laws that govern such committees. Shen Decl. Exh. A; Alvarez Decl. Exh. E at 1.

The FPPC entered into a stipulation with Lee and Common Sense Voters addressing the resulting violations of state law, such as the laws requiring controlled committees to include the name

[2] The California Fair Political Practices Commission ("FPPC") proposed the stipulation following an investigation involving numerous witness interviews and substantial document review. The stipulation, which was executed by Lee, acknowledges that the facts set forth in Exhibit 1 to the stipulation are "a true and accurate summary of the facts in this matter." Shen Decl. Exh. A at 2.

of the controlling candidate in their statements of organization (Gov. Code §§ 84102, 84103) and on any mass mailings (Gov. Code § 84305). Shen Decl. Exh. A. Lee signed the stipulation on October 30, 2014, and the FPPC approved it shortly thereafter on November 21, 2014. *Id.*

Approximately two weeks later, former Ethics Commission Executive Director John St. Croix sent a letter to Farrell concerning the resulting violation of local law—namely the San Francisco law governing campaign contribution limits. *See* Alvarez Decl. Exh. E. Section 1.114(a) of the SF CGCC sets a $500 per person limit on contributions to candidate committees. The contributions to Common Sense Voters far exceeded this limit: a total of seven people contributed $221,500 to the committee in amounts ranging from a low of $1,000 (two times the contribution limit) to a high of $141,000 (*282 times* the contribution limit). Shen Decl. Exh. B at 4, 8. Accordingly, the letter from Mr. St. Croix informed Farrell that he was required to forfeit $190,903.04 of that money to the City. *See* Alvarez Decl. Exh. E. Although there was some discussion of waiving the forfeiture demand, the Ethics Commission ultimately decided—after discussing the matter at several meetings and considering oral comment and written submissions from Farrell's counsel James Sutton—to proceed with the forfeiture demand. *See* Shen Decl. Exh. C at 1-2; Alvarez Decl. Exh. L at 2-3; Shen Decl. Exh. D at 1, 5.

ARGUMENT

I. THE ANTI-SLAPP STATUTE DOES NOT APPLY TO THIS CASE.

A. The Anti-SLAPP Statute Does Not Apply To Actions By A Public Prosecutor.

As noted above, the only case to examine whether the anti-SLAPP statute applies to a city's lawsuit to enforce local campaign finance laws concluded that the statute is inapplicable—that "the legislative history of [the statute] makes it clear the statute was never intended to apply to matters such as this enforcement action." *City of Long Beach v. Cal. Citizens for Neighborhood Empowerment*, 111 Cal. App. 4th 302 (2003). Given that *City of Long Beach* is the only California case directly on point, the Court of Appeal's opinion is highly instructive and merits close scrutiny.

City of Long Beach involved an alleged violation of the Long Beach Municipal Code provision that imposed a $600 cap on contributions from individuals for the purpose of making independent expenditures to support or oppose at candidate. *Id.* at 304, n.2. The defendant committee—which made substantial expenditures in support of one of the candidates for mayor—had received several

donations in excess of the $600 cap. The City of Long Beach filed a lawsuit against the committee. *Id.* at 304. The trial court granted the committee's anti-SLAPP motion, but the Court of Appeal reversed, concluding that granting the motion "would result in the stretching of the statute far beyond the bounds originally intended by the Legislature." *Id.* at 306.

The Court of Appeal relied on a statutory exception to the anti-SLAPP statute making it inapplicable to "any enforcement action brought in the name of the People of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor." Code Civ. Proc. § 425.16(d). The committee argued that this exception applied only to civil enforcement actions brought literally in the name of the People of the State of California, but the court rejected this narrow interpretation. The court closely examined the legislative history of the both statute and the public prosecutor exception to discern the Legislature's intent.

Beginning with the exception, the court noted that the Attorney General had expressed a concern with an earlier version of the bill that did not contain any exception for enforcement actions by public prosecutors. The court concluded that it was reasonable to infer that the Legislature has added the exception to address the Attorney General's concern: a concern "which extended to *all* civil actions brought by state and local agencies to enforce laws aimed at consumer and/or public protection"—not just those technically filed in the name of the People. *Id.* at 308 (emphasis added).[3]

With respect to the anti-SLAPP statute generally, the Court of Appeal in *City of Long Beach* correctly explained that the purpose of the statute was not served by extending its coverage to actions by public prosecutors to protect the public interest. *Id.* at 308-09. The legislative history of the statute demonstrates that the Legislature's intent was to enable the courts to easily and quickly dispose of lawsuits ("'generally suits for malicious prosecution or interference with economic opportunity brought by property owners or developers against those speaking out against their development plans'") filed primarily to gain a personal advantage over an adversary and to "'intimidat[e]' legitimate protestors." *Id.* (quoting Enrolled Bill Rep. on Sen. Bill No. 1264 (1991–1992 Reg. Sess.),

[3] The court also noted that when the identical language was added into Code of Civil Procedure section 998 in 2001, the legislative analysis reflected the Legislature's belief that the language applied broadly to all civil enforcement actions seeking restitution and penalties. *City of Long Beach*, 111 Cal. App. 4th at 307.

as amended June 29, 1992, p. 3)). Actions by public prosecutors are fundamentally different.

The Court of Appeal has recognized that "a public prosecutor's enforcement action is not motivated by a retaliatory attempt to gain a personal advantage over a defendant who has challenged his or her economic ambition." *People v. Health Labs. of N. America*, 87 Cal. App. 4th 442, 450 (2001). To the contrary, "[t]he prosecutor's motive derives from the constitutional mandate to assure that the laws of the state are uniformly enforced and to prosecute any violation of these laws, so that order is preserved and the public interest protected." *Id.* (internal citation omitted). And it is not just the courts that have acknowledged this integrity. The California legislature has adopted a presumption that public officials—including public prosecutors—act in good faith. *See* Evidence Code § 664; *Bus Riders Union v. L.A. Cty. Metro. Transp. Agency*, 179 Cal. App. 4th 101, 108 (2009); *Miller v. Superior Court*, 101 Cal. App. 4th 728, 747–48 (2002).

In short, "[n]othing in the legislative history of [the anti-SLAPP statute] implies that the problem the Legislature sought to rectify thereby was created by prosecutors bringing meritless enforcement actions." *Health Labs.*, 87 Cal. App. 4th at 450; *see also City of Long Beach*, 111 Cal. App. 4th at 308-09 (quoting *Health Labs*). Accordingly, based on the legislative history, the *City of Long Beach* court concluded that the public prosecutor exception applies to *any* civil enforcement action initiated by a city attorney, county counsel, district attorney or the Attorney General to enforce laws intended to protect the public. *City of Long Beach*, 111 Cal. App. 4th at 306-09.

The court's holding in *City of Long Beach* is supported by two other considerations as well.

First, there is a separate "public interest exception" to the anti-SLAPP law for cases brought solely in the public interest—but that exception applies only when, *inter alia*, "private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter." *See* Code Civ. Proc. § 425.17(b)(3). That the public interest exception applies only when a *private* individual brings a lawsuit indicates that the Legislature did not believe resort to this exception was necessary when a *public* prosecutor brings a case aimed at public protection. Given the mandate that courts "consider the statute read as a whole, harmonizing the various elements by considering each clause and section in the context of the overall statutory framework," this bolsters the *City of Long Beach* court's conclusion that the public prosecutor exception should be read broadly to

include all cases brought by state or local agencies. *People v. Jenkins*, 10 Cal. 4th 234, 246 (1995).

Second, the Legislature has enacted several laws to "enable public prosecutors to perform their constitutional duties thoroughly and effectively," and to "insulate them from actions that would hinder or deter their enforcement actions." *Health Laboratories*, 87 Cal. App. 4th at 450 (citing, e.g., Civ. Code §§ 47(a) & (b)(4), 3423(d), 820.2, 821.6). Subjecting public prosecutors to the anti-SLAPP motion procedure simply because the case is not technically filed in the name of the People would be inconsistent with the purpose of these immunity statutes (as well as the public prosecutor exception) and "could unduly hinder and undermine their efforts" to enforce laws that protect public safety and integrity. *Id.* at 450. This Court should not adopt an overly narrow reading of the public prosecutor exception which would lead to this unintended result.

The City acknowledges that there is another Court of Appeal case—*City of Colton v. Singletary*, 206 Cal. App. 4th 751, 775-777 (2012)—that disagreed with *City of Long Beach* and concluded that the exception should be read narrowly. But *City of Colton*'s brief discussion of the issue and of the *City of Long Beach* opinion is flawed. According to the *City of Colton* opinion, the court in *City of Long Beach* looked beyond the "plain language" of the statute based on its conclusion that giving the statute its literal meaning would lead to the absurd result that political committees could avoid compliance with local election laws. *Id.* at 777 (citing *City of Long Beach*, 111 Cal. App. 4th at 305). *City of Colton* "disagree[d] that the 'absurd results' exception to the plain language rule [was] applicable" because the suit could have been brought in the name of the People pursuant to Government Code section 36900. *See id.* But the opinion misreads section 36900. The section states:

> Violation of a city ordinance is a misdemeanor unless by ordinance it is made an infraction. The violation of a city ordinance may be prosecuted by city authorities in the name of the people of the State of California, or redressed by civil action.

In context, it is apparent that the first clause of the second sentence refers to criminal prosecutions—*i.e.*, that district attorneys (and, when authorized to pursue criminal cases, city attorneys) can criminally prosecute violations of a city ordinance as a misdemeanor. Not that local authorities can file any *civil action* concerning violation of a local ordinance in the name of the People.

In sum, *City of Colton* is not persuasive. This Court should follow the only case in which a government entity was exercising its statutory right to enforce campaign finance laws and remedy an

illegal acceptance of donations in excess of campaign contribution limits and find—as the Court did there—that the anti-SLAPP statute is inapplicable in this scenario.

B. The Anti-SLAPP Statute Does Not Shield A Defendant's Illegal Actions.

The anti-SLAPP statute is also inapplicable here because the City's claims are based on activities that are illegal as a matter of law and therefore fall within the "illegality" exception to the anti-SLAPP statute. Unlike the public prosecutor exception, which is codified in the statute, the illegality exception is a court-created doctrine. The California Supreme Court endorsed the exception in *Flatley v. Mauro*, 39 Cal. 4th 299 (2006), and explained its scope as follows:

> [W]here a defendant brings a motion to strike under section 425.16 . . . but either the defendant concedes, or the evidence conclusively establishes, that the assertedly protected speech or petition activity was illegal as a matter of law, the defendant is precluded from using the anti-SLAPP statute to strike the plaintiff's action. (*Id.* at 320.)

1. Conclusive Evidence Of A Violation Of Any Law Triggers The Exception.

A split of authority has emerged among the California Courts of Appeal concerning which laws will trigger application of the illegality exception. Some courts have held that only violations of *criminal* statutes constitute the type of illegality that prevents application of the anti-SLAPP law. *See, e.g.*, *Collier v. Harris*, 240 Cal. App. 4th 41 (2015); *Gerbosi v. Gaims, Weil, W. & Epstein, LLP*, 193 Cal. App. 4th 435, 446 (2011); *Mendoza v. ADP Screening & Selection Servs., Inc.*, 182 Cal. App. 4th 1644, 1654 (2010). Others conclude that the exception applies more broadly to any unlawful (even if non-criminal) conduct. In *Novartis Vaccines & Diagnostics, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.*, 143 Cal. App. 4th 1284 (2006), for example, the plaintiff corporation asserted tort claims for intentional infliction of emotional distress, invasion of privacy, intrusion into private affairs, and trespass as well as a statutory claim for civil harassment under Civil Code section 527.6. *Id.* at 1291-92. The *Novartis* court held that the illegality exception applied to these claims because the evidence conclusively established that the defendant engaged in a civil "conspiracy" with the unnamed individuals who committed "unlawful" wrongs such as acts of civil "harassment, infliction of emotional distress, intrusion and trespass." *Id.* at 1296-97. *Novartis*' application of the illegality exception was not based upon and did not reference any Penal Code violations. Moreover, several cases have analyzed whether there was sufficient evidence of illegality based on non-criminal

activities without suggesting that illegality required proof of a crime. *See Wallace v. McCubbin*, 196 Cal. App. 4th 1169, 1187-1188 (2011); *Birkner v. Lam*, 156 Cal. App. 4th 275, 285 (2007); *Cf. Dwight R. v. Christy B.*, 212 Cal. App. 4th 697, 711 (2013) ("*Unlawful or* criminal activities do not qualify as protected speech or petition activities under the anti-SLAPP statute.") (emphasis added).

This Court should follow the latter line of cases because limiting the illegality exception to criminal conduct is inconsistent with the California Supreme Court's decision in *Soukup v. Law Offices of Herbert Hatif*, 39 Cal. 4th 260 (2006). In 2005, the Legislature incorporated the illegality exception into section 425.18, a companion to the anti-SLAPP statute that authorizes SLAPPback motions. Section 425.18, subdivision (h) thus provides that "[a] special motion to strike may not be filed against a SLAPPback by a party whose filing or maintenance of the prior cause of action from which the SLAPPback arises was illegal as a matter of law." In *Soukup*, the Supreme Court analyzed the meaning of this statutory illegality exception. It held that "[a]n illegal act is an act '[f]orbidden by law'" and expressly rejected the argument that "'illegal' refers only to criminal acts." *Soukup*, 39 Cal. 4th at 283 & n.12. Instead of limiting illegality exclusively to crimes, *Soukup* analyzed whether illegality had been established based on violations of two non-criminal statutes, Labor Code section 1102.5(b) and 29 U.S.C. section 1140. *Id.* at 287-291.

Although *Soukup* was addressing the statutory SLAPPback exception rather than the judge-made anti-SLAPP exception at issue here, the Court explained that the statutory exception "echo[es]" the language of the judge-made exception, and originated in the same source—namely *Paul for Council*. *Soukup*, 39 Cal. 4th at 284-286 & n.14. This shared source and language led the *Soukup* Court to conclude that "there is no indication in the legislative history that a different meaning" between the judicially created and statutory illegality exceptions "was intended." *Id.* at 286. Since the statutory and judge-made illegality exceptions share the same language, origin, and meaning, *Soukup*'s application of the statutory exception to non-criminal acts confirms that the judicially created exception equally applies to unlawful but non-criminal acts.

2. The Evidence Conclusively Establishes Violation Of Section 1.114(a).

The evidence conclusively establishes that the activities giving rise to the City's claims were illegal as a matter of law. Section 1.114(a) of the SF CGCC provides that a "candidate committee"—

which is defined as any committee controlled by a candidate and formed primarily to support that candidate's election to office (SF CGCC § 1.104)—cannot solicit or accept donations from any person in excess of $500. The San Francisco law defines "control" of a committee by reference to section 82016 of the California Fair Political Practices Act, which provides, in relevant part that "[a] candidate . . . controls a committee if he or she, *his or her agent*, or any other committee he or she controls has a significant influence on the actions or decisions of the committee." (Emphasis added.) Simply put, if Farrell *or his agent* had significant influence over Common Sense Voters, then the committee was a "controlled committee" and acceptance of any donations in excess of the $500 cap violated the law.

Although Farrell has not conceded that acceptance of the contributions was illegal as a matter of law, the evidence conclusively establishes that it was. The relevant facts are not in dispute. In fall 2010, Jack Helfand formed Common Sense Voters as an "independent expenditure committee." In September 2010, Chris Lee—a campaign consultant for the Farrell Campaign—"reached out to [Helfand] to assist [him] with the formation of [Common Sense Voters]." Shen Exh. A at Exhibit 1 p.1. Lee "coordinated" with Helfand and with Common Sense Voters "regarding the setup, fundraising, and initial campaign consultant" for the committee. *Id.* For example, Lee referred Helfand to a political consultant (stating in an email to Helfand "We have a consultant on board that you will need to meet with") and provided Helfand with a list of donors (who had already contributed the maximum to the Farrell Campaign) that Helfand could reach out to for additional contributions. Alvarez Decl. Exh. T at 2. Later, Lee had contact with a mail house Common Sense Voters was using to produce a door hanger in support of Farrell. Shen Decl. Exh. A at Exhibit 1 p.1.

Farrell does not deny any of this. *See, e.g.*, Farrell Verified Complaint ¶14 (acknowledging that "Lee sent emails in September 2010 to agents for [Common Sense Voters] regarding committee formation, potential fundraising, and initial campaign planning"). Rather, he argues that these facts are insufficient to establish "control" over Common Sense Voters within the meaning of the law. *See* Mot. 14-15. But the FPPC disagreed. The FPPC expressly concluded that "through these interactions, [Chris] Lee, an agent of the Farrell Committee, thereby had significant influence on [Common Sense Voters] and thus caused Respondent CSV to become a controlled committee of Mark Farrell." Shen Decl. Exh. A at Exhibit 1 p.6. This determination is entitled to substantial deference by this Court.

See Californians for Political Reform Found. v. Fair Political Practices Com., 61 Cal. App. 4th 472, 484 (1998). Indeed, because the FPPC's interpretation of the statute and application of the significant-influence-standard is not "clearly erroneous or unauthorized," it is entitled to "great weight" and should be followed by this Court. *Id.*

Accordingly, this Court can and should find that the conduct at issue in this case—acceptance by a controlled committee of contributions far in excess of the campaign contribution limits (*see* Shen Decl. Exh. B at 4, 8)—was illegal as a matter of law.[4]

C. The Wrongful Acts Were Not In Furtherance Of Petitioning Or Speech Rights.

To fall within the protection of the anti-SLAPP statute the cause of action must arise from acts "in furtherance of the [defendant's] right of petition or free speech." Code Civ. Proc. § 425.16. Claims arising out of acts undertaken in furtherance of some other right, even a constitutionally protected one (e.g., the free exercise clause or the right to vote), are not within the statute's purview. *See, e.g.*, *Castillo v. Pacheco*, 150 Cal. App. 4th 242, 251 (2007) ("[S]ection 425.16 did not import wholesale the protections of the First Amendment."). Farrell argues that the anti-SLAPP statute applies here because to the extent he coordinated with Common Sense Voters and accepted donations to a controlled committee that exceeded the campaign contribution limits, he did so "in furtherance of his right to run and campaign for office." Mot. at 5. But there is no constitutional right to candidacy under the federal constitution—let alone one protected by the right of free speech. *See, e.g.*, *Clements v. Fashing*, 457 U.S. 957 (1982) ("Far from recognizing candidacy as a fundamental right, we have held that the existence of barriers to a candidate's access to the ballot does not itself compel close scrutiny"); *N.A.A.C.P. v. Jones*, 131 F.3d 1317, 1324 (9th Cir. 1997) ("Candidates do not have a fundamental right to run for public office."); *Carver v. Dennis*, 104 F.3d 847, 853 (6th Cir. 1997); *Bart v. Telford*, 677 F.2d 622, 624 (7th Cir. 1982) ("The First Amendment does not in terms confer a right

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[4] Farrell's assertions that he did not authorize, approve or even know about Lee's activities are irrelevant. The law explicitly provides that a candidate can control a committee through an agent, and a principal does not need to authorize (or be aware of) every specific action by his or her agent to be liable therefor. *See CenterPoint Energy, Inc. v. Superior Court*, 157 Cal. App. 4th 1101, 1118 (2007) ("It is not essential that the right of control be exercised or that there be actual supervision of the work of the agent; the existence of the right establishes that relationship.") Indeed, the FPPC determined that Common Sense Voters was a controlled committee of Farrell due to Lee's conduct despite stating that it had not located any evidence demonstrating that Farrell authorized Lee's actions.

to run for public office, and this court has held that it does not do so by implication either.").

And although some California authority pre-dating the Supreme Court's 1982 decision in *Clements v. Fashing* recognized a fundamental right to run for office (*see, e.g.*, *Zeilenga v. Nelson*, 4 Cal. 3d 716, 720 (1971)), California courts have more recently "acknowledged [that] United States Supreme Court authority on this issue [ ] calls into question the fundamental nature of the right," and have utilized a strict scrutiny test "only where barriers to candidacy have a real and appreciable impact upon *other* fundamental rights, such as the right to vote." *Rittenband v. Cory*, 159 Cal. App. 3d 410, 420, 421 (1984) (emphasis added). Moreover, Farrell has not cited—and the City has not found—a single California case tying a right to candidacy to California's free speech clause. And given that the Supreme Court of the United States has not found a right to run for office in the free speech clause of the federal Constitution, it is unlikely that a California court ever would. *Edelstein v. City & Cty. of San Francisco*, 29 Cal. 4th 164, 168 (2002) ("[W]hen we interpret a provision of the California Constitution that is similar to a provision of the federal Constitution, we will not depart from the United States Supreme Court's construction of the similar federal provision unless we are given cogent reasons to do so.").

In sum, to the extent that there any right to run for office can be found in the United States or California constitution, it is not a one that is protected by the right of petition or free speech. As a result, the anti-SLAPP statute is inapplicable here and Farrell's motion must be denied.

II. THE CITY IS LIKELY TO PREVAIL IN THIS CASE.

Even if the anti-SLAPP statute is applicable here, Farrell's Motion should be denied because the City is likely to prevail on the merits. Not one of Farrell's arguments to the contrary has merit.

A. The Action Is Not Barred By The Statute Of Limitations.

The City agrees that the four-year statute of limitations set forth in SF CGCC section 1.168(c)(3) applies. Nonetheless, the action is not barred by the statute of limitations because the doctrines of delayed discovery and fraudulent concealment render the action timely.

Under California law, "statutes of limitation do not begin to run until a cause of action accrues." *Fox v. Ethicon Endo–Surgery, Inc.*, 35 Cal. 4th 797, 806 (2005). In general, "a cause of action accrues at 'the time when the cause of action is complete with all of its elements.'" *Id.* But

"[a]n important exception to the general rule of accrual is the 'discovery rule,' which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." A plaintiff does not have reason to discover the cause of action until the plaintiff "has reason at least to suspect a factual basis for its elements." *Id.* at 807. Here, the City did not have reason to suspect that Common Sense Voters was controlled by Farrell until the Ethics Commission received a complaint on December 23, 2010, asking it to investigate potential coordination between Farrell and his staff and Common Sense Voters. Alvarez Decl. Exh. A.[5]

Moreover, California courts will toll a statute of limitations under the fraudulent concealment doctrine if a defendant—or his agent—has fraudulently concealed the illegal conduct. *See Community Cause v. Boatwright*, 124 Cal. App. 3d 888, 900 (1981); *Pashley v. Pac. Elec. Co.*, 25 Cal. 2d 226, 235-36 (1944). Here, the illegal activities were actively concealed by Lee's denials that he had any involvement with Common Sense Voters and by public filing and posting of campaign finance reports that portrayed the committee as independent. Farrell's assertion that he was unaware of the acts and did not personally conceal any information (Mot. 9) is irrelevant. California law is clear that "the fraud of the agents will be imputed to the principal for the purpose of preventing the running of the statute of limitations whether the principal was aware of it or not." *Pashley*, 25 Cal. 2d at 236.

Farrell argues that the fraudulent concealment doctrine only applies if the plaintiff did not learn of the underlying facts until after limitations period ran. Mot. 9-10. But while these were the facts presented in the cases cited by Farrell, those cases do not hold (or even suggest) that fraudulent concealment "only" applies in this situation. To the contrary, the law is clear that when the facts upon which the plaintiff's claims are based were fraudulently concealed, the statute of limitations is tolled "until plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the facts on which its cause of action is based and then the applicable statute commences to run" (*Sears, Roebuck & Co. v. Blade*, 139 Cal. App. 2d 580, 587 (1956)), regardless of whether that discovery

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[5] Farrell argues that the City cannot rely on the delayed discovery doctrine because this complaint relied on reports that were filed with the Ethics Commission in October 2010 to support its allegations. Mot. 7. But the complaint relied on more than just the reports (Alvarez Decl. Exh. A at 2-4) which, on their own, would not have been enough to put anyone on notice of Farrell's, or his agent's, control over Common Sense Voters. *See* Alvarez Decl. Exhs. N & O. Farrell's reliance on SF CGCC section 1.115(b) is misplaced because that section concerns a presumption of coordination on a particular expenditure—not a presumption of control over a committee.

occurs within or outside of the limitations period. And, as described above, the earliest that the City could have known about this conduct was December 2010. *See* p.12 & n.5, *supra*.

Citing the United States Supreme Court's opinion in *Gabelli v. S.E.C.*, 133 S.Ct. 1216 (2013), Farrell argues that the City cannot rely upon the fraudulent concealment or delayed discovery doctrines. Mot. 8-9. But the *Gabelli* opinion—in express terms—does not apply to fraudulent concealment. *Gabelli*, 133 S. Ct. at 1220 n.2. And to the extent it addresses the delayed discovery doctrine, it does so in the context of a federal law and a federal agency. In the more than three years since *Gabelli* was decided, not a single state appellate court has applied it in the context of a state or local enforcement action. Indeed, there is good reason for state courts to hesitate to import *Gabelli*'s holding to its state and local agencies whose duties, scope and powers may be very different from those of the S.E.C. For example, the S.E.C. has a staff of well over 1,000 in its enforcement division alone. *See* S.E.C., FY 2016 Budget Request by Program at 60, https://www.sec.gov/about/reports/sec-fy2016-budget-request-by-program.pdf (last visited July 28, 2016). Its "very purpose is to root [fraud] out," and it has "many legal tools" available to it to "aid in that pursuit." *Gabelli*, 133 S. Ct. at 1222. By contrast, the Ethics Commission—which has only a small staff—has many duties including lobbyist registration and ethics training (*see* S.F. Charter C3.699-11) and lacks the full panoply of investigatory tools the Supreme Court noted were available to the S.E.C. *See generally* S.F. Ethics Commission website (http://www.sfethics.org).

B. The Ethics Commission Followed All Required Procedures.

Farrell next argues that the City will not prevail because the Ethics Commission failed to follow "required enforcement procedures" set forth in the City Charter and in the "official" Ethics Commission "Forfeiture Policy." Mot. 10-11. But, as Farrell acknowledges, the Charter provisions apply only when the government is seeking a "monetary penalty" from a citizen. Mot. 10; *see also* Charter § 3.699-13(c)(3) (explaining that after following the procedures set forth in the section, the commission may order the violator to "[p]ay a monetary penalty to the general fund of the City of up to five thousand dollars ($5,000) for each violation or three times the amount which the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater."). The forfeiture of unlawful contributions—which is designed to disgorge the fruits of illegal conduct

(*People v. $4,413 United States Currency*, 47 Cal. App. 4th 1631, 1636 (1996))—is a categorically different remedy. *See Feitelberg v. CSFB*, 134 Cal. App. 4th 997, 1016 (2005) (holding that although civil penalties are authorized under the Unfair Competition Law, nonrestitutionary disgorgement is not permissible). Moreover, the CGCC section authorizing forfeitures as a remedy for violation of contribution limits expressly states that in addition to penalties that may be assessed, a committee must "pay promptly" to the City any amounts received in excess of those limits. SF CGCC § 1.114(e).[6]

As to the "official" Ethics Commission "Forfeiture Policy," no such policy exists. Farrell cites two documents. The first is a memo from the Executive Director of the Commission to the Commission members setting for recommendations for certain policy changes. Alvarez Decl. Exh. M. One of the proposed changes was to adopt an internal one-year limitation on late fines and forfeitures. *Id.* at 1-2. This memo was distributed at the March 24, 2008 meeting of the Ethics Commission and discussed by the Commission members. Shen Decl. Exh. E at 1, 3. Several Commissioners expressed disagreement with the proposed one-year rule. *Id.* at 3. Ultimately, the Commission voted to "adopt staff's policy recommendations as proposed, *except for recommendations 2 and 10*, which shall be amended to reflect the Commission's discussion." *Id.* (emphasis added). The second document cited by Farrell is an August 12, 2008 memo from the Executive Director to Ethics Commission staff setting out the new policies allegedly approved by the Commission at its March 24, 2008 meeting. Alvarez Decl. Exh. P. To the extent it implies that the Commission voted to approve the proposed one-year limitation, it is incorrect. But even if it were correct, the "policy" at most represents an understanding between the Commission and its staff rather than a rule of law, and falls far short of an ordinance or regulation. Farrell has not cited—and the City has not located—any authority for the proposition that

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[6] Because the Commission was not required to follow these procedures, Farrell's argument that its failure to do so violated due process (Mot. 12) fails *ipso facto*. And Farrell's general assertion that he was denied due process fails as well. "[T]he requirements of due process are flexible, especially where administrative procedure is concerned." *Haas v. County of San Bernardino*, 27 Cal.4th 1017, 1037 (2002). Indeed, due process in an administrative proceeding "does not require any particular form of notice or method of procedure. If the [administrative process] provides for reasonable notice and a reasonable opportunity to be heard, that is all that is required." *Bockover v. Perko*, 28 Cal. App. 4th 479, 486 (1994); *see also Mohilef v. Janovici*, 51 Cal. App. 4th 267, 286 (1996). Farrell, through his counsel, appeared at multiple Ethics Commission hearings and submitted written materials to the Commission addressing imposition of the forfeiture. Shen Decl. Exhs. C at 1, D at 1, 5; Alvarez Decl. Exhs. L at 2, F, I. The requirements of due process have been satisfied.

an agency's failure to follow such internal guidance invalidates its action.

C. Forfeiture Is Appropriate In This Case.

Farrell also contends that forfeiture does not apply in this case. He first argues that he cannot be required to forfeit property that was received by Common Sense Voters since the funds were not raised, received, or spent by him or the Farrell Committee. Mot. 11-12. This argument is legally and factually unsupportable. It ignores the central fact that Farrell, through his agent Chris Lee, exerted significant influence over Common Sense Voters rendering it a "controlled committee" subject to the City's $500 campaign contribution limit. And it completely ignores the provisions of local law requiring forfeiture of contributions that exceed this limit (SF CGCC § 1.114(e)) and holding candidates personally liable for the actions of their controlled committees. *Id.* § 1.170(g)) ("Candidates . . . may be held personally liable for violations by their committees."). Notably, section 1.170(g) includes no scienter requirement. It does not require that the candidates be aware of or have authorized the illegal activity to be held personally liable. It is a "strict liability" rule. Such strict liability for candidates guards against the possibility that they attempt to remain willfully ignorant of the illegal activities that take place during the course of a campaign.

His second argument—that forfeiture is "only appropriate when there is a prima facie violation of the law" that requires no investigation (Mot. 12)—is equally flawed. Farrell cites no authority whatsoever in support of this assertion, and the notion that concealing violations of campaign finance laws would allow candidates to avoid forfeiture of illegal contribution is patently preposterous.

D. Farrell Controlled Common Sense Voters.

Farrell's final argument—that he did not "control" Common Sense Voters within the meaning of the campaign finance laws—fails for the reasons discussed above. *See* pp.8-10, *supra*.

CONCLUSION

For the forgoing reasons, Farrell's special motion to strike should be denied.

Dated: July 29, 2016

By: */s/ Sara J. Eisenberg*
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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
07/29/2016
Clerk of the Court
BY: EDNALEEN ALEGRE
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 and MARK FARRELL,

Petitioners and Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO ETHICS COMMISSION; CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR; and DOES 1 to 100, inclusive,

Respondents and Defendants.

CITY AND COUNTY OF SAN FRANCISCO,

Cross-complainant,

vs.

MARK FARRELL, an individual, and ROES 1 to 25, inclusive,

Cross-defendants.

Case No. CGC-16-551745

DECLARATION OF ANDREW SHEN IN SUPPORT OF THE CITY AND COUNTY OF SAN FRANCISCO'S OPPOSITION TO CROSS-DEFENDANT MARK FARRELL'S SPECIAL MOTION TO STRIKE THE CITY AND COUNTY OF SAN FRANCISCO'S CROSS-COMPLAINT

Judge:	Hon. Harold E. Kahn
Date:	August 11, 2016
Time:	9:30am
Dep't:	302
Date Action Filed:	April 29, 2016
Trial Date:	Not set

I, Andrew Shen, declare as follows:

1. I am an attorney admitted to practice law in the State of California. I am employed by the City and County of San Francisco as a Deputy City Attorney. I have personal knowledge of the facts stated in this declaration. If called as a witness, I could and would competently testify to the facts set forth below.

2. Attached hereto as Exhibit A is a true and correct copy of the signed stipulation between the Fair Political Practices Commission ("FPPC"), Chris Lee, and "Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor." I obtained this document via a Public Records Act Request to the FPPC.

3. Attached hereto as Exhibit B are true and correct copies of Common Sense Voters' campaign finance reports (FPPC Form 460s) for 2010 and 2011, which I obtained from the San Francisco Ethics Commission ("SFEC"). Page numbers have been added to aid in citation to the documents.

4. Attached hereto as Exhibit C is a true and correct copy of the meeting minutes of the SFEC's March 23, 2015 meeting, which were printed from the SFEC website at http://www.sfethics.org/ethics/2015/04/minutes-march-23-2015.html on July 27, 2016.

5. Attached hereto as Exhibit D is a true and correct copy of the meeting minutes of the SFEC's June 5, 2015 meeting, which were printed from the SFEC website at http://www.sfethics.org/ethics/2015/06/minutes-june-5-2015.html on July 27, 2016.

6. Attached hereto as Exhibit E is a true and correct copy of the meeting minutes of the SFEC's March 24, 2008 meeting, which were printed from the SFEC website at http://sfgov3.org/ftp/ethics_archive/sfarchive.org/index3dcb.html?dept=2681&sub=&dtype=2791&year= on July 28, 2016.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 28th day of July, 2016, in San Francisco, California.

ANDREW SHEN

EXHIBIT A

GARY S. WINUK
Chief of Enforcement
GALENA WEST
Commission Counsel IV
FAIR POLITICAL PRACTICES COMMISSION
428 J Street, Suite 620
Sacramento, CA 95814
Telephone: (916) 322-5660

Attorneys for Complainant

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of COMMON SENSE VOTERS, SF 2010; VOTE FOR MARK FARRELL FOR DISTRICT 2 SUPERVISOR AND CHRIS LEE Respondents.	FPPC No. 10/973 STIPULATION, DECISION and ORDER

Complainant Fair Political Practices Commission and Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor committee and Chris Lee agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondents, pursuant to Section 83116 of the Government Code.

Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to, the right to personally appear at any administrative hearing held in this matter, to be represented by an

attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

It is further stipulated and agreed that Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor committee and Chris Lee violated the Political Reform Act by failing to file an amended statement of organization within 10 days to disclose that Respondent Committee was controlled by a candidate, in violation of Sections 84102, subdivisions (e) and (g), and 84103, subdivision (a), of the Government Code (1 count) and failing to use proper sender identification on mass mailers sent in support of Mark Farrell for District 2 Supervisor and against his opponent, Janet Reilly, which failed to display the name of the candidate controlling the committee, in violation of Section 84305 (4 counts). All counts are described in Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

Respondents agree to the issuance of the Decision and Order, which is attached hereto. Respondents also agree to the Commission imposing upon them an administrative penalty in the amount of Fourteen Thousand Five Hundred Dollars ($14,500). A cashier's check from Respondents in said amount, made payable to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the administrative penalty, to be held by the State of California until the Commission issues its decision and order regarding this matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and agree that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither any member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

Dated: 11/3/14

Gary Winuk, Enforcement Chief,
on behalf of the
Fair Political Practices Commission

Dated: 30 October 2014

Chris Lee, Respondent
Individually and on behalf of Common Sense Voters,
SF 2010; Vote for Mark Farrell for District 2 Supervisor

DECISION AND ORDER

The foregoing Stipulation of the parties "In the Matter of Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor and Chris Lee," FPPC No. 10/973, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chairman.

IT IS SO ORDERED.

Dated: 11/21/14

Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

In November 2010, the City and County of San Francisco held a ranked-choice voting election to elect the representative for District 2 of the Board of Supervisors. Respondent Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor ("Respondent CSV") qualified as a primarily formed committee on October 1, 2010, and registered on October 13, 2010. At all relevant times, Respondent Stacy Owens ("Respondent Owens") was the treasurer of the Respondent CSV and Henry C. Levy, was assistant treasurer. The principal officer for Respondent CSV was Jack Helfand ("Principal Officer Helfand").

In August 2009, Mark Farrell created a campaign committee for the November 2010 Supervisor race named the Mark Farrell for District 2 Supervisor 2010 committee ("Farrell Committee"). At all relevant times, Respondent Owens was the treasurer of the Respondent CSV and Henry C. Levy, was assistant treasurer. Respondent CSV's Principal Officer, Principal Officer Helfand, was a member of the fundraising subcommittee for the Farrell Committee for the November 2010 election campaign before leaving to form Respondent CSV. During this campaign, the Farrell Committee retained Chris Lee of Townsquare Consulting ("Respondent Lee"), as its campaign consultant.

In September 2010, incumbent Supervisor Michela Alioto-Pier was informed by the California courts that she was unable to run for reelection for her District 2 Supervisor seat. She then chose Mark Farrell, a candidate for District 2 Supervisor, to endorse as her replacement. She and her staff worked with Mark Farrell and his campaign consultant, Respondent Lee, during the course of the campaign to offer her endorsement and appear at events in support of Mark Farrell. In addition to this interaction with Mark Farrell and his staff, Supervisor Alioto-Pier was also in charge of the fundraising activities for Respondent CSV. Supervisor Alioto-Pier raised 86% of the contributions received by Respondent CSV.

While Respondent Lee was a campaign consultant for the Farrell Committee, he also coordinated with Respondent CSV, Principal Officer Helfand and the campaign consultant for Respondent CSV, MSHC Partners, regarding the setup, fundraising, and initial campaign planning of Respondent CSV. Respondent Lee reached out to Principal Officer Helfand, who had previously volunteered for the Farrell Committee, to assist Principal Officer Helfand with the formation of Respondent CSV. In addition, Respondent Lee also had contacts with another mail house used by Respondent CSV to produce a door hanger. The door hanger was being produced as a Farrell support piece containing an endorsement letter written by Supervisor Alioto-Pier. Respondent Lee's interactions with Respondent CSV and its staff caused Respondent CSV to become a controlled committee of Mark Farrell, instead of a committee primarily formed for his election. The evidence supports the finding that Mark Farrell did not authorize Respondent Lee, as an agent of the Farrell Committee, to coordinate with Respondent CSV.

Under the Political Reform Act[1] (the "Act"), any person who violates any provision of this title, who purposely or negligently causes any other person to violate any provision of this title, or who aids and abets any other person in the violation of any provision of this title, shall be liable under the provisions of this chapter. As a result, Respondents were required to amend the statement of organization to reflect being a controlled committee and have all mailers identify the Farrell Committee as the sender of the mailer.

For the purposes of this Stipulation, Respondents' violations of the Act are stated as follows:

COUNT 1: Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor failed to file an amended statement of organization within 10 days to disclose that Respondent Committee was a controlled committee and failed to add the name of the controlling candidate to the committee name. Respondent Chris Lee purposely or negligently caused this violation (within the meaning of Section 83116.5) through his role of campaign consultant for the Farrell Committee and his coordination with Respondent CSV, Principal Officer Helfand and the campaign consultant for Respondent CSV, MSHC Partners, regarding CSV's setup, fundraising, and initial campaign planning. In this way, Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor and Chris Lee violated Government Code Sections 84102, subdivisions (e) and (g), and 84103, subdivision (a).

COUNT 2: Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor failed to use proper sender identification on a mass mailer sent on or about October 17, 2010, sent in support of Mark Farrell for District 2 Supervisor and against his opponent, Janet Reilly, which failed to display the name of the candidate controlling the committee. Respondent Chris Lee purposely or negligently caused this violation (within the meaning of Section 83116.5) through his role of campaign consultant for the Farrell Committee and his coordination with Respondent CSV, Principal Officer Helfand and the campaign consultant for Respondent CSV, MSHC Partners, regarding CSV's setup, fundraising, and initial campaign planning. In this way, Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor and Chris Lee violated Government Code Section 84305.

COUNT 3: Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor failed to use proper sender identification on a mass mailer sent on or about October 19, 2010, sent in support of Mark Farrell for District 2 Supervisor and against his opponent, Janet Reilly, which failed to display the name of the

[1] The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code as it was in effect at the time of the violations, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations as in effect at the time of the violations, unless otherwise indicated.

candidate controlling the committee. Respondent Chris Lee purposely or negligently caused this violation (within the meaning of Section 83116.5) through his role of campaign consultant for the Farrell Committee and his coordination with Respondent CSV, Principal Officer Helfand and the campaign consultant for Respondent CSV, MSHC Partners, regarding CSV's setup, fundraising, and initial campaign planning. In this way, Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor and Chris Lee violated Government Code Section 84305.

COUNT 4: Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor failed to use proper sender identification on two mass mailers sent on or about October 20, 2010, sent in support of Mark Farrell for District 2 Supervisor and against his opponent, Janet Reilly, which failed to display the name of the candidate controlling the committee. Respondent Chris Lee purposely or negligently caused this violation (within the meaning of Section 83116.5) through his role of campaign consultant for the Farrell Committee and his coordination with Respondent CSV, Principal Officer Helfand and the campaign consultant for Respondent CSV, MSHC Partners, regarding CSV's setup, fundraising, and initial campaign planning. In this way, Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor and Chris Lee violated Government Code Section 84305.

COUNT 5: Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor failed to use proper sender identification on a mass mailer sent on or about October 25, 2010, sent in support of Mark Farrell for District 2 Supervisor and against his opponent, Janet Reilly, which failed to display the name of the candidate controlling the committee. Respondent Chris Lee purposely or negligently caused this violation (within the meaning of Section 83116.5) through his role of campaign consultant for the Farrell Committee and his coordination with Respondent CSV, Principal Officer Helfand and the campaign consultant for Respondent CSV, MSHC Partners, regarding CSV's setup, fundraising, and initial campaign planning. In this way, Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor and Chris Lee violated Government Code Section 84305.

SUMMARY OF THE LAW

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

A committee includes any person or combination of persons who receive contributions totaling $1,000 or more in a calendar year. (Section 82013, subd. (a).) This type of committee commonly is referred to as a recipient committee. Section 82047.5 defines a primarily formed

committee, in relevant part, as a committee which is formed or exists primarily to support or oppose a single candidate, a single measure, a group of specific candidates being voted upon in the same city, county, or multicounty election, or two or more measures being voted upon in the same city, county, multicounty, or state election. By contrast, a *controlled committee* is one that is controlled directly or indirectly by a candidate or that acts jointly with a candidate in connection with the making of expenditures. (Section 82016.) A candidate controls a committee if the candidate, *the candidate's agent*, or any other committee controlled by the candidate has a significant influence on the actions or decisions of the committee. Section 84102, subdivision (g), requires any other information shall be required by Commission regulations that are consistent with the purposes and provisions of this chapter.

To further the well-established state interest in the integrity of its election processes, the Act imposes certain restrictions on candidates for elective offices, chiefly in the form of contribution limits and disclosure requirements. To insure that candidates and their supporters do not evade the Act's contribution limits and disclosure requirements, these restrictions are extended to include the activities of persons who coordinate campaign spending with the candidates themselves, or with the candidates' committees and agents.

Duty to Amend Statement of Organization

Section 84101 requires every recipient committee to file a statement of organization with the Secretary of State. Section 84102, subdivision (a), states that the statement of organization shall include the committee's name, street address and telephone number, if any. The statement of organization shall also include the full name, street address and telephone number, if any, of the treasurer and other principal officers of the committee. (Section 84102, subd. (c).)

Section 84102, subdivision (e), states that the statement of organization shall include a statement of whether the committee is independent or controlled, and if controlled, the name of each candidate or state measure proponent by which it is controlled, or the name of any controlled committee with which it acts jointly. Regulation 18402, subdivision (c), requires that whenever identification of a committee is required by law, the identification shall include the full name of the committee as required in the statement of organization including the last name of each candidate that controls the committee.

Section 84103, subdivision (a), requires that whenever there is a change in any of the information contained in a statement of organization, an amendment shall be filed within 10 days to reflect the change.

Duty to Disclose Proper Sender Identification

Section 84305, subdivision (a), requires candidates and committees to properly identify themselves when sending a mass mailing. Specifically, the statute provides that no candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing. If the sender of the mass mailing is a controlled committee, Section 84305, subdivision (c), requires that the

name of the candidate, as well as the name of the committee, be included on the mass mailing.

Section 82041.5 defines a "mass mailing" as over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry. Regulation 18435, subdivision (a), clarifies this section, and further defines a mass mailing as over two hundred substantially similar pieces of mail sent in a calendar month.

Joint and Several Liability for Causing Another to Violate the Act

Recognizing that the law should hold accountable not only those persons who directly commit violations, but also those persons who encourage or assist in the commission of violations, the Act extends liability for a violation to include anyone who causes, either intentionally or negligently, or aids and abets in the violation of the Act. Section 83116.5 imposes liability for violating the Act on those who: (i) violate the Act; (ii) purposely or negligently cause another to violate the Act; or (iii) aid and abet another in violating the Act. When two or more persons are responsible for a violation of the Act, they are jointly and severally liable. (Section 91006.)

SUMMARY OF THE FACTS

In November 2010, the City and County of San Francisco held a ranked-choice voting election to elect the representative for District 2 of the Board of Supervisors. Respondent CSV qualified as a primarily formed committee on October 1, 2010, and registered on October 13, 2010. As discussed above, while Respondent Lee was a campaign consultant for the Farrell Committee, he also coordinated with Respondent CSV, Principal Officer Helfand and the campaign consultant for Respondent CSV, MSHC Partners, regarding the setup, fundraising and initial campaign planning of Respondent CSV. Respondent Lee's interactions with Respondent CSV and its staff caused Respondent CSV to become a controlled committee of Mark Farrell, instead of a committee primarily formed for his election. As such, under the Act, Respondents were required to amend the statement of organization to reflect being a controlled committee and have all mailers identify the Farrell Committee as the sender of the mailer.

COUNT 1
Failure to Amend Statement of Organization

Respondent CSV qualified as a primarily formed committee on October 1, 2010, and filed a statement of organization reflected that information on October 13, 2010. Respondent CSV disclosed that it was formed to support candidate Mark Farrell for County Supervisor of the City and County of San Francisco for District 2. As mentioned above, Mark Farrell had a campaign committee for this election, the Farrell Committee. While Respondent Lee was a campaign consultant for the Farrell Committee, he coordinated with Respondent CSV, Principal Officer Helfand and the campaign consultant for Respondent CSV, MSHC Partners, regarding its setup, fundraising and initial campaign planning. In addition, Respondent Lee also had contacts with another mail house used by Respondent CSV to produce a door hanger. The door hanger

was being produced as a Farrell support piece containing an endorsement letter written by Supervisor Alioto-Pier. Through these interactions, Respondent Lee, an agent of the Farrell Committee, thereby had significant influence on the Respondent CSV and thus caused Respondent CSV to become a controlled committee of Mark Farrell.

As a candidate controlled committee, Respondents were required to include in the name of the candidate controlling the committee in the name of Respondent Committee. Respondents failed to provide this required information in the name of Respondent CSV and failed to amend the statement of organization.

Thus, Respondent CSV failed to file an amended statement of organization within 10 days to disclose that Respondent Committee was a controlled committee and failed to add the name of the controlling candidate to the committee name. Respondent Chris Lee caused this violation (within the meaning of Section 83116.5) through his role of campaign consultant for the Farrell Committee and his coordination with Respondent CSV, Principal Officer Helfand and the campaign consultant for Respondent CSV, MSHC Partners, regarding its setup, fundraising and initial campaign planning. In this way, Respondents CSV and Chris Lee violated Government Code Sections 84102, subdivisions (e) and (g), and 84103, subdivision (a).

COUNTS 2 - 5
Failure to Disclose the Controlling Candidate in Mass Mailings

Section 82041.5 and Regulation 18435 define a "mass mailing" as over 200 substantially similar pieces of mail sent in a calendar month, which are not sent in response to an unsolicited request. Section 84305, subdivision (a), requires candidates and committees to properly identify themselves when sending a mass mailing. Pursuant to Section 84305, subdivision (b), if a candidate or committee sends a mass mailing, the name, street address, and city of the candidate or committee must be shown on the outside of each piece of mail sent as part of the mass mailing, in no less than 6-point type, which shall be in a color or print which contrasts with the background, so as to easily legible. Furthermore, if the sender of a mass mailing is a controlled committee, the name of the person controlling the committee must also be included in each piece of mail. (Section 84305, subd. (c).)

Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor failed to use proper sender identification on mass mailers sent on or about October 17, 2010, through October 25, 2010, sent in support of Mark Farrell for District 2 Supervisor and against his opponent, Janet Reilly, which failed to display the name of the candidate controlling the committee. Respondent Chris Lee caused this violation (within the meaning of Section 83116.5) through his role of campaign consultant for the Farrell Committee and his coordination with Respondent CSV, Principal Officer Helfand and the campaign consultant for Respondent CSV, MSHC Partners, regarding its setup, fundraising and initial campaign planning. The mailers are detailed below:

Mailer Title	Date	Quantity (approx.)
The Man Behind the Curtain	10/17/10	12,248
Captain Mysterious Mail Piece	10/19/10	20,239
CMV1003: Proposition H	10/20/10	40,478
Negative/CMV 1005: Comparative		
11757 Farrell Doorhanger 03	10/25/10	25,000

Thus, Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor and Chris Lee violated Government Code Section 84305 four times.

CONCLUSION

This matter consists of five counts of violating the Act, which carries a maximum administrative penalty of five thousand dollars ($5,000) per count.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. The Enforcement Division also considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6), which include: the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the Respondent voluntarily filed amendment to provide full disclosure. Additionally, liability under the Act is governed in significant part by the provisions of Section 91001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

Statement of Organization: Respondents had a duty to file an amendment to the statement of organization to disclose it was no longer a primarily formed committee but a controlled committee after the actions of Respondent Lee caused this status change. The amendment was needed to include in the name of the candidate controlling the committee in the name of Respondent CSV. Respondents failed to provide this required information in the name of Respondent CSV and failed to amend the statement of organization.

The failure to amend the statement of organization concealed from the public the true nature of the Respondent CSV's activity. In aggravation, these actions coordinating the committees gave an unlawful advantage to one side in an election which was decided by only the slimmest of margins. In mitigation, Respondents filed other campaign information correctly and the name of the committee disclosed its support of Mark Farrell.

Other cases regarding the failure to amend a statement of organization recently approved by the Commission include:

In the Matter of Put California Back to Work, Sponsored by the Civil Justice Association of California and J. Richard Eichman, FPPC No. 10/504. Respondents formed as a state general purpose committee and failed to amend the statement of organization when the committee became primarily formed. The committee was aware of the requirement, having been told by the treasurer, and chose not to timely amend the statement. A $3,500 stipulated settlement was approved for this violation by the Commission on March 15, 2012.

In the Matter of Californians for SAFE Food, a coalition of public health and food safety experts, labor unions, consumers, family farmers, and veterinarians. No on Proposition 2, FPPC No. 08/515. This case involved one count of failing to name a sponsor on the statement of organization and one count of failing to amend the statement of organization to include a sponsor. A $2,500 penalty for the each count was approved by the Commission on April 8, 2010.

In this matter, Respondent CSV's actions were serious as Respondent CSV coordinated with the candidate's campaign consultant. However, in mitigation, Principal Officer Helfand had little campaign experience and neither of the Respondents have a history of violating the Act. Therefore, imposition of an administrative penalty in the amount of two thousand five hundred dollars ($2,500) is recommended.

Sender Identification: As a candidate controlled committee, Respondents had a duty to display on the mass mailing the name of the controlling candidate. The failure to provide proper disclosure in a mass mailing deprives the public of important information by making them believe that the mailing is independent of a candidate. In aggravation, Respondent CSV was able to send out hit pieces on opponents without disclosing its association with the candidate. Also, without the statement of organization's amendment, the public would not have been able to trace the association back to the candidate. Further, Respondent CSV was involved in multiple advertisements, all of which failed to provide proper disclosure. In mitigation, the name of Respondent CSV clearly presented its support of candidate Mark Farrell and Respondents have cooperated with the investigation and assert that the contacts and coordination were the actions of only one individual who believed that he was acting within the law.

Other similar cases regarding failing to properly include the required disclosure statements on mailers recently approved by the Commission include:

In the Matter of Alan Frank, Alan Frank for City Council 2012, and Jeff Buchanan, FPPC No. 12/890. Staff: Commission Counsel Zachary Norton and Special Investigator Paul Rasey. Respondent, Alan Frank, was an unsuccessful candidate for Placentia City Council in the November 6, 2012 election. Alan Frank for City Council 2012 was Respondent Frank's candidate controlled committee, and Respondent Jeff Buchanan was the Treasurer of the committee. Prior to the election, Respondents paid for and caused to be sent two mass mailers which failed to identify Respondents as the senders of the mailers in violation of Government Code Section 84305, subdivision (a) (1 count). A stipulated settlement of $2,500 was approved by the Commission on September 19, 2013.

In the Matter of Protect Burlingame and Kevin Osborne, FPPC No. 09/804. This case involved two mailers in a local election campaign, each sent to approximately 7,000 households, which lacked sender identification. Respondent in this matter did not have an Enforcement history. A $2,500 penalty was approved by the Commission on April 11, 2011.

In this matter, Respondents failed to provide proper disclosure statements as a result of failing to properly file as a candidate controlled committee and concealing the connection between the candidate-controlled committee and the committee which was supposed to be independent of it. Taking into consideration the factors above, imposition of an administrative penalty of three thousand dollars ($3,000) is recommended for each of the four counts.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Fourteen Thousand Five Hundred Dollars ($14,500) is recommended.

EXHIBIT B

Recipient Committee Campaign Statement Cover Page

(Government Code Sections 84200-84216.5)

Type or print in ink.

SEE INSTRUCTIONS ON REVERSE

Statement covers period	Date of election if applicable: (Month, Day, Year)	Date Stamp
from 01/01/2010		
through 10/16/2010	11/02/2010	

COVER PAGE

CALIFORNIA FORM **460**

Page 1 of 4

For Official Use Only

1. Type of Recipient Committee: All Committees – Complete Parts 1, 2, 3, and 4.

- ☐ Officeholder, Candidate Controlled Committee
  - ○ State Candidate Election Committee
  - ○ Recall
  - *(Also Complete Part 5)*
- ☐ General Purpose Committee
  - ○ Sponsored
  - ○ Small Contributor Committee
  - ○ Political Party/Central Committee
- ☒ Primarily Formed Ballot Measure Committee
  - ○ Controlled
  - ○ Sponsored
  - *(Also Complete Part 6)*
- ☐ Primarily Formed Candidate/ Officeholder Committee
  - *(Also Complete Part 7)*

2. Type of Statement:

- ☒ Preelection Statement
- ☐ Semi-annual Statement
- ☐ Termination Statement (Also file a Form 410 Termination)
- ☐ Amendment (Explain below)
- ☐ Quarterly Statement
- ☐ Special Odd-Year Report
- ☐ Supplemental Preelection Statement - Attach Form 495

3. Committee Information

I.D. NUMBER 1332919

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

STREET ADDRESS (NO P.O. BOX)

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Woodside	CA	94062	(650) 868-1614

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX

CITY	STATE	ZIP CODE	AREA CODE/PHONE

OPTIONAL: FAX / E-MAIL ADDRESS

commonsensevoters@gmail.com

Treasurer(s)

NAME OF TREASURER

Ms. Stacy Owens

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

NAME OF ASSISTANT TREASURER, IF ANY

Mr. Henry C. Levy

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

OPTIONAL: FAX / E-MAIL ADDRESS

4. Verification

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 10/21/2010 (Date) By Stacy Owens (Signature of Treasurer or Assistant Treasurer)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

0353

Recipient Committee Campaign Statement Cover Page — Part 2

Type or print in ink.

COVER PAGE - PART 2

CALIFORNIA FORM **460**

Page 2 of 4

5. Officeholder or Candidate Controlled Committee

NAME OF OFFICEHOLDER OR CANDIDATE

OFFICE SOUGHT OR HELD (INCLUDE LOCATION AND DISTRICT NUMBER IF APPLICABLE)

RESIDENTIAL/BUSINESS ADDRESS (NO. AND STREET) CITY STATE ZIP

Related Committees Not Included in this Statement: ***List any committees not included in this statement that are controlled by you or are primarily formed to receive contributions or make expenditures on behalf of your candidacy.***

COMMITTEE NAME	I.D. NUMBER
NAME OF TREASURER	CONTROLLED COMMITTEE? ☐ YES ☐ NO

COMMITTEE ADDRESS STREET ADDRESS (NO P.O. BOX)

CITY STATE ZIP CODE AREA CODE/PHONE

COMMITTEE NAME	I.D. NUMBER
NAME OF TREASURER	CONTROLLED COMMITTEE? ☐ YES ☐ NO

COMMITTEE ADDRESS STREET ADDRESS (NO P.O. BOX)

CITY STATE ZIP CODE AREA CODE/PHONE

6. Primarily Formed Ballot Measure Committee

NAME OF BALLOT MEASURE

BALLOT NO. OR LETTER	JURISDICTION	☐ SUPPORT ☐ OPPOSE

Identify the controlling officeholder, candidate, or state measure proponent, if any.

NAME OF OFFICEHOLDER, CANDIDATE, OR PROPONENT

OFFICE SOUGHT OR HELD	DISTRICT NO. IF ANY

7. Primarily Formed Candidate/Officeholder Committee *List names of officeholder(s) or candidate(s) for which this committee is primarily formed.*

NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE

Attach continuation sheets if necessary

0354

Campaign Disclosure Statement Summary Page

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

SUMMARY PAGE

Statement covers period
from 01/01/2010
through 10/16/2010

CALIFORNIA FORM 460

Page 3 of 4

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

Contributions Received

		Column A TOTAL THIS PERIOD (FROM ATTACHED SCHEDULES)	Column B CALENDAR YEAR TOTAL TO DATE
1. Monetary Contributions	*Schedule A, Line 3*	$30,500.00	$30,500.00
2. Loans Received	*Schedule B, Line 3*	$0.00	$0.00
3. SUBTOTAL CASH CONTRIBUTIONS	*Add Lines 1 + 2*	$30,500.00	$30,500.00
4. Nonmonetary Contributions	*Schedule C, Line 3*	$0.00	$0.00
5. TOTAL CONTRIBUTIONS RECEIVED	*Add Lines 3 + 4*	$30,500.00	$30,500.00

Expenditures Made

6. Payments Made	*Schedule E, Line 4*	$0.00	$0.00
7. Loans Made	*Schedule H, Line 3*	$0.00	$0.00
8. SUBTOTAL CASH PAYMENTS	*Add Lines 6 + 7*	$0.00	$0.00
9. Accrued Expenses (Unpaid Bills)	*Schedule F, Line 3*	$0.00	$0.00
10. Nonmonetary Adjustment	*Schedule C, Line 3*	$0.00	$0.00
11. TOTAL EXPENDITURES MADE	*Add Lines 8 + 9 + 10*	$0.00	$0.00

Current Cash Statement

12. Beginning Cash Balance	*Previous Summary Page, Line 16*	$0.00
13. Cash Receipts	*Column A, Line 3 above*	$30,500.00
14. Miscellaneous Increases to Cash	*Schedule I, Line 4*	$0.00
15. Cash Payments	*Column A, Line 8 above*	$0.00
16. **ENDING CASH BALANCE**	*Add Lines 12 + 13 + 14, then subtract Line 15*	$30,500.00

If this is a termination statement, Line 16 must be zero.

17. LOAN GUARANTEES RECEIVED	*Schedule B, Part 2*	$0.00

Cash Equivalents and Outstanding Debts

18. Cash Equivalents	*See instructions on reverse*	$0.00
19. Outstanding Debts	*Add Line 2 + Line 9 in Column B above*	$0.00

To calculate Column B, add amounts in Column A to the corresponding amounts from Column B of your last report. Some amounts in Column A may be negative figures that should be subtracted from previous period amounts. If this is the first report being filed for this calendar year, only carry over the amounts from Lines 2, 7, and 9 (if any).

Calendar Year Summary for Candidates Running in Both the State Primary and General Elections

	1/1 through 6/30	7/1 to Date
20. Contributions Received	$	$
21. Expenditures Made	$	$

Expenditure Limit Summary for State Candidates

22. Cumulative Expenditures Made*
(If Subject to Voluntary Expenditure Limit)

Date of Election (mm/dd/yy)	Total to Date
___/___/___	$
___/___/___	$

*Amounts in this section may be different from amounts reported in Column B.

0355

Schedule A
Monetary Contributions Received

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

SCHEDULE A

Statement covers period
from 01/01/2010
through 10/16/2010

CALIFORNIA FORM 460

Page 4 of 4

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)		PER ELECTION TO DATE (IF REQUIRED)
10/08/2010	Sam W. Humphreys San Francisco CA 94115	[X] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC	CEO London Bay Capital, LLC	$7,500.00	$7,500.00	G10	$7,500.00
10/02/2010	David Lamond San Francisco CA 94123	[X] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC	Business Manager Artis Capital Management	$2,000.00	$2,000.00	G10	$2,000.00
10/08/2010	Mark R. Malcoun San Francisco CA 94115	[X] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC	Analyst Zazove Associates	$5,000.00	$5,000.00	G10	$5,000.00
10/02/2010	Kamran Moghtaderi New York NY 10024	[X] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC	Investment Advisor Apis Capital Advisors, LLC	$15,000.00	$15,000.00	G10	$15,000.00
10/08/2010	Raj Venkatesan San Francisco CA 94118	[X] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC	Business Manager Standard Pacific Capital	$1,000.00	$1,000.00	G10	$1,000.00
			SUBTOTAL $	$30,500.00			

Schedule A Summary

1. Amount received this period – itemized monetary contributions. (Include all Schedule A subtotals.) ..... $ $30,500.00
2. Amount received this period – unitemized monetary contributions of less than $100 ..... $ $0.00
3. Total monetary contributions received this period. (Add Lines 1 and 2. Enter here and on the Summary Page, Column A, Line 1.) ..... **TOTAL $** $30,500.00

*Contributor Codes
IND – Individual
COM – Recipient Committee (other than PTY or SCC)
OTH – Other (e.g., business entity)
PTY – Political Party
SCC – Small Contributor Committee

03564

Recipient Committee Campaign Statement Cover Page

(Government Code Sections 84200-84216.5)

Type or print in ink.

VER PAGE

Date Stamp

CALIFORNIA FORM **460**

Page 1 of 15

For Official Use Only

SEE INSTRUCTIONS ON REVERSE

Statement covers period
from 10/17/2010
through 12/31/2010

Date of election if applicable: (Month, Day, Year)
11/02/2010

1. Type of Recipient Committee: All Committees – Complete Parts 1, 2, 3, and 4.

- ☐ Officeholder, Candidate Controlled Committee
  - ○ State Candidate Election Committee
  - ○ Recall
  - *(Also Complete Part 5)*
- ☐ General Purpose Committee
  - ○ Sponsored
  - ○ Small Contributor Committee
  - ○ Political Party/Central Committee
- ☒ Primarily Formed Ballot Measure Committee
  - ○ Controlled
  - ○ Sponsored
  - *(Also Complete Part 6)*
- ☐ Primarily Formed Candidate/ Officeholder Committee
  - *(Also Complete Part 7)*

2. Type of Statement:

- ☒ Preelection Statement
- ☐ Semi-annual Statement
- ☐ Termination Statement (Also file a Form 410 Termination)
- ☐ Amendment (Explain below)
- ☐ Quarterly Statement
- ☐ Special Odd-Year Report
- ☐ Supplemental Preelection Statement - Attach Form 495

3. Committee Information

I.D. NUMBER
1332919

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

STREET ADDRESS (NO P.O. BOX)

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Woodside	CA	94062	(650) 868-1614

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX

CITY	STATE	ZIP CODE	AREA CODE/PHONE

OPTIONAL: FAX / E-MAIL ADDRESS
commonsensevoters@gmail.com

Treasurer(s)

NAME OF TREASURER
Ms. Stacy Owens

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

NAME OF ASSISTANT TREASURER, IF ANY
Mr. Henry C. Levy

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

OPTIONAL: FAX / E-MAIL ADDRESS

4. Verification

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 01/31/2011 (Date) By Stacy Owens (Signature of Treasurer or Assistant Treasurer)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

03575

Recipient Committee Campaign Statement Cover Page — Part 2

Type or print in ink.

COVER PAGE - PART 2

CALIFORNIA FORM 460

5. Officeholder or Candidate Controlled Committee

NAME OF OFFICEHOLDER OR CANDIDATE

OFFICE SOUGHT OR HELD (INCLUDE LOCATION AND DISTRICT NUMBER IF APPLICABLE)

RESIDENTIAL/BUSINESS ADDRESS (NO. AND STREET) CITY STATE ZIP

Related Committees Not Included in this Statement: ***List any committees not included in this statement that are controlled by you or are primarily formed to receive contributions or make expenditures on behalf of your candidacy.***

COMMITTEE NAME	I.D. NUMBER
NAME OF TREASURER	CONTROLLED COMMITTEE? ☐ YES ☐ NO

COMMITTEE ADDRESS STREET ADDRESS (NO P.O. BOX)

CITY STATE ZIP CODE AREA CODE/PHONE

COMMITTEE NAME	I.D. NUMBER
NAME OF TREASURER	CONTROLLED COMMITTEE? ☐ YES ☐ NO

COMMITTEE ADDRESS STREET ADDRESS (NO P.O. BOX)

CITY STATE ZIP CODE AREA CODE/PHONE

6. Primarily Formed Ballot Measure Committee

NAME OF BALLOT MEASURE

BALLOT NO. OR LETTER	JURISDICTION	☐ SUPPORT ☐ OPPOSE

Identify the controlling officeholder, candidate, or state measure proponent, if any.

NAME OF OFFICEHOLDER, CANDIDATE, OR PROPONENT

OFFICE SOUGHT OR HELD	DISTRICT NO. IF ANY

7. Primarily Formed Candidate/Officeholder Committee *List names of officeholder(s) or candidate(s) for which this committee is primarily formed.*

NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE

Attach continuation sheets if necessary

0358

Campaign Disclosure Statement
Summary Page

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

SUMMARY PAGE

Statement covers period
from 10/17/2010
through 12/31/2010

CALIFORNIA FORM 460

Page 3 of 15

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

Contributions Received

		Column A TOTAL THIS PERIOD (FROM ATTACHED SCHEDULES)	Column B CALENDAR YEAR TOTAL TO DATE
1. Monetary Contributions	*Schedule A, Line 3*	$ $191,000.00	$ $221,500.00
2. Loans Received	*Schedule B, Line 3*	$0.00	$0.00
3. SUBTOTAL CASH CONTRIBUTIONS	*Add Lines 1 + 2*	$ $191,000.00	$ $221,500.00
4. Nonmonetary Contributions	*Schedule C, Line 3*	$0.00	$0.00
5. TOTAL CONTRIBUTIONS RECEIVED	*Add Lines 3 + 4*	$ $191,000.00	$ $221,500.00

Expenditures Made

6. Payments Made	*Schedule E, Line 4*	$ $213,774.15	$ $213,774.15
7. Loans Made	*Schedule H, Line 3*	$0.00	$0.00
8. SUBTOTAL CASH PAYMENTS	*Add Lines 6 + 7*	$ $213,774.15	$ $213,774.15
9. Accrued Expenses (Unpaid Bills)	*Schedule F, Line 3*	$0.00	$0.00
10. Nonmonetary Adjustment	*Schedule C, Line 3*	$0.00	$0.00
11. TOTAL EXPENDITURES MADE	*Add Lines 8 + 9 + 10*	$ $213,774.15	$ $213,774.15

Current Cash Statement

12. Beginning Cash Balance	*Previous Summary Page, Line 16*	$ $30,500.00
13. Cash Receipts	*Column A, Line 3 above*	$191,000.00
14. Miscellaneous Increases to Cash	*Schedule I, Line 4*	$0.00
15. Cash Payments	*Column A, Line 8 above*	$213,774.15
16. **ENDING CASH BALANCE**	*Add Lines 12 + 13 + 14, then subtract Line 15*	$ $7,725.85

If this is a termination statement, Line 16 must be zero.

17. LOAN GUARANTEES RECEIVED — *Schedule B, Part 2* — $ $0.00

Cash Equivalents and Outstanding Debts

18. Cash Equivalents	*See instructions on reverse*	$ $0.00
19. Outstanding Debts	*Add Line 2 + Line 9 in Column B above*	$ $0.00

To calculate Column B, add amounts in Column A to the corresponding amounts from Column B of your last report. Some amounts in Column A may be negative figures that should be subtracted from previous period amounts. If this is the first report being filed for this calendar year, only carry over the amounts from Lines 2, 7, and 9 (if any).

Calendar Year Summary for Candidates Running in Both the State Primary and General Elections

	1/1 through 6/30	7/1 to Date
20. Contributions Received	$	$
21. Expenditures Made	$	$

Expenditure Limit Summary for State Candidates

22. Cumulative Expenditures Made*
(If Subject to Voluntary Expenditure Limit)

Date of Election (mm/dd/yy)	Total to Date
___/___/___	$
___/___/___	$

*Amounts in this section may be different from amounts reported in Column B.

Schedule A
Monetary Contributions Received

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

SCHEDULE A

Statement covers period
from 10/17/2010
through 12/31/2010

CALIFORNIA FORM 460

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)	PER ELECTION TO DATE (IF REQUIRED)
10/18/2010	Thomas J. Coates San Francisco CA 94111	[X] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC	Founding Partner Arroyo & Coates	$100,000.00	$141,000.00	G10 $141,000.00
10/25/2010	Thomas J. Coates San Francisco CA 94111	[X] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC	Founding Partner Arroyo & Coates	$41,000.00	$141,000.00	G10 $141,000.00
10/18/2010	Diane B. Wilsey San Francisco CA 94115	[X] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC	President A Wilsey Properties Co.	$50,000.00	$50,000.00	G10 $50,000.00
		[ ] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC				
		[ ] IND [ ] COM [ ] OTH [ ] PTY [ ] SCC				
			SUBTOTAL $	$191,000.00		

Schedule A Summary

1. Amount received this period – itemized monetary contributions. (Include all Schedule A subtotals.) ..... $ $191,000.00
2. Amount received this period – unitemized monetary contributions of less than $100 ..... $ $0.00
3. Total monetary contributions received this period. (Add Lines 1 and 2. Enter here and on the Summary Page, Column A, Line 1.) ..... **TOTAL $** $191,000.00

*Contributor Codes
IND – Individual
COM – Recipient Committee (other than PTY or SCC)
OTH – Other (e.g., business entity)
PTY – Political Party
SCC – Small Contributor Committee

Schedule D
Summary of Expenditures Supporting/Opposing Other Candidates, Measures and Committees

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

SCHEDULE D

CALIFORNIA FORM **460**

Statement covers period
from 10/17/2010
through 12/31/2010

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

DATE	NAME OF CANDIDATE, OFFICE, AND DISTRICT, OR MEASURE NUMBER OR LETTER AND JURISDICTION, OR COMMITTEE	TYPE OF PAYMENT	DESCRIPTION (IF REQUIRED)	AMOUNT THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)	PER ELECTION TO DATE (IF REQUIRED)
10/22/2010	District 2 Democratic Club Political Party Committee ☒ Support ☐ Oppose	☐ Monetary Contribution ☒ Nonmonetary Contribution ☐ Independent Expenditure		$1,410.80	$2,717.76	
10/26/2010	District 2 Democratic Club Political Party Committee ☒ Support ☐ Oppose	☐ Monetary Contribution ☒ Nonmonetary Contribution ☐ Independent Expenditure		$1,306.96	$2,717.76	
10/19/2010	Janet Reilly County Supervisor City & County of San Francisco District: 2 Janet Reilly 2010 ☐ Support ☒ Oppose	☐ Monetary Contribution ☐ Nonmonetary Contribution ☒ Independent Expenditure		$10,533.28	$148,003.86	$148,003.86G-10
			SUBTOTAL $	$13,251.04		

Schedule D Summary

1. Itemized contributions and independent expenditures made this period. (Include all Schedule D subtotals.) ..... $ $199,120.80
2. Unitemized contributions and independent expenditures made this period of under $100 ..... $ $0.00
3. Total contributions and independent expenditures made this period. (Add Lines 1 and 2. Do not enter on the Summary Page.) ..... **TOTAL $** $199,120.80

03619

Schedule D
(Continuation Sheet)
Summary of Expenditures Supporting/Opposing Other Candidates, Measures and Committees

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

SCHEDULE D (CONT.)

Statement covers period
from 10/17/2010
through 12/31/2010

CALIFORNIA FORM 460

Page 6 of 15

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

DATE	NAME OF CANDIDATE, OFFICE, AND DISTRICT, OR MEASURE NUMBER OR LETTER AND JURISDICTION, OR COMMITTEE	TYPE OF PAYMENT	DESCRIPTION (IF REQUIRED)	AMOUNT THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)	PER ELECTION TO DATE (IF REQUIRED)
10/19/2010	Janet Reilly County Supervisor City & County of San Francisco District: 2 Janet Reilly 2010 ☐ Support ☒ Oppose	☐ Monetary Contribution ☐ Nonmonetary Contribution ☒ Independent Expenditure		$16,200.00	$148,003.86	$148,003.86G-10
10/19/2010	Janet Reilly County Supervisor City & County of San Francisco District: 2 Janet Reilly 2010 ☐ Support ☒ Oppose	☐ Monetary Contribution ☐ Nonmonetary Contribution ☒ Independent Expenditure		$20,566.06	$148,003.86	$148,003.86G-10
10/19/2010	Janet Reilly County Supervisor City & County of San Francisco District: 2 Janet Reilly 2010 ☐ Support ☒ Oppose	☐ Monetary Contribution ☐ Nonmonetary Contribution ☒ Independent Expenditure		$3,306.96	$148,003.86	$148,003.86G-10
10/22/2010	Janet Reilly County Supervisor City & County of San Francisco District: 2 Janet Reilly 2010 ☐ Support ☒ Oppose	☐ Monetary Contribution ☐ Nonmonetary Contribution ☒ Independent Expenditure		$2,500.00	$148,003.86	$148,003.86G-10
			SUBTOTAL $	$42,573.02		

0360

Schedule D
(Continuation Sheet)
Summary of Expenditures Supporting/Opposing Other Candidates, Measures and Committees

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

SCHEDULE D (CONT.)

Statement covers period
from 10/17/2010
through 12/31/2010

CALIFORNIA FORM 460

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

DATE	NAME OF CANDIDATE, OFFICE, AND DISTRICT, OR MEASURE NUMBER OR LETTER AND JURISDICTION, OR COMMITTEE	TYPE OF PAYMENT	DESCRIPTION (IF REQUIRED)	AMOUNT THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)	PER ELECTION TO DATE (IF REQUIRED)
10/22/2010	Janet Reilly County Supervisor City & County of San Francisco District: 2 Janet Reilly 2010 ☐ Support ☒ Oppose	☐ Monetary Contribution ☐ Nonmonetary Contribution ☒ Independent Expenditure		$11,333.84	$148,003.86	$148,003.86G-10
10/22/2010	Janet Reilly County Supervisor City & County of San Francisco District: 2 Janet Reilly 2010 ☐ Support ☒ Oppose	☐ Monetary Contribution ☐ Nonmonetary Contribution ☒ Independent Expenditure		$5,464.53	$148,003.86	$148,003.86G-10
10/22/2010	Janet Reilly County Supervisor City & County of San Francisco District: 2 Janet Reilly 2010 ☐ Support ☒ Oppose	☐ Monetary Contribution ☐ Nonmonetary Contribution ☒ Independent Expenditure		$56,700.00	$148,003.86	$148,003.86G-10
10/22/2010	Janet Reilly County Supervisor City & County of San Francisco District: 2 Janet Reilly 2010 ☐ Support ☒ Oppose	☐ Monetary Contribution ☐ Nonmonetary Contribution ☒ Independent Expenditure		$2,732.27	$148,003.86	$148,003.86G-10
			SUBTOTAL $	$76,230.64		

0369I

Schedule D
(Continuation Sheet)
Summary of Expenditures Supporting/Opposing Other Candidates, Measures and Committees

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

SCHEDULE D (CONT.)

Statement covers period
from 10/17/2010
through 12/31/2010

CALIFORNIA FORM 460

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

DATE	NAME OF CANDIDATE, OFFICE, AND DISTRICT, OR MEASURE NUMBER OR LETTER AND JURISDICTION, OR COMMITTEE	TYPE OF PAYMENT	DESCRIPTION (IF REQUIRED)	AMOUNT THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)	PER ELECTION TO DATE (IF REQUIRED)
10/22/2010	Janet Reilly County Supervisor City & County of San Francisco District: 2 Janet Reilly 2010 ☐ Support ☒ Oppose	☐ Monetary Contribution ☐ Nonmonetary Contribution ☒ Independent Expenditure		$5,666.92	$148,003.86	$148,003.86 G-10
10/27/2010	Janet Reilly County Supervisor City & County of San Francisco District: 2 Janet Reilly 2010 ☐ Support ☒ Oppose	☐ Monetary Contribution ☐ Nonmonetary Contribution ☒ Independent Expenditure		$13,000.00	$148,003.86	$148,003.86 G-10
10/22/2010	Mark Farrell County Supervisor City & County of San Francisco District: 2 Mark Farrell (2010) ☒ Support ☐ Oppose	☐ Monetary Contribution ☐ Nonmonetary Contribution ☒ Independent Expenditure		$5,666.92	$43,399.18	$43,399.18 G-10
10/22/2010	Mark Farrell County Supervisor City & County of San Francisco District: 2 Mark Farrell (2010) ☒ Support ☐ Oppose	☐ Monetary Contribution ☐ Nonmonetary Contribution ☒ Independent Expenditure		$2,732.26	$43,399.18	$43,399.18 G-10
			SUBTOTAL $	$27,066.10		

Schedule D
(Continuation Sheet)
Summary of Expenditures Supporting/Opposing Other Candidates, Measures and Committees

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

SCHEDULE D (CONT.)

Statement covers period
from 10/17/2010
through 12/31/2010

CALIFORNIA FORM 460

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

DATE	NAME OF CANDIDATE, OFFICE, AND DISTRICT, OR MEASURE NUMBER OR LETTER AND JURISDICTION, OR COMMITTEE	TYPE OF PAYMENT	DESCRIPTION (IF REQUIRED)	AMOUNT THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)	PER ELECTION TO DATE (IF REQUIRED)
10/25/2010	Mark Farrell County Supervisor City & County of San Francisco District: 2 Mark Farrell (2010) ☒ Support ☐ Oppose	☐ Monetary Contribution ☐ Nonmonetary Contribution ☒ Independent Expenditure		$35,000.00	$43,399.18	$43,399.18G-10
10/19/2010	San Francisco Republican County Central Committee Political Party Committee ☒ Support ☐ Oppose	☒ Monetary Contribution ☐ Nonmonetary Contribution ☐ Independent Expenditure		$5,000.00	$5,000.00	
	☐ Support ☐ Oppose	☐ Monetary Contribution ☐ Nonmonetary Contribution ☐ Independent Expenditure				
	☐ Support ☐ Oppose	☐ Monetary Contribution ☐ Nonmonetary Contribution ☐ Independent Expenditure				
			SUBTOTAL $	$40,000.00		

0365

SCHEDULE E

Schedule E
Payments Made

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

Statement covers period
from 10/17/2010
through 12/31/2010

CALIFORNIA FORM 460

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR DESCRIPTION OF PAYMENT	AMOUNT PAID
Henry C Levy & Co. Oakland CA 94618	PRO		$1,849.63
Henry C Levy & Co. Oakland CA 94618	PRO		$1,541.00
MSHC Partners, Inc. Washington DC 20005	IND	Mailer in opposition to Janet Reilly for San Francisco Supervisor, District 2.	$3,306.96

*** Payments that are contributions or independent expenditures must also be summarized on Schedule D.**

SUBTOTAL $ $6,697.59

Schedule E Summary

1. Itemized payments made this period. (Include all Schedule E subtotals.) ..... $ $213,774.15
2. Unitemized payments made this period of under $100 ..... $ $0.00
3. Total interest paid this period on loans. (Enter amount from Schedule B, Part 1, Column (e).) ..... $ $0.00
4. Total payments made this period. (Add Lines 1, 2, and 3. Enter here and on the Summary Page, Column A, Line 6.) ..... **TOTAL $** $213,774.15

0366

Schedule E.
(Continuation Sheet)
Payments Made

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

SCHEDULE E (CONT.)

Statement covers period
from 10/17/2010
through 12/31/2010

CALIFORNIA FORM 460

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR DESCRIPTION OF PAYMENT	AMOUNT PAID
MSHC Partners, Inc. Washington DC 20005	IND	Mailer in opposition to Janet Reilly for San Francisco Supervisor, District 2.	$10,533.28
MSHC Partners, Inc. Washington DC 20005	IND	Website in opposition to Janet Reilly for San Francisco Supervisor, District 2.	$16,200.00
MSHC Partners, Inc. Washington DC 20005	IND	Mailer in opposition to Janet Reilly for San Francisco Supervisor, District 2.	$20,566.06
MSHC Partners, Inc. Washington DC 20005	CTB	Bill Paid on Behalf of District Two Democratic Club, See Schedule D.	$1,410.80
MSHC Partners, Inc. Washington DC 20005	IND	Mailer in opposition to Janet Reilly for San Francisco Supervisor, District 2.	$11,333.84

03675

* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

SUBTOTAL $ $60,043.98

Schedule E (Continuation Sheet) Payments Made

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

Statement covers period
from 10/17/2010
through 12/31/2010

CALIFORNIA FORM 460

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR DESCRIPTION OF PAYMENT	AMOUNT PAID
MSHC Partners, Inc. Washington DC 20005	IND	Postage in opposition to Janet Reilly for San Francisco Supervisor, District 2.	$5,464.53
MSHC Partners, Inc. Washington DC 20005	IND	Postage in opposition to Janet Reilly and in support of Mark Farrell for San Francisco Supervisor, District 2.	$5,464.53
MSHC Partners, Inc. Washington DC 20005	IND	Mailer in opposition to Janet Reilly and in support of Mark Farrell for San Francisco Supervisor, District 2.	$11,333.84
MSHC Partners, Inc. Washington DC 20005	IND	Website in opposition to Janet Reilly for San Francisco Supervisor, District 2.	$56,700.00
MSHC Partners, Inc. Washington DC 20005	IND	Website in opposition to Janet Reilly for San Francisco Supervisor, District 2.	$2,500.00

0368

*** Payments that are contributions or independent expenditures must also be summarized on Schedule D.**

SUBTOTAL $ $81,462.90

Schedule E (Continuation Sheet) Payments Made

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

SCHEDULE E (CONT.)

Statement covers period
from 10/17/2010
through 12/31/2010

CALIFORNIA FORM 460

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR DESCRIPTION OF PAYMENT	AMOUNT PAID
MSHC Partners, Inc. Washington DC 20005	TRS	Reimbursed Expense under the $500 Schedule G Threshold	$85.00
MSHC Partners, Inc. Washington DC 20005	CTB	Bill Paid on Behalf of District Two Democratic Club, See Schedule D.	$1,306.96
MSHC Partners, Inc. Washington DC 20005	POL		$2,588.86
MSHC Partners, Inc. Washington DC 20005	IND	Web blast in opposition to Janet Reilly for Supervisor, District 2.	$13,000.00
MSHC Partners, Inc. Washington DC 20005	POL		$2,588.86

0369

* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

SUBTOTAL $ $19,569.68

Schedule E (Continuation Sheet) Payments Made

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

Statement covers period
from 10/17/2010
through 12/31/2010

CALIFORNIA FORM 460

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Pineda Consulting Pasadena CA 91104	POL			$6,000.00
San Francisco Republican County Central Committee (#890605) San Francisco CA 94119-3303	CTB			$5,000.00
Winning Directions South San Francisco CA 94080	IND		Doorhanger in support of Mark Farrell for Supervisor, District 2.	$35,000.00

0370B

* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

SUBTOTAL $ $46,000.00

Schedule G
Payments Made by an Agent or Independent Contractor (on Behalf of This Committee)

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

SCHEDULE G

Statement covers period
from 10/17/2010
through 12/31/2010

CALIFORNIA FORM **460**

Page 15 of 15

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

NAME OF AGENT OR INDEPENDENT CONTRACTOR
MSHC Partners, Inc.

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

*** Payments that are contributions or independent expenditures must also be summarized on Schedule D.**

NAME AND ADDRESS OF PAYEE OR CREDITOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
US Postmaster Washington DC 20002	POS			$3,062.00
US Postmaster Washington DC 20002	POS			$5,262.14
US Postmaster Washington DC 20002	POS			$5,464.53
US Postmaster Washington DC 20002	POS			$5,464.53

Attach additional information on appropriately labeled continuation sheets.

TOTAL* $ $19,253.20

** Do not transfer to any other schedule or to the Summary Page. This total may not equal the amount paid to the agent or independent contractor as reported on Schedule E.*

037

Recipient Committee Campaign Statement Cover Page

(Government Code Sections 84200-84216.5)

SEE INSTRUCTIONS ON REVERSE

Type or print in ink.

E-filed on: 07/30/2011 16:12:46

Statement covers period	Date of election if applicable: (Month, Day, Year)	Date Stamp
from 01/01/2011		
through 06/30/2011		

COVER PAGE

CALIFORNIA FORM **460**

Page 1 of 4

For Official Use Only

1. Type of Recipient Committee: All Committees – Complete Parts 1, 2, 3, and 4.

- ☐ Officeholder, Candidate Controlled Committee
  - ○ State Candidate Election Committee
  - ○ Recall
  - *(Also Complete Part 5)*
- ☐ General Purpose Committee
  - ○ Sponsored
  - ○ Small Contributor Committee
  - ○ Political Party/Central Committee
- ☒ Primarily Formed Ballot Measure Committee
  - ○ Controlled
  - ○ Sponsored
  - *(Also Complete Part 6)*
- ☐ Primarily Formed Candidate/ Officeholder Committee
  - *(Also Complete Part 7)*

2. Type of Statement:

- ☐ Preelection Statement
- ☒ Semi-annual Statement
- ☐ Termination Statement (Also file a Form 410 Termination)
- ☐ Amendment (Explain below)
- ☐ Quarterly Statement
- ☐ Special Odd-Year Report
- ☐ Supplemental Preelection Statement - Attach Form 495

3. Committee Information

I.D. NUMBER: 1332919

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

STREET ADDRESS (NO P.O. BOX)

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Woodside	CA	94062	(650) 868-1614

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX

CITY	STATE	ZIP CODE	AREA CODE/PHONE

OPTIONAL: FAX / E-MAIL ADDRESS
commonsensevoters@gmail.com

Treasurer(s)

NAME OF TREASURER
Ms. Stacy Owens

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

NAME OF ASSISTANT TREASURER, IF ANY
Mr. Henry C. Levy

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

OPTIONAL: FAX / E-MAIL ADDRESS

4. Verification

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 08/01/2011 (Date) By Stacy Owens (Signature of Treasurer or Assistant Treasurer)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

0378

Recipient Committee Campaign Statement Cover Page — Part 2

Type or print in ink.

COVER PAGE - PART 2

CALIFORNIA FORM **460**

Page 2 of 4

5. Officeholder or Candidate Controlled Committee

NAME OF OFFICEHOLDER OR CANDIDATE

OFFICE SOUGHT OR HELD (INCLUDE LOCATION AND DISTRICT NUMBER IF APPLICABLE)

RESIDENTIAL/BUSINESS ADDRESS (NO. AND STREET) CITY STATE ZIP

Related Committees Not Included in this Statement: ***List any committees not included in this statement that are controlled by you or are primarily formed to receive contributions or make expenditures on behalf of your candidacy.***

COMMITTEE NAME	I.D. NUMBER
NAME OF TREASURER	CONTROLLED COMMITTEE? ☐ YES ☐ NO

COMMITTEE ADDRESS STREET ADDRESS (NO P.O. BOX)

CITY STATE ZIP CODE AREA CODE/PHONE

COMMITTEE NAME	I.D. NUMBER
NAME OF TREASURER	CONTROLLED COMMITTEE? ☐ YES ☐ NO

COMMITTEE ADDRESS STREET ADDRESS (NO P.O. BOX)

CITY STATE ZIP CODE AREA CODE/PHONE

6. Primarily Formed Ballot Measure Committee

NAME OF BALLOT MEASURE

BALLOT NO. OR LETTER	JURISDICTION	☐ SUPPORT ☐ OPPOSE

Identify the controlling officeholder, candidate, or state measure proponent, if any.

NAME OF OFFICEHOLDER, CANDIDATE, OR PROPONENT

OFFICE SOUGHT OR HELD	DISTRICT NO. IF ANY

7. Primarily Formed Candidate/Officeholder Committee *List names of officeholder(s) or candidate(s) for which this committee is primarily formed.*

NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE

Attach continuation sheets if necessary

03742

Campaign Disclosure Statement Summary Page

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

SUMMARY PAGE

Statement covers period
from 01/01/2011
through 06/30/2011

CALIFORNIA FORM 460

Page 3 of 4

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

Contributions Received

		Column A TOTAL THIS PERIOD (FROM ATTACHED SCHEDULES)	Column B CALENDAR YEAR TOTAL TO DATE
1. Monetary Contributions	*Schedule A, Line 3*	$ $0.00	$ $0.00
2. Loans Received	*Schedule B, Line 3*	$0.00	$0.00
3. SUBTOTAL CASH CONTRIBUTIONS	*Add Lines 1 + 2*	$ $0.00	$ $0.00
4. Nonmonetary Contributions	*Schedule C, Line 3*	$0.00	$0.00
5. TOTAL CONTRIBUTIONS RECEIVED	*Add Lines 3 + 4*	$ $0.00	$ $0.00

Expenditures Made

6. Payments Made	*Schedule E, Line 4*	$ $2,078.01	$ $2,078.01
7. Loans Made	*Schedule H, Line 3*	$0.00	$0.00
8. SUBTOTAL CASH PAYMENTS	*Add Lines 6 + 7*	$ $2,078.01	$ $2,078.01
9. Accrued Expenses (Unpaid Bills)	*Schedule F, Line 3*	$0.00	$0.00
10. Nonmonetary Adjustment	*Schedule C, Line 3*	$0.00	$0.00
11. TOTAL EXPENDITURES MADE	*Add Lines 8 + 9 + 10*	$ $2,078.01	$ $2,078.01

Current Cash Statement

12. Beginning Cash Balance	*Previous Summary Page, Line 16*	$ $7,725.85
13. Cash Receipts	*Column A, Line 3 above*	$0.00
14. Miscellaneous Increases to Cash	*Schedule I, Line 4*	$0.00
15. Cash Payments	*Column A, Line 8 above*	$2,078.01
16. **ENDING CASH BALANCE**	*Add Lines 12 + 13 + 14, then subtract Line 15*	$ $5,647.84

If this is a termination statement, Line 16 must be zero.

To calculate Column B, add amounts in Column A to the corresponding amounts from Column B of your last report. Some amounts in Column A may be negative figures that should be subtracted from previous period amounts. If this is the first report being filed for this calendar year, only carry over the amounts from Lines 2, 7, and 9 (if any).

17. LOAN GUARANTEES RECEIVED *Schedule B, Part 2* $ $0.00

Cash Equivalents and Outstanding Debts

18. Cash Equivalents	*See instructions on reverse*	$ $0.00
19. Outstanding Debts	*Add Line 2 + Line 9 in Column B above*	$ $0.00

Calendar Year Summary for Candidates Running in Both the State Primary and General Elections

	1/1 through 6/30	7/1 to Date
20. Contributions Received	$	$
21. Expenditures Made	$	$

Expenditure Limit Summary for State Candidates

22. Cumulative Expenditures Made*
(If Subject to Voluntary Expenditure Limit)

Date of Election (mm/dd/yy)	Total to Date
/ /	$
/ /	$

*Amounts in this section may be different from amounts reported in Column B.

03758

SCHEDULE E

Schedule E
Payments Made

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

Statement covers period
from 01/01/2011
through 06/30/2011

CALIFORNIA FORM 460

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Henry C Levy & Co. Oakland CA 94618	PRO			$1,159.16
Henry C Levy & Co. Oakland CA 94618	PRO			$828.85

* **Payments that are contributions or independent expenditures must also be summarized on Schedule D.**

SUBTOTAL $ $1,988.01

Schedule E Summary

1. Itemized payments made this period. (Include all Schedule E subtotals.) ..... $ $1,988.01
2. Unitemized payments made this period of under $100 ..... $ $90.00
3. Total interest paid this period on loans. (Enter amount from Schedule B, Part 1, Column (e).) ..... $ $0.00
4. Total payments made this period. (Add Lines 1, 2, and 3. Enter here and on the Summary Page, Column A, Line 6.) ..... **TOTAL $** $2,078.01

03764

Recipient Committee Campaign Statement Cover Page

(Government Code Sections 84200-84216.5)

SEE INSTRUCTIONS ON REVERSE

Type or print in ink.

E-filed on: 12/06/2011 12:27:07

Statement covers period	Date of election if applicable: (Month, Day, Year)	Date Stamp
from 07/01/2011 through 12/06/2011		

CALIFORNIA FORM **460**

Page 1 of 5

For Official Use Only

1. Type of Recipient Committee: All Committees – Complete Parts 1, 2, 3, and 4.

- ☐ Officeholder, Candidate Controlled Committee
  - ○ State Candidate Election Committee
  - ○ Recall
  - *(Also Complete Part 5)*
- ☐ General Purpose Committee
  - ○ Sponsored
  - ○ Small Contributor Committee
  - ○ Political Party/Central Committee
- ☒ Primarily Formed Ballot Measure Committee
  - ○ Controlled
  - ○ Sponsored
  - *(Also Complete Part 6)*
- ☐ Primarily Formed Candidate/ Officeholder Committee
  - *(Also Complete Part 7)*

2. Type of Statement:

- ☐ Preelection Statement
- ☐ Semi-annual Statement
- ☒ Termination Statement (Also file a Form 410 Termination)
- ☐ Amendment (Explain below)
- ☐ Quarterly Statement
- ☐ Special Odd-Year Report
- ☐ Supplemental Preelection Statement - Attach Form 495

3. Committee Information

I.D. NUMBER: 1332919

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

STREET ADDRESS (NO P.O. BOX)

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Woodside	CA	94062	(650) 868-1614

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX

CITY	STATE	ZIP CODE	AREA CODE/PHONE

OPTIONAL: FAX / E-MAIL ADDRESS
commonsensevoters@gmail.com

Treasurer(s)

NAME OF TREASURER
Ms. Stacy Owens

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

NAME OF ASSISTANT TREASURER, IF ANY
Mr. Henry C. Levy

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94618	(510) 652-1000

OPTIONAL: FAX / E-MAIL ADDRESS

4. Verification

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 12/06/2011 (Date) By Stacy Owens (Signature of Treasurer or Assistant Treasurer)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

Executed on _____ (Date) By _____ (Signature of Controlling Officeholder, Candidate, State Measure Proponent)

03775

Recipient Committee Campaign Statement Cover Page — Part 2

Type or print in ink.

COVER PAGE - PART 2

CALIFORNIA FORM **460**

Page 2 of 5

5. Officeholder or Candidate Controlled Committee

NAME OF OFFICEHOLDER OR CANDIDATE

OFFICE SOUGHT OR HELD (INCLUDE LOCATION AND DISTRICT NUMBER IF APPLICABLE)

RESIDENTIAL/BUSINESS ADDRESS (NO. AND STREET) CITY STATE ZIP

Related Committees Not Included in this Statement: ***List any committees not included in this statement that are controlled by you or are primarily formed to receive contributions or make expenditures on behalf of your candidacy.***

COMMITTEE NAME	I.D. NUMBER
NAME OF TREASURER	CONTROLLED COMMITTEE? ☐ YES ☐ NO
COMMITTEE ADDRESS STREET ADDRESS (NO P.O. BOX)	
CITY STATE ZIP CODE AREA CODE/PHONE	

COMMITTEE NAME	I.D. NUMBER
NAME OF TREASURER	CONTROLLED COMMITTEE? ☐ YES ☐ NO
COMMITTEE ADDRESS STREET ADDRESS (NO P.O. BOX)	
CITY STATE ZIP CODE AREA CODE/PHONE	

6. Primarily Formed Ballot Measure Committee

NAME OF BALLOT MEASURE

BALLOT NO. OR LETTER	JURISDICTION	☐ SUPPORT ☐ OPPOSE

Identify the controlling officeholder, candidate, or state measure proponent, if any.

NAME OF OFFICEHOLDER, CANDIDATE, OR PROPONENT

OFFICE SOUGHT OR HELD	DISTRICT NO. IF ANY

7. Primarily Formed Candidate/Officeholder Committee

List names of officeholder(s) or candidate(s) for which this committee is primarily formed.

NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	☐ SUPPORT ☐ OPPOSE

Attach continuation sheets if necessary

03786

Campaign Disclosure Statement Summary Page

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

SUMMARY PAGE

Statement covers period
from 07/01/2011
through 12/06/2011

CALIFORNIA FORM 460

Page 3 of 5

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

Contributions Received

		Column A TOTAL THIS PERIOD (FROM ATTACHED SCHEDULES)	Column B CALENDAR YEAR TOTAL TO DATE
1. Monetary Contributions	*Schedule A, Line 3*	$0.00	$0.00
2. Loans Received	*Schedule B, Line 3*	$0.00	$0.00
3. SUBTOTAL CASH CONTRIBUTIONS	*Add Lines 1 + 2*	$0.00	$0.00
4. Nonmonetary Contributions	*Schedule C, Line 3*	$0.00	$0.00
5. TOTAL CONTRIBUTIONS RECEIVED	*Add Lines 3 + 4*	$0.00	$0.00

Expenditures Made

6. Payments Made	*Schedule E, Line 4*	$5,647.84	$7,725.85
7. Loans Made	*Schedule H, Line 3*	$0.00	$0.00
8. SUBTOTAL CASH PAYMENTS	*Add Lines 6 + 7*	$5,647.84	$7,725.85
9. Accrued Expenses (Unpaid Bills)	*Schedule F, Line 3*	$0.00	$0.00
10. Nonmonetary Adjustment	*Schedule C, Line 3*	$0.00	$0.00
11. TOTAL EXPENDITURES MADE	*Add Lines 8 + 9 + 10*	$5,647.84	$7,725.85

Current Cash Statement

12. Beginning Cash Balance	*Previous Summary Page, Line 16*	$5,647.84
13. Cash Receipts	*Column A, Line 3 above*	$0.00
14. Miscellaneous Increases to Cash	*Schedule I, Line 4*	$0.00
15. Cash Payments	*Column A, Line 8 above*	$5,647.84
16. **ENDING CASH BALANCE**	*Add Lines 12 + 13 + 14, then subtract Line 15*	$0.00

If this is a termination statement, Line 16 must be zero.

17. LOAN GUARANTEES RECEIVED — *Schedule B, Part 2* — $0.00

Cash Equivalents and Outstanding Debts

18. Cash Equivalents	*See instructions on reverse*	$0.00
19. Outstanding Debts	*Add Line 2 + Line 9 in Column B above*	$0.00

To calculate Column B, add amounts in Column A to the corresponding amounts from Column B of your last report. Some amounts in Column A may be negative figures that should be subtracted from previous period amounts. If this is the first report being filed for this calendar year, only carry over the amounts from Lines 2, 7, and 9 (if any).

Calendar Year Summary for Candidates Running in Both the State Primary and General Elections

	1/1 through 6/30	7/1 to Date
20. Contributions Received	$	$
21. Expenditures Made	$	$

Expenditure Limit Summary for State Candidates

22. Cumulative Expenditures Made*
(If Subject to Voluntary Expenditure Limit)

Date of Election (mm/dd/yy)	Total to Date
/ /	$
/ /	$

*Amounts in this section may be different from amounts reported in Column B.

0379

SCHEDULE E

Schedule E
Payments Made

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

Statement covers period
from 07/01/2011
through 12/06/2011

CALIFORNIA FORM 460

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR DESCRIPTION OF PAYMENT	AMOUNT PAID
City and County of San Francisco San Francisco CA 94120		Payment regarding stipulation agreement	$500.00
Jack Hefland, Esq. Woodside CA 94062	PRO		$2,180.50
Henry C Levy & Co. Oakland CA 94618	PRO		$673.85

* **Payments that are contributions or independent expenditures must also be summarized on Schedule D.**

SUBTOTAL $ $3,354.35

Schedule E Summary

1. Itemized payments made this period. (Include all Schedule E subtotals.) ..... $ $5,647.84
2. Unitemized payments made this period of under $100 ..... $ $0.00
3. Total interest paid this period on loans. (Enter amount from Schedule B, Part 1, Column (e).) ..... $ $0.00
4. Total payments made this period. (Add Lines 1, 2, and 3. Enter here and on the Summary Page, Column A, Line 6.) ..... **TOTAL $** $5,647.84

03808

Schedule E (Continuation Sheet) Payments Made

SEE INSTRUCTIONS ON REVERSE

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

Statement covers period
from 07/01/2011
through 12/06/2011

CALIFORNIA FORM **460**

NAME OF FILER
Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor

I.D. NUMBER
1332919

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Henry C Levy & Co. Oakland CA 94618	PRO			$2,293.49

0384

* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

SUBTOTAL $ $2,293.49

EXHIBIT C

SHARE

Minutes -

March 23, 2015

Minutes of the Regular Meeting of
The San Francisco Ethics Commission
March 23, 2015
Room 400, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

I. Call to order and roll call.

Chairperson Hur called the meeting to order at 5:31 PM.

COMMISSION MEMBERS PRESENT: Ben Hur, Chairperson; Paul Renne, Vice-Chairperson; Brett Andrews, Commissioner; Beverly Hayon, Commissioner; Peter Keane; Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Jesse Mainardi, Deputy Executive Director; Shaista Shaikh, Assistant Deputy Director; Catherine Argumedo, Investigator/Legal Analyst; Garrett Chatfield, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Andrew Shen, Deputy City Attorney (DCA).

OTHERS PRESENT: Bob Planthold; Ray Hartz; Paula Datesh; James Sutton; Larry Bush; Charles Bell; Bob Dockendorff; and other unidentified members of the public.

MATERIALS DISTRIBUTED:
- Letter from Executive Director to Supervisor Mark Farrell, dated December 9, 2014, regarding Forfeitures due from 2010 election;
- Letter from The Sutton Law Firm to Chairperson Hur, dated March 15, 2015, regarding Ethics Commission's' Official "Forfeiture Policy;"
- Letter from The Sutton Law Firm to Executive Director, dated March 15, 2015, regarding Requested "Forfeiture" from Mark Farrell for District 2 Supervisor 2010 Committee;
- Email, dated March 15, 2014, from Michael Garcia;
- Staff Memorandum re: Audit Selection of Year 2014 Campaign Committees and Lobbyists, dated March 18, 2015:
- Staff Memorandum re: Proposed Project Calendar for 2015, dated March 18, 2015;
- Draft Minutes of the Ethics Commission's Regular Meeting of February 23, 2015;
- Executive Director's Report.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Bob Planthold stated that there is a need for timeliness regarding the resolutions of complaints, and in particular complaints referred by the Sunshine Ordinance Task Force. He stated that he filed a complaint in 2013 and never received a response. He stated that when he was a commissioner, there was an issue about complaints becoming stale. He stated that the Commission rejects findings of the Sunshine Ordinance Task Force by using standards that would only apply in courts and that the Sunshine Ordinance does not require that standard.

Ray Hartz put up an excerpt from the court case Citizen's United and read from it. He stated that he agreed with the previous speaker regarding the timeliness of complaints. He stated that the Sunshine Ordinance Task Force issued 19 Orders of Determination in his favor and the Ethics Commission rejected the findings in each one. He stated that the Ethics Commission held a hearing on one of the matters without ever notifying him of the hearing. He stated that there is a pattern in City government to not follow the Sunshine Ordinance laws.

Paula Datesh stated that she is experiencing problems with the Arts Commission. She stated that the Arts Commission gives her irrelevant documents in response to public records requests. She stated that in 2013 the Arts Commission held a hearing to revoke a permit issued to her by the Arts Commission without notifying her of the hearing. She stated that the Arts Commission filed a stalking case against her, which she won on appeal. She stated that she is afraid to go to the Arts Commission's office.

III. Discussion and possible action regarding forfeiture letter sent to Supervisor Mark Farrell on December 9, 2014.

Deputy Executive Director Mainardi recused himself from this item and sat with the public.

Executive Director St. Croix introduced the item and stated that Supervisor Farrell provided a response to the forfeiture request.

James Sutton, representing Supervisor Farrell, presented his case. He stated that forfeiture in this matter is not warranted and requested a complete waiver. He stated that the California Fair Political Practices Commission (FPPC) completed an investigation and exonerated Supervisor Farrell. He stated that there is no factual or legal basis for the forfeiture request and that the applicable statute of limitation bars the Ethics Commission from seeking the forfeiture. He stated that forfeiture is appropriate in limited circumstances, none of which apply in this matter.

Responding to Commissioner Renne's question regarding what other remedies are available apart from forfeiture, Mr. Sutton stated that a settlement can be entered into, or penalties may be assessed after a hearing, but that forfeitures are not applicable in matters that require investigation.

Commissioner Keane stated that Supervisor Farrell hired Chris Lee, who was found to have coordinated campaign activities, and Supervisor Farrell is responsible for Mr. Lee's actions. Commissioner Keane also stated that the FPPC approved a stipulation to which Mr. Lee along with Common Sense Voters were parties. He stated that the stipulation is an admission by Mr. Lee. He stated that campaign contributions may be closely regulated, and that is the last check the public has to insure the electoral process is not corrupt. He stated that this the Ethics Commission waives the forfeiture amount, it is in effect stating that this type of conduct is permissible.

Commissioner Andrews stated that, given the amount of expenditures made by Common Sense Voters, it is implausible to assert that a reasonable person was unaware of those expenditures being made.

Mr. Sutton stated that Supervisor Farrell's committee was unaware that the expenditures were being made by Common Sense Voters until the mail pieces were distributed.

Chairperson Hur stated that regarding the exceeding of contribution limits, strict liability applies and that if a committee was determined to be controlled by the candidate, then no investigation would be required because the excess amount, on its face, is subject to forfeiture.

Public Comment:
Larry Bush stated that the Ethics Commission should waive the forfeiture amount because there is no clear definition of "candidate controlled committee." He stated that it is merely through self-declaration that a committee is candidate controlled. He stated that the Ethics Commission provides no "check-list" to determine if a committee is candidate controlled.

Ray Hartz stated that out of the 19 Orders of Determination he had from the Sunshine Ordinance Task Force, one involved Supervisor Farrell's failure to respond to a records request. He stated that it is ludicrous for Supervisor Farrell to say he was unaware of the actions of his staff. He stated that if you employ someone, you are responsible for that person's actions. He stated Supervisor Farrell never personally attends any Sunshine Ordinance Task Force hearing and always sends a representative.

Charles Bell stated that the Ethics Commission should reject the waiver request. He stated that the FPPC stipulation concluded that Common Sense Voters was a candidate controlled committee through Chris Lee's actions. He stated that the request for forfeitures was issued within the applicable statute of limitations and that Supervisor Farrell is personally responsible.

Bob Planthold stated that too many attorneys are looking at this issue from the attorney viewpoint. He stated that candidates rely on professionals who know about the election process and that Supervisor Farrell may have misplaced his trust in Mr. Lee. He stated that the Ethics Commission should review how it conducts candidate trainings and issue a "bright line" of "dos and don'ts" regarding candidate obligations.

Chairperson Hur stated that the Ethics Commission's policy regarding waiver requests is that the Executive Director makes the request to the Commission on behalf of the entity making the waiver request. DCA Shen confirmed that policy with Chairperson Hur, and Executive Director St. Croix confirmed that he is not making a waiver request in this matter.

IV. Discussion and possible action on the selection of random audits of lobbyists and committees that were active in 2014. Staff estimates that it will have time and resources to conduct four randomly selected lobbying audits and ten randomly selected audits of non-publicly financed candidate, ballot measure and general purpose committees.

Assistant Deputy Director Shaikh introduced the item and explained the process for randomly selecting committees and lobbyists for audit.

Responding to Chairperson Hur, Assistant Deputy Director Shaikh stated that the Ethics Commission does not currently track the hours spent on each audit, but estimates that each individual audit will take about three weeks of staff time. She clarified that Commission audit staff do not work solely on one audit at a time and balance all audits with their various other required duties.

Chairperson Hur stated that he would like the hours spent on each audit to be tracked.

Public Comment:
Bob Planthold stated that it is a good idea to track the number of hours spent on each audit. He stated that the way the selection process is set up, some committees with a lot of activity may not be audited. He stated that the Commission should request more staff for audits.

Ray Hartz stated that he is no longer receiving agenda packets even though he informed staff he wanted to be on the interested persons list. He stated that the group Friends of the Library should be included on the audit selection list. He stated that the Friends of the Library engage in lobbying and they raised 70 million dollars, with no information on how the money is spent. He stated that if the Chamber of Commerce is included in the selection, the Friends of the Library should also be included. He stated that the FPPC determined that Luis Herrera accepted thousands of dollars in gifts from the Friends of the Library and he never reported those gifts.

Larry Bush stated that the selection list is not complete. He stated that he gathered that the list only includes the entities that file as a committee. He stated that that Friends of the Library do not file as a committee and neither does the Parks Alliance.

Assistant Deputy Director Shaikh explained that the selection list excludes any entity that raised less than $10,000 following prior guidance from the Commission.

Bob Planthold read the campaign committee names from activity level one while Deputy Executive Mainardi placed each individual chit into the selection box for the random draw.

Bob Dockendorff selected six activity level one committees from the selection box to be audited: Mayor Ed Lee for San Francisco Committee; Committee for Better Wages, Yes on J; No on B 2014, sponsored by the San Francisco Alliance for Jobs and Sustainable Growth; No Wall on the Waterfront, Yes on Prop B, top contributors include Richard and Barbara Stewart; Jane Kim for Supervisor, 2014; and Yes on E – Choose Health SF.

Bob Dockendorff read the campaign committee names from activity level two while Deputy Executive Mainardi placed each individual chit into the selection box for the random draw.

Bob Planthold selected two activity level two committees from the selection box to be audited: Hydra Mendoza for School Board, 2014; and Carballo for District 2 Supervisor 2014.

Bob Planthold read the campaign committee names from activity level three while Deputy Executive Mainardi placed each individual chit into the selection box for the random draw.

Bob Dockendorff selected two activity level three committees from the selection box to be audited: District 11 Democratic Club; and San Francisco Young Democrats.

Assistant Deputy Director Shaikh explained the audit selection process for lobbyist activity.

Bob Dockendorff read the lobbyist names from activity level one while Deputy Executive Mainardi placed each individual chit into the selection box for the random draw.

Bob Planthold selected two activity level one lobbyists from the selection box to be audited: Lapointe and Associates; and the San Francisco Chamber of Commerce.

Bob Planthold read the lobbyist names from activity level two while Deputy Executive Mainardi placed each individual chit into the selection box for the random draw.

Bob Dockendorff selected one activity level two lobbyist from the selection box to be audited: Hanson Bridgett LLP.

Bob Dockendorff read the lobbyist names from activity level three while Deputy Executive Mainardi placed each individual chit into the selection box for the random draw.

Bob Planthold selected one activity level three lobbyist from the selection box to be audited: Airbnb.

V. Discussion and possible action regarding a proposed project calendar for various staff projects, including potential regulatory changes and amendments to the Campaign and Governmental Conduct Code.

Deputy Executive Director Mainardi introduced the item.

Responding to Commissioner Renne, Deputy Executive Director Mainardi stated that the initial work will involve legal research and that he will work with the City Attorney's Office. He stated that he wanted to make sure all pertinent issues were thoroughly researched and discussed with the opportunity for public input.

Chairperson Hur stated that it would be helpful if individual Commissioners participated with staff regarding the development of the items presented in the project calendar. He stated that he would assist with the development of revised enforcement regulations.

Public Comment:
Larry Bush stated that he was speaking on behalf of the Friends of Ethics, which had also sent a letter to the Commission outlining its concerns with the projects proposed in the calendar. He stated that the calendar timeline should include contemporaneous political activities. He stated that the Civil Grand Jury report discussed requiring the disclosure of behested payments, and not just gifts of travel. He stated that it would be instructive to research the requirements in place in other jurisdictions that have Ethics Commissions.

Ray Hartz stated that it seems to him that the Ethics Commission is only concerned with campaign finance activity and ignores its duty to enforce the Sunshine Ordinance. He stated that the Ethics Commission does not make that a priority because that would require enforcing the Sunshine Ordinance against the Commission's colleagues. He stated that he won 19 Orders of Determination against public officials and the Ethics Commission does not care. He stated that the Executive Director finds technical reasons to dismiss each complaint and even holds hearings on matters when complainants are out of the state, which is what happened to him. He stated that First Amendment rights are not respected in San Francisco.

Chairperson Hur stated that the project calendar should be kept up to date as to the progress on each item.

Responding to Commissioner Renne, Deputy Executive Director Mainardi stated that state law prohibits local jurisdictions from imposing contribution limits on central county committee candidates or prohibiting legal defense funds.

DCA Shen stated that state law provides a definition for controlled committees which is already incorporated into local law

VI. Election of Officers. Discussion and possible action regarding the election of a Chair and Vice-chair to serve for the coming year.

Executive Director St. Croix introduced the item, and explained that a Commissioner may nominate either themselves or another Commissioner and that no second is needed.

Chairperson Hur thanked the Commissioners for allowing him to serve as Chairperson over the last year.

Commissioner Keane nominated Commissioner Renne for Chairperson.

Public Comment:
Ray Hartz stated that the Commission needs a leader who will actually lead. He stated that campaign finance is just "rearranging deck chairs on the Titanic" and that he would like to see someone as Chairperson who will address the thing the Commission neglects, such as enforcing the Sunshine Ordinance. He stated that citizens think they are allowed to make public comment, but are routinely told that they cannot speak, or are denied public records. He stated that for eight years he has attended Ethics Commission meetings and has only heard "lip service" about the Sunshine Ordinance, and only held one hearing on a Sunshine case. He stated that Luis Herrera lied about accepted thousands of dollars in gifts. He stated that he wants to see a Chairperson that will do more than just deal with campaign finance.

Larry Bush stated that some of the Commissioners have only been seated on the Commission in the last two years. He stated that Commissioner Renne was the only Commissioner to have attended an interested persons meeting. He stated that Commissioner Renne raised the issue of expenditure lobbyists and that impressed him.

Motion 15-03-23-01: (Hayon/Keane) Moved, seconded, and passed (5-0) to elect Commissioner Renne as Chairperson for the upcoming year.

Commissioner Keane nominated Commissioner Andrews for Vice-Chairperson.

Public Comment:
Ray Hartz stated that he was in favor of Commissioner Andrews becoming Vice-Chairperson because Commissioner Andrews was the only Commissioner to question Luis Herrera about the public's use of video equipment during a Sunshine Ordinance hearing regarding a complaint by Mr. Hartz. He stated that Commissioner Andrews is willing to ask questions. He stated that Commissioner Keane would also be a good nomination because he is an advocate for free expression. He stated that Commissioner Andrews will serve effectively. He stated that the Sunshine Ordinance "posse" has given up on the Ethics Commission and that the Ethics Commission is not required to respond to criticism during public comment, but that no Commissioner ever chooses to respond to all of his negative criticism.

Motion 15-03-23-02: (Renne/Hayon) Moved, seconded, and passed (5-0) to elect Commissioner Andrews as Vice-Chairperson for the upcoming year.

VII. Discussion and possible action on the minutes of the Commission's meeting of February 23, 2015.

0385

Executive Director St. Croix stated that there was a typographical error on page six where the word "lined" should be changed to "linked."

Motion 15-03-23-03: (Andrews/Renne) Moved, seconded, and passed (5-0) to approve the minutes for the Commission's meeting of February 23, 2015, as amended.

VIII. Discussion of Executive Director's Report.

Executive Director St. Croix stated that the Commission has started to send documents to a translator to comply with the language access ordinance. Responding to Commissioner Keane, Executive Director St. Croix stated that he estimates that 50% of all records that require a translation will be completed by the end of 2015 and 100% will be completed by March 2016.

Responding to Commissioner Andrews, Executive Director St. Croix stated that the Bureau of Delinquent Revenue matter regarding Chris Jackson is a separate matter from the stipulation approved by the Commission in February 2015 regarding Chris Jackson.

Responding to Commissioner Renne, Deputy Executive Director Mainardi, stated that even though there are currently 126 registered lobbyists, the audit selection for lobbyists included a smaller number because staff determined to conduct the audits for an entire firm.

Public Comment:
Ray Hartz stated that the Executive Director's Report never includes any information regarding Sunshine Ordinance complaints except for how many are pending. He stated that the Ethics Commission doesn't enforce the Orders of Determination issued by the Sunshine Ordinance Task Force, and by doing so it is protecting City officers. He stated that he had to go to the FPPC to enforce violations of law against Luis Herrera. He stated that he will continue to attend Ethics Commission meetings and make public comment until the Ethics Commission starts enforcing the Sunshine Ordinance.

IX. Items for future meetings.

Public Comment:
Ray Hartz stated that Ethics Commission should defend the public's right to speech and to stop other boards and commissions from disparaging public speakers. He stated that at the most recent Library Commission meeting, the public was told no comments could be made about items not appearing on the agenda. He stated the Police Commission has done the same thing. He stated that it is amazing that in San Francisco, public policy bodies try to stop the public from speaking. He stated that the Ethics Commission did nothing when Luis Herrera accepted thousands of dollars in gifts from the Friends of the Library. He stated that as soon as a Commissioner takes the oath of office, that Commissioner works for the people of San Francisco. He stated that Supervisor Farrell withheld public records, and he voted to approve money from the Friends of the Library without ever reviewing a single document. He stated that the members of the Ethics Commission just sit there with a blank look in their eyes.

X. Adjournment.

Motion 15-03-23-04: Moved, seconded and passed (5-0) that the Ethics Commission adjourn.

Public Comment:
None.

The Ethics Commission adjourned the meeting at 7:47 PM.

EXHIBIT D

SHARE

Minutes -

June 5, 2015

Minutes of the Special Meeting of
The San Francisco Ethics Commission
June 5, 2015
Room 400, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

I. Call to order and roll call.

Chairperson Renne called the meeting to order at 1:04 PM.

COMMISSION MEMBERS PRESENT: Paul Renne, Chairperson; Brett Andrews, Vice-Chairperson; Beverly Hayon, Commissioner; Ben Hur, Commissioner; Peter Keane; Commissioner. Chairperson Renne stated that Executive Director St. Croix was absent from the meeting.

STAFF PRESENT: Jesse Mainardi, Deputy Executive Director; Catherine Argumedo, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Andrew Shen, Deputy City Attorney (DCA).

OTHERS PRESENT: Robert Stern, former Director of the Center for Governmental Studies; Corey Cook, Ph.D., Associate Professor, Department of Politics, University of San Francisco; Charles Marsteller; Larry Bush; Anita Mayo, Pillsbury Winthrop Shaw Pittman; David Pilpel; Bob Planthold; Robert van Ravenswaay; Ken Miller; Vince Courtney; Jim Maxwell; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- Staff Memorandum re: Further Proposed Changes to C.F.R.O. Amendments, dated June 3, 2015, including proposed amendment;
- Chart provided by Corey Cook, PhD.;
- Spreadsheet provided by Larry Bush;
- Recruitment Proposal from Alliance Resource Consulting;
- Forfeiture letter to Supervisor Mark Farrell, dated December 9, 2014;
- Draft letter to Supervisor Mark Farrell;
- Letters from Charles Bell;
- E-mail from Michael Garcia, dated June 4, 2015;
- Letter from James Sutton re: Revocation of Forfeiture Letter Sent to Supervisor Mark Farrell, dated June 4, 2015.

II. Presentation regarding the potential need for, and implications of, imposing limitations on candidate-controlled ballot measure committees and/or legal defense funds. Presenters include: Robert M. Stern, Former Director of the Center for Governmental Studies, Principal co-author of the Political Reform Act; and Corey Cook, Ph.D., Associate Profession, Department of Politics, University of San Francisco; Director, Leo T. McCarthy Center for Public Service and the Common Good.

Deputy Director Jesse Mainardi introduced the item and introduced both speakers, Bob Stern and Corey Cook. He stated the following:

"Good afternoon, Commissioners. Jesse Mainardi, Deputy Director. You will recall that earlier this year, the Commission resolved to investigate whether to propose a ballot measure imposing limitations on committees controlled by City candidates and officeholders which are not directly related to their campaigns for office.

These types of committees include:

1. Candidate controlled ballot measure committees, which raise and spend funds in support of, or in opposition to, particular ballot measures;
2. Candidate controlled general purpose ballot measure committees, which raise and spend funds in support of, or in opposition to, various, generally unspecified measures, usually over a number election cycles; and
3. Legal defense funds, which allow a candidate to raise funds to pay for legal expenses associated with litigation resulting from his or her candidacy.

By way of background, there are generally no limits on how much these committees may raise from any particular donor, although certain City contractors may be prohibited from contributing. Also, unlike with City candidate campaigns, corporations may generally make contributions to these candidate-controlled committees.

This item today is a part of the Commission's due diligence and further exploration of this issue. We are very lucky to have two experts today who will tell us more about these types of committees, how they are used by candidates, and whether, as a policy matter, certain restrictions may be advisable.

Our first speaker today is Bob Stern. Bob has been called the "godfather of modern political reform in California." He was a principal co-author of Proposition 9, otherwise known as the Political Reform Act of 1974, which continues to form the basis of California's campaign disclosure, ethics and lobbying laws. He was also a principal drafter of the City of Los Angeles' Ethics and Public Campaign Financing laws.

Bob served as the first general counsel of the Fair Political Practices Commission and later was the President of the Center for Governmental Studies, based in Los Angeles.

Bob has been honored for his public service by a number of good government groups including the League of Women Voters of Los Angeles, Common Cause California, Pomona College, and the Council on Governmental Ethics Laws. Bob is a graduate of Pomona College and Stanford Law School.

Our next speaker will be Corey Cook. For the last six years, Corey has been an Associate Professor in the Department of Politics at the University of San Francisco, where he has also served as the Director of the Leo T. McCarthy Center for Public Service and the Common Good.

Corey teaches courses in American Politics specializing in political institutions, urban and state politics, and the dynamics of political representation. His early work concerned campaign finance reform and his current research focuses on election results and political geography in California."

Robert M. Stern
Mr. Stern stated his experience and research at the Center for Governmental Studies ("CGS") of the field, including working for the Fair Political Practices Commission for nine years. He stated that he had studied campaign finance, redistricting, and the initiative process and written a series of reports and recommendations to improve campaign finance laws. He stated that one report in 1990 studied 18 cities and counties and recommended major changes in the law. He stated he was now semi-retired and working as a consultant and speaker.

Mr. Stern stated that CGS came out with a report about 12 years ago that urged the FPPC to adopt a regulation requiring contribution limits on candidate-controlled ballot measure committees. He stated that the court later invalidated the adopted regulation by stating that the FPPC exceeded its authority in adopting the regulation, but did not address the constitutionality of the regulation.

Mr. Stern stated that the purpose of contribution limits was to reduce the appearance of corruption when candidates receive campaign money. He stated that there is no difference in a candidate raising money for his or her own campaign and money for his or her ballot measure committee. Mr. Stern stated that a donor does not care how a contribution is used; the donor only cares about the gratitude of the officeholder. He stated that the donor at the very least wants access to the official; at the most, the donor wants a decision by the officeholder. He estimated that 90% of campaign money comes from people who want something from government. He cited the example of labor unions negotiating contracts, developers seeking a permits or variances, businesses seeking tax breaks or contracts. He stated that all want the support, or at least the ear, of the official.

Mr. Stern stated that allowing unlimited contributions to candidate controlled ballot measure committees allows for the circumvention of contribution limits for other candidate-controlled committees. He stated that officeholders get involved with ballot measure committees for various reasons: e.g., promote an issue, enhance their standing, to raise more money from special interests. He stated that a contributor may not care about the ballot measure, but he or she cares about his or her relationship with the City official. He stated that, in some instances, the contributor may be from out of town and have no idea what the measure is about, but contributes because the official asks for it.

Mr. Stern recognized that limits on candidate controlled ballot measure committees may seem unfair because other ballot measure committees will have no limits per a Supreme Court ruling from the 1980s. He stated that it is also unfair that officials can raise money from people who merely want to influence the candidate or official, as opposed to support or oppose the measure.

Mr. Stern stated that he was less concerned with legal defense funds, as the FPPC has rules on how they can be used: you must have a pending case against you. He again stated that it is unfair that an officeholder has access to money that a member of the public does not have. He stated that special interests would be interested in supporting legal defense funds for officeholders. He stated that fundraising should be strictly limited and have the same limits as candidate committees.

Mr. Stern stated that the bottom line was that if the Commission wanted to support meaningful limits for candidates, the Commission adopt contribution limits on both candidate-controlled ballot measure committees and legal defense funds. He stated that any committee that the officeholder or candidate controls should have contribution limits. He stated that no other jurisdiction has adopted limits on candidate-controlled ballot measure committees, but he thinks they should.

The Commissioners asked Mr. Stern various questions about the proposed limits on these committees.

Chairperson Renne asked whether a candidate controlled committee has to be focused on a specific ballot measure, or whether it can be a general fund supporting many measures. Mr. Stern stated that limits should apply to either type. He confirmed that a committee is candidate controlled because the candidate can help direct how the funds are spent.

Commissioner Hur asked if Mr. Stern would be comfortable with different limits for legal defense funds, campaign committees, and ballot measure committees. Mr. Stern stated that he would prefer the same limit for all based on the prior determination of what was the right limit, but would certainly prefer different limits to no limits. Mr. Stern also stated that he did not think that limits on legal defense funds would not deter people from running for office. Mr. Stern "guessed" that candidates would no longer control ballot measure committees if limits were imposed.

In response to Commissioner Andrews' question, Mr. Stern stated that there should be contribution limits on any committee controlled by any candidate. Mr. Stern provided an example of a candidate-controlled ballot measure committee controlled by former Mayor Villaraigosa. He stated that the former Mayor had raised hundreds of thousands of dollars from the same people who would have contributed to his candidate committee. He also gave the example of Governor Schwarzenegger raising well above the limits for his ballot measure committees from special interests. He stated that, although not true in all cases, these contributors would not be giving to these ballot measure committees except for the fact that the officeholder was involved.
In response to a question from Commissioner Renne, Mr. Stern stated that, if an officeholder asked a donor to give money to a committee that s/he did not control, the candidate would not control the funds and may not get the benefit of the expenses paid by the committee which might help the candidate. Mr. Stern said there was a difference between controlled and non-controlled committees. Mr. Stern stated that it is not common that these types of committees are created and that mayors and governors have been creating them, and there will be more if there are no restrictions.

Public Comment:
Charles Marsteller stated that Mr. Stern was his political mentor. He stated that an analogy could be made between regulating these types of committee and the need to impose loan limits on candidates. He stated that, after winning an election, an officeholder would have more cachet to raise money and pay back their loans.

Larry Bush stated that he had provided the Commissioners with spreadsheets. He stated that these types of committees provide an advantage to candidates because they allow a candidate to maintain a political infrastructure. He also noted that the contributions to the Mayor's committee mostly exceeded limits. He supported Mr. Stern's suggestion to place contribution limits on these committees.

Anita Mayo, Pillsbury Winthrop Shaw Pittman, provided documents to the Commissioners. She stated that case law has held that these types of limits are unconstitutional. She stated that free speech and freedom of association would be diluted and cited the state appellate case which struck down the FPPC's regulation. She stated that this case suggested that the limit would be unconstitutional. She stated that limits on legal defense funds may impact the quality of legal representation.

Mr. Stern stated that there was a constitutional question and he could not predict what the Supreme Court would do, but stated there is a difference between controlled and non-controlled committees. He stated he thought the Court would uphold it. The Commission thanked Mr. Stern for his testimony.

Corey Cook, Ph.D.
Dr. Cook stated the following:

"Mr. Chairman and Commissioners,

Thank you for the opportunity to address the commission. It is an honor to appear before you with Bob Stern, whose work I have admired for some time.

I began studying campaign finance issues in California in 1994 working for the California Research Bureau writing reports to the state legislature on campaign finance. That research was undertaken during the "wild west" period before Proposition 34 when California had few campaign finance regulations – between the passage of Propositions 68 and 73 in 1988 (which ultimately never took effect) and before Proposition 25 (which was defeated) and 208 (which was ruled unconstitutional) and California's current regulatory regime established by Proposition 34. Additionally, I've done research on public finance systems in Maine and Arizona as a graduate student and studied political reform efforts in California and San Francisco since becoming a professor in political science at San Francisco State and the University of San Francisco. I'm going to try to offer a political science perspective.

Beginning with Buckley vs. Valeo, the court has put the prevention of "corruption and the appearance of corruption" at the center of any efforts to regulate campaign financing.

In recent years, the court has interpreted "corruption" according to a narrow focus on bribery and quid pro quos rather distortion of the public interest and the undue influence of campaign contributors. I would dispute that narrow definition of corruption but nevertheless, the regulatory regime's primary focus has been on distinguishing between direct and indirect speech and regulating contributions to candidates and elected officials rather than direct spending.

For instance, in *Citizen United*, the Supreme Court held that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.

The logic of San Francisco's contribution limits, set at $500, is to deal directly with this concern about "corruption and the appearance of corruption" stemming from contributions to candidates and officeholders. In my view, allowing, in essence, for unlimited and unregulated funds to flow through candidates and officeholders to use in ballot campaigns is a clear circumvention of these limits and a clear distortion or the purpose of campaign finance law. It is worth stating, though it is beyond the scope of this hearing, that in my view, behested payments directly solicited by officeholders also create such an appearance, but at least these have been made more transparent, which is not the case with candidate controlled ballot measure committees.

To be clear, I am not asserting that any of the candidates and officeholders in San Francisco or California who have created a candidate-controlled ballot measure committee has participated in a quid pro quo or engaged in corruption. But the appearance of corruption and the potential for corruption is present. And I would add, as importantly in my view, is the potential to increase the cynicism and disengagement of the public through these convoluted and non-transparent campaign funding mechanisms.

Candidate-controlled committees are now fairly widespread at the state level – In a 2009 report, the FPPC estimated that state and legislative candidates raised $150 million in candidate-controlled committees for ballot measures in the first 8 years since the passage of Proposition 34.

Governor Arnold Schwarzenegger had his "Citizens to Save California" which raised substantial sums, including one contribution over $1.5 million. His expenditures gained some public attention including a reported $523,000 on executive jet services. Now, FPPC regulations generally limit expenditures by state candidate-controlled ballot measure committees to purposes related to the qualification, passage, or defeat of ballot measures. Still, Schwarzenegger went to the ballot repeatedly, with some successes and some notable failures to advance his legislative agenda.

Governor Jerry Brown has taken this to new heights. He raised $17 million for his Propositions 1 and 2 in 2014 and $42 million on his Prop. 30 initiative in 2012. Again, the single largest contributor was $1.5 million.

As noted, in addition to concern about the appearance of corruption is that for voters, it is exceptionally difficult to track the various committees. For instance, one $1.5 million contribution from

Californians Working Together To Restore And Protect Public Schools, Universities And Public Safety

Went to Governor Brown's controlled committee:

Yes On Prop. 30 - To Protect Our Schools and Public Safety, A Broad Coalition Of Teachers, Business, Labor, Law Enforcement, And Governor

I have tried to sort some of this out at the local level and examined six candidate controlled committees (please see appendix below).

As the chart indicates, there is quite a bit of a range in the size and scope of the committees. Most were designed to contest a specific measure, but one is a more general committee. But in every case,

- The majority of donors gave more than the $500 limit
- The majority of donors also gave to the candidate's committee
- The donors could have made contributions directly to a ballot measure committees (and some of the contributors gave to both.
- And in most of these cases, the candidates then distributed the funds to other ballot committees.

Because contributors are able to give directly to ballot committees, it is clear that this is indirect rather than direct speech and ought to be subject to contribution limits.

And this practice raises legitimate public policy questions about the appearance of corruption and potential for quid pro quos, and ultimately the lack of transparency around these contributions.

There exists a substantial literature in political science on ballot propositions and this emerging phenomenon, really since the late 1980s of political actors – candidates and officeholders – turning to ballot measure campaigns to advance their own campaigns.

Ballot measures do influence vote choice in candidate races – have "spillover effects."

They set the agenda and prime voters.

Ballot measures have a priming effect – they raise the salience of issues that voters use in evaluating candidates. For example, gay marriage in 2004, Illegal immigration, affirmative action.

These issues become important in evaluating candidates – even in cases where the issues are completely unrelated to the race.

And even when candidates are not on the same ballot, candidates can advance policy while advancing one's political career by taking stands on issues and elevating their public profile. Seeing this around the country. And seeing this in San Francisco.

It is good policy to subject candidate-controlled ballot measure committees and/or legal defense funds to the City's limits for candidate contributions

Courts have expressed concerns about the free speech rights of donors. But in contributing to a candidate, they are not directly speaking and as such this could and should be regulated as indirect speech.

There is always the option of creating independent ballot committees that can accept unlimited contributions. But passing it through officeholders creates a clear appearance of corruption and has substantial potential for coordination with candidate activities, particularly in light of the lack of regulations mandating that the funds be limited to spending on qualification, passage, or defeat of ballot measures as at the state level.

And lastly, I'm not concerned that this would unfairly limit the ability of candidates to advocate for a City ballot measure. There exist plentiful opportunities for candidates and officeholders to promote measures through their official duties and to contribute their own funds and regulated campaign funds. And as we have seen in San Francisco, candidates have demonstrated a capacity to raise substantial sums to contest competitive campaigns while staying within the contribution restrictions.

The Commissioners asked Dr. Cook various questions about the proposed limits on candidate-controlled committees.

Commissioner Hur asked what else could be done if the proposed limit were unconstitutional. Dr. Cook said that disclosure would be the answer, as well as to ensure that the funds could only be used for advocacy regarding ballot measures. He stated that it is very difficult to discern where the money goes from these committees. He stated that no other jurisdiction has dealt with this issue well and was generally pleased with how San Francisco manages disclosure. He stated that most jurisdictions have not prioritized making data available in a clear manner.

In response to Commissioner Hayon's question, he also suggested that the Commission not ban candidate-controlled ballot measure committees altogether. Dr. Cook stated that he believes that contribution limits in San Francisco are sufficiently high that candidates can run well-financed, effective campaigns, but are also sufficiently low so as to avoid the appearance of corruption.

In response to Commissioner Andrews' question, Dr. Cook referenced the information on the chart he provided and stated that the majority of past donations to these types of committees would be in violation of this limit, if the limit had been in place in San Francisco.

Public Comment:
Larry Bush stated that the Commission could create a disclosure form for these types of committees, so that a donor could indicate what interest s/he has in the city and alert the public that the donor had an interest before the candidate. He also referenced the Oak project which bans an officer from making decisions affecting donors.

Mr. Stern clarified that the Oaks Project rules provide that if an officeholder votes on a project, the officeholder cannot receive a contribution or accept a job from the applicant for the next five years. He stated that this is an anti-incumbent provision, but that it has worked well in Pasadena even though it does not really deal with ballot measure committees.

Charles Marsteller thanked the Commission for allowing public comment after each speaker. He supported tying the limit to inflation, but agreed with the $500 limit.

David Pilpel stated that two approaches that have been discussed are to limit contributions or to ban contributions from certain individuals under certain circumstances. He stated that a third approach could be to prohibit an officeholder from taking certain actions following a contribution from an individual that would benefit them for a certain period of time.

III. Discussion and possible action regarding further changes to the San Francisco Campaign Finance Reform Ordinance amendments which were approved by the Commission at its meetings on January 26, 2015 and February 23, 2015.

Deputy Director Mainardi introduced the item. He stated that the Board would consider the amendments approved by the Commission on Tuesday, June 9, but that the Rules Committee meeting generated discussion on two issues. He stated that the first issue related to the 24-hour reporting requirement for electioneering communications. He stated that the Rules Committee asked the Commission to reconsider exempting the requirement for the committees to report vendor information in the 24-hour disclosure reports. Commissioner Hur asked about the amendment procedure and process before the Board. DCA Shen stated that whatever the Commission approved during this meeting would be before the Board when it meets on Tuesday. He stated that it was possible that the Board could send the whole matter back to the Commission with additional changes.

Motion 150605-01 (Hur/Hayon): Moved, seconded, and passed (3-2; Keane and Renne dissented) that the Commission approve the language previously sent to the Board, making it consistent with what the state requires.

Public Comment:
David Pilpel supported the motion. He questioned whether the Board would be able to consider the matter on Tuesday. DCA Shen stated that the draft ordinance has been available for a long time and the Board could consider it.

Bob Planthold stated that the motion should be defeated and the Commission should recommend the amendment.

Chairperson Renne stated that he did not realize that the Commission had removed this requirement and he was inclined to vote against any resolution that sends a message that information that was previously required would no longer be required in the 24-hour turnaround.

Deputy Director Mainardi stated that the second issue related to an exemption for communications sent by 501(c)(3) charity organizations. He stated that federal tax rules already preclude those organizations from influencing elections and that staff saw the rule as a trap for the unwary. Commissioner Andrews expressed support for this exemption.

Motion 150605-02 (Andrews/Hayon): Moved, seconded, and passed (5-0) that the Commission support this exemption within CFRO, thereby retaining the language contained in the proposed draft legislation.

Public Comment:
Larry Bush did not support the motion.

Robert van Ravenswaay stated that he did not understand parts of staff's memorandum.

David Pilpel supported the motion.

IV. Discussion and possible action on Executive Director recruitment process.

Deputy Director Mainardi recused himself from the next two agenda items.

Chairperson Renne stated that no other responses had been submitted. He stated that only Los Angeles County, four years ago, had used an outside recruiting firm to fill a vacant Executive Director position. He stated that he and Vice-Chairperson Andrews would soon meet with Alliance to discuss the proposal and decide whether that firm will adequately perform the job. He stated that any member of the public would be welcome to attend the meeting and provide input.

Public Comment:
David Pilpel encouraged the Commissioners to meet in City Hall, to avoid a 15-day notice requirement.

V. Discussion and possible action regarding staff's proposed revocation of a forfeiture letter sent to Supervisor Mark Farrell on December 9, 2014.

Chairperson Renne stated that the Commission must decide whether to take any action on the draft letter submitted by Executive Director St. Croix.

Commissioner Keane stated that the Commission has had an extended discussion on this matter once before and nothing has changed. He stated that the Supervisor was elected on the basis of an illegal $200,000 contribution and that forfeiture was an appropriate measure. He wondered why Supervisor Farrell never addressed the Commission directly. He stated that what he did is corrupt. Commissioner Hur stated that the process was not handled well.

Motion 150605-03 (Keane/Renne): Moved and seconded that the Commission overrule Executive Director St. Croix's request for waiver.

The Commissioners questioned both Mr. Bell and Mr. Sutton, regarding fraudulent concealment, the agency of Mr. Lee, the discovery rule, the statute of limitations, and Supervisor Farrell's knowledge of or involvement in the independent expenditure committee.

Public Comment:
Robert van Ravenswaay stated that staff was setting their own policy of when to seek forfeiture. He stated that money was used improperly and forfeiture is appropriate.

Larry Bush referenced an August 2014 e-mail from FPPC to Commission staff. He provided a copy of the e-mail to the Commissioners.

Ken Miller, resident of District 2, stated that he knew Supervisor Farrell's character and values. He stated that he is guided by the highest ethical standards.

Bob Planthold supported the withdrawal of the waiver letter.

David Pilpel wondered whether the independent expenditure committee was the entity found to have become a candidate-controlled committee and asked whether it would have to forfeit the amount requested as well.

Vince Courtney stated that he agreed with what a previous speaker stated about Supervisor Farrell. He stated that former Supervisor Alioto-Pier had been involved in the independent expenditure at the time and had more ability to fundraise from people in District 2 than Supervisor Farrell. He stated that former Supervisor Alioto-Pier had been raising money for Supervisor Farrell and against Ms. Reilly.

Jim Maxwell stated that he was a neighbor of Supervisor Farrell and had seen him grow up. He stated that he has worked with his office and he has done fabulous work for the city. He stated that Supervisor Farrell wants to make San Francisco a better place.

Charles Marsteller expressed disappointment that Supervisor Farrell was not present.

Commissioner Hur asked whether the Commission could seek advice from the City Attorney on this matter, on the legality of the statute. Chairperson Renne stated that the Commission could move into agenda item six in order to confer with the City Attorney. Commissioner Keane asked whether the Commission could seek advice in open session. DCA Shen requested that the Commission discuss the matter in closed session.

VI. Discussion and possible action regarding a complaint received or initiated by the Ethics Commission concerning San Francisco Campaign and Governmental Conduct Code section 1.114(a) (contribution limits). Closed Session.

Commissioner Keane asked whether the Commission was required to discuss the matter in closed session. DCA Shen stated that it was a requirement and that it was in the best interest of the city and the Commission to discuss the matter in closed session.

Motion 150605-04 (Hur/Andrews): Moved, seconded, and passed (3-2; Hayon and Keane dissented) that the Commission move into closed session.

Public Comment:
Bob Planthold agreed with Commissioner Keane. He asked the Commission to inform the public what issues would be discussed. Commissioner Hur stated that the topic was the statute of limitations.

Larry Bush stated that the City Attorney would say that a court will find that the statute has passed, but will represent the Commission.

Charles Marsteller stated that it would be a disaster to rescind this letter.

Chairperson Renne stated that the Commission would move into agenda item six and later return to agenda item five.

The Commission moved into closed session at 3:45 PM and took a 10-minute break. All members of the public left the hearing room. The Commission members, DCA Shen, and Ms. Argumedo remained in the hearing room during closed session. The Commission returned into open session at 4:18 PM.

Motion 150605-05 (Hur/Andrews): Moved, seconded, and passed (5-0) that the Commission not disclose its closed session deliberations re: anticipated litigation, except to state that no decision had been made in closed session.

Public Comment:
None.

The Commission then continued discussion and possible action on agenda item five.

CONTINUATION OF AGENDA ITEM V

Commissioner Keane restated the pending motion (Motion 150605-03).

Commissioner Hur stated that he did not think that the Commission was considering whether Supervisor Farrell committed fraud or wrongdoing. He stated that he did not want to impugn his integrity or character based on these allegations. He stated that there are reasonable legal and factual disputes related to the statute of limitations. Chairperson Renne added that he too was not making a finding that Supervisor Farrell did or did not violate various campaign finance laws named in the FPPC stipulation.

Motion 150605-03 (Keane/Renne): Passed (5-0) that the Commission overrule Executive Director St. Croix's request for waiver.

VII. Adjournment.

Public Comment:
None.

The Ethics Commission adjourned the meeting at 4:24 PM.

EXHIBIT E

SF Ethics Commission

(Approved April 14, 2008)

Minutes of the Special Meeting of
The San Francisco Ethics Commission
March 24, 2008
Room 400, City Hall

- **Call to order and roll call.**

Chairperson Harriman called the meeting to order at 6:05 p.m. Commissioner Studley was excused from the first portion of the meeting; she joined the meeting during consideration of Agenda Item V.

COMMISSION MEMBERS PRESENT: Susan Harriman, Chairperson; Emi Gusukuma, Vice-Chairperson; Jamienne Studley, Commissioner; Eileen Hansen, Commissioner; Charles Ward, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Paul Solis, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Andrew Shen, Deputy City Attorney.

OTHERS PRESENT: Supervisor Aaron Peskin; Kimo Crossman; Allan Grossman; Dan Boreen; Anita Mayo; Nancy Warren; and other unidentified members of the public.

MATERIALS DISTRIBUTED:
- Memorandum from Executive Director to Ethics Commission re: Ethics Commission Policy Changes, March 4, 2008
- Memorandum from Executive Director to Ethics Commission re: Ordinance and Ballot Measures, re: Contractor Contributions, March 4, 2008
- Memorandum from Executive Director to Ethics Commission re: Audit Selection of Year 2007 Committees, March 5, 2008
- Draft Minutes of the February 11, 2008 Regular Meeting of the Ethics Commission
- Executive Director's Report to the San Francisco Ethics Commission for the Meeting of March 24, 2008

- **Public comment on matters appearing or not appearing on the agenda that is within the jurisdiction of the Ethics Commission**

Kimo Crossman requested that the Commission prioritize Sunshine Ordinance complaints. He stated that his concern was that the Ethics Commission has no official procedures for handling referrals from the Sunshine Ordinance Task Force. Mr. Crossman further stated that during investigation of at least one of his complaints, he was not contacted for additional information. He stated that although Sunshine Ordinance Task Force hearings are public, Ethics Commission investigations are confidential.

Allan Grossman stated that referrals from the Sunshine Ordinance Task Force should not be considered Ethics complaints because the Task Force has fully vetted the issue before they are referred. Mr. Grossman stated that referrals are the last resort for records seekers and they should not be re-investigated by the Ethics Commission.

Dan Boreen stated that he supported protections for whistle blowers and read from the whistle blower protection ordinance. He stated that he was able to establish a violation of the whistle blower ordinance through the Sunshine Ordinance.

Commissioner Hansen asked the Executive Director whether staff had followed-up on Mr. Boreen's inquiry from the last Commission meeting. Mr. St. Croix responded that staff had followed-up on the matter.

- **Proposed legislation to amend sections 1.104 and 1.126 of the Campaign and Governmental Conduct Code to expand the definition of controlled committees to encompass elected officials who raise $10,000 or more in contributions for the committee and to prohibit elected officials and their controlled committees from soliciting or accepting contributions from certain City contractors**

Supervisor Aaron Peskin stated that the purpose of this proposed amendment was to clear ambiguities involving the definition of a "controlled committee." Supervisor Peskin stated that the language is meant to further clarify those actions by a candidate that have a significant influence on a committee. Supervisor Peskin stated that candidates often circumvent campaign finance the law by advertising their candidacy freely on ballot measure campaigns without being subject to regular candidate spending limits. He stated that he believes the legislation serves a compelling interest, would survive constitutional challenge, and that the $10,000 fund-raising figure was a proposal that could be further examined.

Commissioner Gusukuma asked whether there were specific examples of candidates using ballot measure campaigns for free publicity. Supervisor Peskin stated he would not discuss specific examples but provided a hypothetical scenario. Supervisor Peskin stated that without further consideration of how candidates may influence a committee, it would be difficult to meaningfully regulate controlled committees.

Chairperson Harriman stated that although she found the legislation to be in the public's best interest, she was concerned about the constitutionality of the legislation, particularly regarding the $10,000 fund-raising figure. She stated that a record must be developed in order to support appropriate legislative findings and protect against constitutional challenges. Supervisor Peskin responded that this is an untested area of law, but that a record could be developed by the Board of Supervisors Rules Committee through public hearings and research. Chairperson Harriman stated that the Rules Committee should develop that record before the Commission votes on the legislation.

Commissioner Hansen added that the legislation attempts to accomplish a worthy goal and that a record must be first developed. **0395**

Commissioner Ward asked what constituted "acceptance" of contributions within the proposed legislation. Deputy City Attorney Shen stated that acceptance occurs when the contribution is deposited into a bank account and not returned within a 48-hour time period.

Commissioner Gusukuma asked what entities or individuals would be liable under the proposed legislation. Deputy City Attorney Shen stated that both candidates and committees could be liable for violation of the law.

Commissioner Hansen stated that she believed the $10,000 figure had some rationale and asked how the legislation compares to Mayor Newsom's similar ballot measure. Deputy City Attorney Shen stated that, other than Supervisor Peskin's definition of "controlled committee," the two pieces of legislation are identical. Executive Director St. Croix stated that Supervisor Peskin's legislation adds clarity to existing law.

Public Comment:
Anita Mayo stated that the constitutionality of the proposed legislation is suspect and that the Governor has successfully challenged this type of law at the state level. She stated that confusion could arise because state and local definitions of "controlled committee" would differ.

- **Proposed legislation to amend section 1.104 of and add section 1.127 to the Campaign and Governmental Conduct Code to prohibit making, soliciting or accepting contributions to members of the Board of Supervisors, candidates for the Board of Supervisors, the Mayor, candidates for Mayor and their controlled committees from any person with a land use matter before a City board or commission**

Supervisor Peskin stated that the intent of the proposed legislation is to prevent influencing legislators in anticipation of any possible administrative appeals concerning land use. He stated that a factual record supporting this legislation could easily be produced.

Chairperson Harriman asked whether it would be possible for a factual record to show the discrepancy between contributions to incumbents and contributions to challengers. Supervisor Peskin responded that he believed a record could be developed. Chairperson Harriman then asked about the timeframe of the land use appeals and whether they would occur during a single term of office. Supervisor Peskin responded that almost all land use matters are concluded within one term of office.

Commissioner Hansen stated that in gathering the factual evidence to formulate a record, the process should not be rushed. Chairperson Harriman stated that there is no need to bring all of Supervisor Peskin's proposed legislation back to the Commission at the same time.

Commissioner Gusukuma asked how individuals would be notified about reporting requirements under the proposed legislation. Supervisor Peskin stated that a tracking system could be implemented at the Planning Department or the Department of Building Inspection. He said that the process could be similar to the requirements of Proposition J for members of the Board of Supervisors.

Public Comment:
Anita Mayo stated that there are also constitutional problems with this legislation as well, concerning the expanded definition of "controlled committee." She stated that changing the definition will increase the likelihood of violations for contributors and committees alike.

- **Proposed legislation to amend section 2.117 of the Campaign and Governmental Conduct Code to require campaign consultants to disclose lobbying contacts with any officer of the City and County**

Supervisor Peskin stated the intent of the legislation is to treat campaign consultants the same as lobbyists under City law. He stated that currently, many campaign consultants are not required to report activity when they advise inactive campaigns. Supervisor Peskin stated that the public has a right to know about these activities.

Commissioner Hansen stated that she supported the legislation but asked why the legislation is necessary in light of the fact that City law covers lobbyists and consultants separately. Supervisor Peskin stated this was his first attempt at legislation in this arena and that he would be receptive to any proposals from the Commission about how to appropriately address the issues.

Deputy City Attorney Shen stated that the legislation could be enacted by the Board of Supervisors, without the Ethics Commission's approval, because it does not seek to amend the Campaign Finance Reform Ordinance. He also stated that the Campaign Consultant Ordinance could only be amended through an initiative.

Executive Director St. Croix stated that the Commission will be soon considering changes to the Lobbyist Ordinance that may address some of the changes in Supervisor Peskin's legislation. He stated that Supervisor Peskin and Commission staff could work together on new legislation.

Commissioner Gusukuma stated that she would not support legislation that posed more stringent standards for campaign consultants than those applied to lobbyists. Supervisor Peskin agreed stating that he was not interested in regulating consulting services valued under $3,200 a quarter. Supervisor Peskin stated that the compelling interest is to make the public aware of the influence of campaign consultants after an election.

Commissioner Studley asked whether pre-campaign conversations, between a non-incumbent candidate and a potential campaign consultant, would be covered by the legislation. Supervisor Peskin stated that he was not interested in regulating those contacts absent polling work or other services that typically receive economic consideration.

Chairperson Harriman thanked Supervisor Peskin for attending the meeting personally.

Public Comment:
None.

- **Selection of Random Audits of 2007 Committees**

Deputy Director Ng discussed the staff memo regarding random selection of 2007 committees for audits. Commissioner Gusukuma asked how many audits were conducted last year. Ms. Ng responded that 17 audits were conducted last year, but now staff must conduct audits of publicly financed committees in conjunction with randomly selected committees. Executive Director St. Croix stated that staff will conduct targeted audits as well.

Deputy Director Ng, Anita Mayo, Nancy Warren, and Dan Boreen participated in the random drawing of committee names for audit.

Level 1 Committees selected (pool of 20): Plan C San Francisco PAC; Captain Democracy for Mayor of San Francisco; Committee for Election Sunshine, Yes on C; Campaign for Small Business; Vote for Chicken.

Level 2 Committees selected (pool of 3): Citizens Against Recall Abuse.

Level 3 Committees selected (pool of 10): Yes on A, a Coalition of Muni Riders, Environmentalists, Labor, and Supervisor Aaron Peskin; Re-elect District Attorney Kamala Harris; Parking for Neighborhoods, Yes on H/No on A; Gavin Newsom for Mayor.

0396

Public Comment:

None.

- **Policy Discussion/Determination**

Executive Director St. Croix stated that the impetus behind the recommend changes was to ease burdens placed upon individuals with no professional campaign assistance while treating well-funded candidates and committees fairly. Mr. St. Croix stated that one of the goals is to achieve more consistent enforcement.

Commissioner Gusukuma stated that, concerning policy recommendation number 2, she did not support the proposed "internal one-year limitations period." Executive Director St. Croix stated that the policy change is not a change in the law but a way for staff to expeditiously process late fines and forfeitures. Commissioner Hansen concurred with Commissioner Gusukuma and stated that, in the past, she did not believe that the Commission had accepted internal restrictions on its ability to impose fines. Commissioner Studley stated that creating this type of policy may create unnecessary tension with regulated individuals. She stated that staff should endeavor to provide notice within a year but should not make a definitive internal policy on fines. Chairperson Harriman stated that Commission staff should be able to notify individuals within a year and should not pursue late fines after that time has passed.

Commissioner Ward asked whether, concerning policy recommendation number 3, "shall notify" is more appropriate language than "should notify." Executive Director St. Croix responded that "should" could be changed to "shall."

Commissioner Hansen asked why, concerning policy recommendation number 6, staff would eliminate specific written notice. Executive Director St. Croix responded that specific written notice is based upon state administrative procedure and its elimination would provide staff with more flexibility in granting appropriate waivers. Commissioner Hansen stated that a consequence could be that more waivers could be granted than previously warranted.

Commissioner Hansen asked why, concerning policy recommendation number 7, staff would recommend taking names off the non-responsive filers list. Executive Director St. Croix responded that some individuals should not be on the list due to lack of notice or other valid reasons. Commissioner Hansen stated that if an individual has not yet filed, they should remain on the list due to their non-compliance.

Commissioner Ward stated that if an individual has been in contact with staff to remedy their non-responsive status, they should no longer be considered non-responsive. Commissioner Hansen stated that although individuals may contact staff representing that they will comply, they may not. Chairperson Harriman stated that there should be an assumption that good faith communications to staff will result in compliance.

Commissioner Ward suggested that, concerning policy recommendation number 10, staff use a pre-determined dollar figure to determine the materiality of infractions, rather than a percentage of the total activity of the candidate or committee. Executive Director St. Croix responded that staff chose the percentage approach to be fair to the smaller candidates and committees. Commissioner Gusukuma suggested combining the two methodologies by using the smaller of either a percentage figure or a pre-determined dollar figure. Mr. St. Croix stated that staff could employ Commissioner Gusukuma's suggestion on a trial basis. Commissioner Hansen concurred with Commissioner Ward's concern and stated that the Los Angeles Ethics Commission may have helpful approaches in addressing this issue.

Commissioner Gusukuma asked, concerning policy recommendation number 9, if staff would apply the proposed postmark policy to 24-hour reporting requirements. Deputy Director Ng responded that it would not apply because 24-hour reporting requirements are specified in law. Commissioner Hansen stated that she was concerned that filings would be received after the deadline. Executive Director St. Croix stated that the goal is to ease some of the burden on filers, especially those with less reporting experience.

Public Comment:
Nancy Warren, on behalf of the California Political Treasurers Association, stated that she strongly supports policy recommendation number 2 concerning the one-year statute of limitations. She also stated that she supports policy recommendation number 3 concerning contributor information. Ms. Warren stated that qualified people should be removed from the non-responsive filers list because often times the issue is simply one of administrative error. She also stated that the materiality standard developed in policy recommendation number 10 is necessary so that individuals are not penalized for administrative errors.

Commissioner Hansen stated that staff shares a burden regarding non-responsive filers. She also stated that she believes the policy recommendations were crafted as a direct result of communications with two specific groups and may lack input from many other groups affected by these issues.

Dan Boreen stated that the intent of the proposed policies have merit. He also stated that the Commission should develop policies concerning whistle blowers.

Commissioner Gusukuma stated that she believed several grassroots groups attended the interested persons meeting that formed the basis for the policy recommendations. She also stated that the policies benefit both large and small groups within the regulated community. Commissioner Studley added that citizens should be notified about these issues and given the opportunity to comment. She stated that although the Commission should consider the viewpoint of many groups, the Commission should nonetheless implement the policies and monitor them accordingly.

Motion 08-03-24-1 (Harriman/Studley) Moved, seconded and passed (4-1; Hansen dissenting) that the Ethics Commission adopt staff's policy recommendations as proposed, except for recommendations 2 and 10, which shall be amended to reflect the Commission's discussion.

- **Minutes of the regular Commission meeting of February 11, 2008**

Commissioner Hansen stated that the name of the staff member preparing the minutes should appear at the bottom of the minutes document. Commissioner Gusukuma concurred.

Public Comment:
None.

Motion 08-03-24-2 (Gusukuma/Hansen) Moved, seconded and unanimously passed (5-0) that the Ethics Commission adopt the minutes for the February 11, 2008, regular meeting.

- **Executive Director's Report**

Executive Director St. Croix stated that Statements of Economic Interests, Form 700, are due by April 1, 2008.

Mr. St. Croix stated that three 2008 candidates for the Board of Supervisors have qualified for public financing and that staff is currently spending significant time with outreach and education for the upcoming elections.

He also stated that staff recently met with staff from the Bureau of Delinquent Revenue (BDR) where BDR expressed a desire to make changes to the referral system, because the existing referral process has been complicated and burdensome. Mr. St. Croix added that BDR considers referrals to be confidential, though they are represented on the Executive Director's Report.

Commissioner Hansen asked whether staff could engage in more outreach and education. Executive Director St. Croix stated that staff is doing all that it can to prepare the candidates and committees in addition to carefully reviewing initial filings. Commissioner Hansen also asked whether discussions with BDR produced any suggestions on how to make collections in a timelier manner. Mr. St. Croix stated that BDR is the collection agency for all City departments and that Ethics referrals may not be BDR's first priority. Commissioner Hansen asked how the Commission could be notified of BDR collections, to which Mr. St. Croix responded that they may be represented in future Executive Director's Reports.

Public Comment:
Dan Boreen stated that within Executive Director's Report, there should be more discussion on investigations and enforcement, especially concerning whistle blower protections. He also stated that complainants should be notified as to the status of the investigation pertaining to their complaint.

- **Closed Session**

Public Comment:
None.

Motion 08-03-24-3 (Gusukuma/Studley): Moved, seconded, and unanimously passed (5-0) that the Commission go into closed session.

The Commission went into closed session at 8:35 p.m. Present at the closed session were Chairperson Harriman, Vice-Chairperson Gusukuma, Commissioner Studley, Commissioner Hansen, Commissioner Ward, Deputy City Attorney Shen, Executive Director St. Croix, Deputy Director Ng, Investigator/Legal Analyst Paul Solis.

- **Discussion and vote regarding closed session action and deliberations**

At 8:39 p.m. the Commission returned to open session.

Public Comment:
None.

Motion 08-03-24-4 (Gusukuma/Studley): Moved, seconded and unanimously passed (5-0) that the Ethics Commission finds that it is in the best interest of the public not to disclose its closed session deliberations regarding existing litigation.

- **Items for future meetings**

Public Comment:
Dan Boreen stated the Commission should hold hearings on whistle blower protections.

- **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission**

None.

- **Adjournment**

Public Comment:
None.

Motion 08-03-24-5 (Gusukuma/Hansen): Moved, seconded and unanimously passed (5-0) that the Commission adjourn.

The meeting was adjourned at 8:42 p.m.

Respectfully submitted,

Paul Solis
Investigator/ Legal Analyst

Contact SFGov Accessibility Policies
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Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
07/29/2016
Clerk of the Court
BY:EDNALEEN ALEGRE
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 and MARK FARRELL,

Petitioners and Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO ETHICS COMMISSION; CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR; and DOES 1 to 100, inclusive,

Respondents and Defendants.

CITY AND COUNTY OF SAN FRANCISCO,

Cross-complainant,

vs.

MARK FARRELL, an individual, and ROES 1 to 25, inclusive,

Cross-defendants.

Case No. CGC-16-551745

DECLARATION OF SARA J. EISENBERG IN SUPPORT OF THE CITY AND COUNTY OF SAN FRANCISCO'S OPPOSITION TO CROSS-DEFENDANT MARK FARRELL'S SPECIAL MOTION TO STRIKE THE CITY AND COUNTY OF SAN FRANCISCO'S CROSS-COMPLAINT

Judge:	Hon. Harold E. Kahn
Date:	August 11, 2016
Time:	9:30am
Dep't:	302
Date Action Filed:	April 29, 2016
Trial Date:	Not set

I, Sara J. Eisenberg, declare as follows:

1. I am an attorney admitted to practice law in the State of California. I am employed by the City and County of San Francisco as a Deputy City Attorney. As one of the attorneys of record for the Defendants, Respondents and Cross-Complainants in this case, I am familiar with the file, the documents, and the history related to this action. I have personal knowledge of the facts stated in this declaration. If called as a witness, I could and would competently testify to the facts set forth below.

2. Attached hereto as Exhibit A is a true and correct copy of the Summons, Civil Case Cover Sheet, and Verified Petition For Writ of Mandate To Compel Respondents and Defendants To Vacate Forfeiture Demand; Complaint For Declaratory and Injunctive Relief; Complaint For Violation Of Equal Protection and Due Process Rights filed by Mark Farrell For District 2 Supervisor 2010 and Mark Farrell on April 29, 2016.

3. Attached hereto as Exhibit B is a true and correct copy of the Answer To Plaintiffs' Verified Petition for Writ Of Mandate and Complaint filed by Respondent City and County of San Francisco on May 31, 2016.

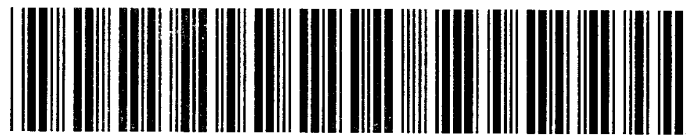
4. Attached hereto as Exhibit C is a true and correct copy of the Cross-Complaint For Violation of Campaign and Governmental Conduct Code Section 1.114 And Concealment filed by Cross-Complainant City and County of San Francisco on May 31, 2016.

5. Attached hereto as Exhibit D is a true and correct copy of the Answer To Cross-Complainant City and County Of San Francisco's Cross-Complaint filed by Cross-Defendant Mark Farrell on July 6, 2016.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 28th day of July, 2016, in San Francisco, California.

SARA J. EISENBERG

EXHIBIT A



24

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

Document Scanning Lead Sheet

Apr-29-2016 3:37 pm

Case Number: CGC-16-551745

Filing Date: Apr-29-2016 2:58

Filed by: ARLENE RAMOS

Image: 05378011

COMPLAINT

MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 VS. CITY AND COUNTY OF SAN FRANCISCO ET AL

001C05378011

Instructions:

Please place this sheet on top of the document to be scanned.

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
City and County of San Francisco; San Francisco Ethics Commission;
City and County of San Francisco Treasurer and Tax Collector
DOES 1 to 100, Inclusive
YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
Mark Farrell for District 2 Supervisor 2010; Mark Farrell

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ***¡AVISO!*** *Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Francisco Superior Court
400 McAllister Street
San Francisco, CA 94102

CASE NUMBER:
(Número del Caso): CGC-16-551745

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
James R. Sutton, 150 Post Street, Suit 405, San Francisco, CA 94108, 415/732-7700

DATE:
(Fecha) APR 29 2016 CLERK OF THE COURT Clerk, by *(Secretario)* Arlene Ramos ARLENE RAMOS , Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☑ on behalf of *(specify):*

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☑ other *(specify):* CCP 416.50 (public entity)

4. ☐ by personal delivery on *(date):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

0403

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*:
James R. Sutton
The Sutton Law Firm
150 Post St., Ste. 405
San Francisco, CA 94108
TELEPHONE NO.: 415/732-7700 FAX NO.: 415/732-7701
ATTORNEY FOR *(Name)*: Petitioners Mark Farrell for District 2 Supervisor 2010

FOR COURT USE ONLY

FILED
Superior Court of California
County of San Francisco
APR 29 2016
CLERK OF THE COURT
BY: Adam Ramos Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS: 400 McAllister St.
MAILING ADDRESS:
CITY AND ZIP CODE: San Francisco, CA 94102
BRANCH NAME: Civic Center Courthouse

CASE NAME:
Mark Farrell for District 2 Supervisor 2010 v. City & County of San Francisco

CASE NUMBER: CGC-16-551745

JUDGE:
DEPT:

CIVIL CASE COVER SHEET

[X] **Unlimited** (Amount demanded exceeds $25,000) [ ] **Limited** (Amount demanded is $25,000 or less)

Complex Case Designation
[ ] Counter [ ] Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort
- [ ] Auto (22)
- [ ] Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- [ ] Asbestos (04)
- [ ] Product liability (24)
- [ ] Medical malpractice (45)
- [ ] Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- [ ] Business tort/unfair business practice (07)
- [ ] Civil rights (08)
- [ ] Defamation (13)
- [ ] Fraud (16)
- [ ] Intellectual property (19)
- [ ] Professional negligence (25)
- [ ] Other non-PI/PD/WD tort (35)

Employment
- [ ] Wrongful termination (36)
- [ ] Other employment (15)

Contract
- [ ] Breach of contract/warranty (06)
- [ ] Rule 3.740 collections (09)
- [ ] Other collections (09)
- [ ] Insurance coverage (18)
- [ ] Other contract (37)

Real Property
- [ ] Eminent domain/Inverse condemnation (14)
- [ ] Wrongful eviction (33)
- [ ] Other real property (26)

Unlawful Detainer
- [ ] Commercial (31)
- [ ] Residential (32)
- [ ] Drugs (38)

Judicial Review
- [ ] Asset forfeiture (05)
- [ ] Petition re: arbitration award (11)
- [ ] Writ of mandate (02)
- [ ] Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
- [ ] Antitrust/Trade regulation (03)
- [ ] Construction defect (10)
- [ ] Mass tort (40)
- [ ] Securities litigation (28)
- [ ] Environmental/Toxic tort (30)
- [ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- [ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
- [ ] RICO (27)
- [ ] Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
- [ ] Partnership and corporate governance (21)
- [X] Other petition *(not specified above)* (43)

2. This case [ ] is [X] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. [ ] Large number of separately represented parties
   b. [ ] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. [ ] Substantial amount of documentary evidence
   d. [ ] Large number of witnesses
   e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. [ ] Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. [ ] monetary b. [X] nonmonetary; declaratory or injunctive relief c. [ ] punitive
4. Number of causes of action *(specify)*: 5
5. This case [ ] is [X] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: April 29, 2016
James R. Sutton
(TYPE OR PRINT NAME)

James R. Sutton
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev. July 1, 2007]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400–3.403, 3.740;
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SUPERVISOR 2010 and MARK FARRELL

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County of San Francisco
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 and MARK FARRELL,

Petitioners and Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO ETHICS COMMISSION; CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR; and DOES 1 to 100, inclusive,

Respondents and Defendants.

Case No. CGC-16-551745

VERIFIED PETITION FOR WRIT OF MANDATE TO COMPEL RESPONDENTS AND DEFENDANTS TO VACATE FORFEITURE DEMAND; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; COMPLAINT FOR VIOLATION OF EQUAL PROTECTION AND DUE PROCESS RIGHTS

[CAL. CODE OF CIVIL PROCEDURE SECTIONS 525, 1060, 1085 & 1094.5 et seq.; 42 U.S.C. SECTION 1983]

INTRODUCTION

Petitioners and Plaintiffs MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 and SAN FRANCISCO SUPERVISOR MARK FARRELL (collectively, "Petitioners") bring this action against Respondents and Defendants CITY AND COUNTY OF SAN FRANCISCO, SAN FRANCISCO ETHICS COMMISSION, CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR and DOES 1 to 100, inclusive (collectively, "Respondents" or "the City") to vacate and set

aside the Ethics Commission's demand that Petitioners "forfeit" approximately $191,000 to the City.

The City lacks any rational basis for making this outrageous demand. Supervisor Farrell is totally and completely innocent. Neither Supervisor Farrell nor the Farrell Committee broke any City, state or other laws - and, although this matter has been investigated and re-investigated for several years now, no governmental entity has ever made any findings to the contrary. Not once. During what can only be described as a witchhunt, the Ethics Commission has systematically and blatantly ignored City law, as well as its own procedures, and is guilty of a gross violation of Supervisor Farrell's rights. This miscarriage of justice must be stopped.

This matter arises out of the activities of Common Sense Voters, an independent political committee which spent approximately $191,000 on several mailers which supported Supervisor Farrell's candidacy for District 2 Supervisor in 2010. Chris Lee, the campaign manager for the Farrell Committee, had minor and unauthorized communications with the agents of Common Sense Voters before the committee was set up. Based solely on these limited interactions, the City believes that it can unilaterally demand that Petitioners now "forfeit" over $190,000 to the City - even though Petitioners never solicited, received, possessed or otherwise controlled the funds the City now seeks, and even though Supervisor Farrell in no way authorized and had absolutely no knowledge of his campaign manager's actions.

The City is pursuing the forfeiture demand even though the California Fair Political Practices Commission ("FPPC") – the state agency charged with interpreting and enforcing the state's campaign laws – conducted a thorough investigation over the course of multiple years of all of the relevant facts and law surrounding the interactions between Lee and Common Sense Voters. The FPPC concluded that Petitioners did nothing wrong and decided to fine only Lee and Common Sense Voters, and not Petitioners. The staff of

the Ethics Commission also reviewed the facts and law and, like the FPPC, decided not to take any action against Petitioners.

The Ethics Commission completely ignored the laws and rules governing its investigations and enforcement matters, thereby violating Petitioners' due process rights. It never provided Petitioners with a written description of the charges against them, never held a formal hearing on the matter, and never even interviewed Supervisor Farrell. Instead, Ethics Commissioner Peter Keane went on the record with inflammatory and unsubstantiated statements about Supervisor Farrell, equating him to Richard Nixon, calling him "corrupt," and jumping to the conclusion that Supervisor Farrell violated the law without hearing all of the facts. The Ethics Commission handled this forfeiture matter differently than it has administered every other prior forfeiture matter, thereby depriving Petitioners of their rights to equal protection under the law.

The City did not and cannot establish that Petitioners controlled or coordinated with Common Sense Voters. Neither Supervisor Farrell nor anyone else involved in his 2010 campaign authorized Lee to interact with Common Sense Voters, and Supervisor Farrell did not learn of these interactions until the FPPC told him about them years after the election. Respondents have failed to carry their burden of proving that Petitioners violated the City's campaign laws, thereby making the forfeiture demand utterly frivolous.

Perhaps most notably, the City has blatantly disregarded the express statute of limitations set out in the City's campaign law, repeated in the regulations adopted by the Ethics Commission, and confirmed in the Ethics Commission's own policies. This statute of limitations states clearly that the City must take action against an alleged violation of the City's campaign laws within four years of the date of the alleged violation. Common Sense Voters' campaign mailers were sent out in October 2010, so the City was required to act by October 2014. It failed to do so, and therefore can not demand almost $191,000 from Petitioners at this time.

PETITION FOR WRIT OF MANDATE

Petitioners bring this lawsuit after exhausting all other paths to resolve this matter, and accordingly seek a writ of mandate and injunctive relief and declaratory relief to overturn Respondents' forfeiture demand. The Court's issuance of the requested writ of mandate and declaratory and injunctive relief is necessary and appropriate for the enforcement of Petitioners' rights in that Petitioners are beneficially interested in this matter and have no plain, speedy, or adequate remedy in the ordinary course of law whereby their rights can be upheld or Respondents can be compelled to rescind and cease their forfeiture demand. Petitioners allege the following:

PARTIES

1. Petitioner MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 (the "Farrell Committee") was, at all relevant times, the campaign committee established up by Supervisor Mark Farrell for his 2010 election.

2. Petitioner MARK FARRELL ("Farrell") is an individual and a member of the Board of Supervisors of the City and County of San Francisco, representing District 2. Farrell was elected to the Board in November 2010 and re-elected in November 2014.

3. Respondent CITY AND COUNTY OF SAN FRANCISCO (the "City") is a subdivision of the State of California and has a duty to fairly and properly apply the laws of the City and the State to Petitioners and others.

4. The City acts, and at all relevant times acted, through its agents, including City Attorney Dennis Herrera. Herrera has a duty to fairly and properly apply the laws of the City and the State to Petitioners and others.

5. Respondent SAN FRANCISCO ETHICS COMMISSION (the "SFEC") is the City agency tasked with enforcing the City's campaign laws. The SFEC has a duty to fairly and properly apply the laws of the City and the State to Petitioners and others.

6. The SFEC acts, and at all relevant times acted, through its agents, including Chair Paul Renne, four other Commissioners, and former Executive Director John St.

Croix ("St. Croix"). The Commissioners and St. Croix have a duty to fairly and properly apply the laws of the City and the State to Petitioners and others.

7. Respondent CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR ("Treasurer" and "Tax Collector") is the City office tasked with collecting debts on behalf of the City. The Treasurer and Tax Collector have a duty to fairly and properly apply the laws of the City and the State to Petitioners and others.

8. The Treasurer and Tax Collector act, and at all relevant times acted, through their agents Treasurer Jose Cisneros and Tax Collector David Augustine. Cisneros and Augustine have a duty to fairly and properly apply the laws of the City and the State to Petitioners and others.

9. The true and correct capacities of Respondents and Defendants DOES 1 through 100, and each of them, are unknown to Petitioners at this time, and therefore Petitioners sue said DOE parties by such fictitious names. Petitioners will file amendments and/or seek leave of court to amend this Petition to assert the true names and capacities of these DOE parties when they have been ascertained. The DOE parties have a duty to fairly and properly apply the laws of the City and the State to Petitioners and others.

10. Petitioners are informed and believe, and based thereon allege, that each Respondent and Defendant is the agent of each other Respondent and Defendant and is in some manner responsible for the harm caused to Petitioners.

JURISDICTION AND VENUE

11. At all times relevant hereto, Petitioners, Respondents, and all DOE parties resided in the City and in the State of California, and the wrongful conduct alleged herein occurred in the City and in the State of California, and therefore the proper venue for this case is in the San Francisco County Superior Court.

FACTUAL AND PROCEDURAL BACKGROUND

2010 Board of Supervisors Election

12. In August 2009, Farrell formed the Farrell Committee in connection with his candidacy for the Board of Supervisors. The Farrell Committee filed public reports with the SFEC before and after the election, as required by state and City law, disclosing all of its contributions and all of its expenditures and vendors.

13. The Farrell Committee engaged Chris Lee ("Lee") of Townsquare Consulting as a campaign consultant.

14. Without Petitioners' authorization or knowledge, Lee sent e-mails in September 2010 to agents for a political committee in the process of being set up named "Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor" ("CSV"), regarding committee formation, potential fundraising, and initial campaign planning.

15. CSV was set up as an "independent expenditure" committee to support Farrell and oppose Janet Reilly ("Reilly"), one of the other candidates in the District 2 Supervisor race. It spent approximately $191,000 on mail pieces and door hangers in October 2010 which supported Farrell and opposed Reilly. CSV filed public reports with the SFEC before and after the election, as required by state and City law, disclosing all of its contributions and all of its expenditures and vendors.

16. Farrell won the election and became the Supervisor representing District 2 in January 2011.

17. The Farrell Committee spent all of its remaining funds and officially terminated in March 2013.

FPPC Investigation and Settlement

18. Following the election, Reilly filed identical complaints on December 23, 2010 with the SFEC and the California Fair Political Practices Commission ("FPPC"), the state agency tasked with enforcing the state's campaign laws, alleging, among other

things, that the Farrell Committee illegally coordinated with CSV to make expenditures in support of Farrell and in opposition to Reilly.

19. On January 10, 2011, the FPPC informed Reilly that it would investigate the matter.

20. On January 26, 2011, the SFEC informed Reilly that it would review the alleged violations of City law pursuant to its investigatory powers under City law, but would defer any action on alleged violations of state law until the FPPC completed its investigation.

21. Starting in 2012, the FPPC conducted a detailed investigation of potential coordination between CSV and the Farrell Committee. The FPPC interviewed numerous individuals from October 2012 through February 2013, including Farrell. SFEC staff was present for at least three of these interviews, which took place in SFEC offices, including the interview of Lee.

22. On August 20, 2014, the FPPC informed the SFEC that it had concluded its investigation and reached a settlement with CSV and Lee, and that it had decided not to proceed against Petitioners.

23. The FPPC invited the SFEC to join in the settlement and/or comment on the proposed stipulation with CSV and Lee, something that is often done between the FPPC and local enforcement agencies. The SFEC Executive Director declined to join in the settlement or comment on the proposed stipulation, and decided not to take action against Supervisor Farrell, Lee, CSV or anyone else, as the law specifically authorizes him to do. (SFEC Regulations for Investigations and Enforcement Proceedings ("SFEC Enforcement Regulations") section IV(B)(4) ["Executive Director may dismiss the complaint if . . . [t]he allegations contained in the complaint are already under investigation, or already have been resolved, by the Commission or another law enforcement agency."].)

24. On November 20, 2014, the FPPC approved a $14,500 settlement with

CSV and Lee, concluding that CSV violated certain reporting requirements triggered by Lee's interactions with CSV. The FPPC concluded that Farrell was not aware of, and did not authorize, Lee's interactions with CSV.

25. Neither Farrell nor the Farrell Committee were parties to the FPPC settlement.

SFEC Forfeiture Demand

26. On December 9, 2014, and more than four years after the alleged violations, the SFEC sent a letter to Petitioners stating that the SFEC considered the expenditures made by CSV to be "contributions" to Petitioners, and demanding that Petitioners "forfeit" $190,903.04 to the City (the "forfeiture demand").

27. The City's campaign law provides that committees which receive contributions which violate the $500 limit on contributions to candidates, the prohibition on contributions to candidates from corporations, or the requirement to identify the contributor's occupation and employer, must "forfeit" this money to the City. (S.F. Camp. & Govt. Conduct Code section 1.114.) The City has only demanded forfeiture in the past when the violation of City law was clear from the face of the campaign report filed by the committee, except in the present matter.

28. The City Attorney's office investigated Petitioners' alleged violations of City law from December 2014 through February 2015 pursuant to its investigatory powers under City law, including a review of the FPPC's entire investigatory file, and ultimately chose not to pursue the matter. Petitioners are informed and believe that the City Attorney's office chose not to pursue the matter based at least in part on the four-year statute of limitations in City law.

29. On March 15, 2015, Petitioners sent a letter to the SFEC objecting to the forfeiture demand and requesting that it be waived.

30. The forfeiture demand appeared on the SFEC's March 23, 2015 regularly scheduled meeting agenda and was discussed in open session, even though – as a

confidential enforcement matter – it should have been discussed only in closed session. Counsel for Petitioners spoke during the public comment period at this meeting, but the presentation was brief and informal.

31. On April 27, 2015, the SFEC held its regularly scheduled monthly meeting and again discussed the forfeiture demand in open session. Counsel for Petitioners also spoke during the public comment period at this meeting, but again the presentation was brief and informal.

32. On June 5, 2015, SFEC Executive Director St. Croix issued a letter granting Petitioners' request to waive the forfeiture demand on the grounds that: (1) the statute of limitations had expired; (2) the doctrine of "fraudulent concealment" did not apply and therefore the statute of limitations was not tolled; and (3) Petitioners were not named in the FPPC stipulation.

33. In an extremely unusual and unprecedented move, the SFEC's Commissioners overruled St. Croix's decision and re-issued a forfeiture demand on June 15, 2015, even though the Executive Director has sole discretion to grant or deny waiver requests.

34. At these public meetings in March, April and June 2015, while the Commission was debating whether to grant Petitioners' request that the forfeiture demand be waived, SFEC Commissioner Peter Keane made several statements which evidence his bias against Petitioners.

35. On July 8, 2015, the SFEC forwarded the forfeiture demand to the Bureau of Delinquent Revenue (the "BDR") in the Office of the Treasurer and Tax Collector, which is responsible for the City's debt collection.

36. On September 30, 2015, the BDR sent a letter to Petitioners demanding payment.

37. On November 4, 2015, Petitioners sent a letter to BDR objecting to the forfeiture demand, but Petitioners' efforts to convince the City to close the matter without the need for litigation were unsuccessful.

38. The administrative portion of the dispute having come to an end, and Petitioners having exhausted their administrative remedies, Petitioners now seek equitable judicial relief to remedy the wrongs that Respondents have visited upon Petitioners.

First Cause of Action

(Petition for Writ of Mandate to Compel Respondents and Defendants to Vacate Forfeiture Demand- California Code of Civil Procedure ("CCP") sections 1085 et seq.; Against All Respondents and Defendants)

39. Petitioners hereby reallege and incorporate herein by this reference paragraphs 1 through 38 of this Petition as if fully set forth herein.

40. Petitioners are entitled to a writ of mandate on the grounds that: (a) forfeiture is barred by the statute of limitations; (b) forfeiture is improper because Petitioners' never possessed the money Respondents seek; (c) Respondent SFEC failed to follow the laws, regulations, policies and procedures applicable to the present matter; (d) forfeiture violates Petitioners' right to equal protection under the law; (e) forfeiture violates Petitioners' due process rights; (f) the FPPC stipulation does not serve as an adequate legal basis for forfeiture; (g) Petitioners did not "control" or "coordinate" with CSV regarding CSV's political activities, as those terms are defined in the law.

Forfeiture is Barred by the Statute of Limitations

41. The City's campaign law provides that the City has four years from the date of an alleged violation to take action against the alleged violator. (S.F. Camp. & Govt. Conduct Code section 1.168(c)(3).) Respondent SFEC Enforcement Regulation reiterate this four-year statute of limitations. (SFEC Enforcement Regulations section XIII(F).)

42. Respondent SFEC's Forfeiture Policy ("SFEC Forfeiture Policy") also

provides that the City has four years from the date of an alleged violation to demand that the alleged violator forfeit an amount to the City.

43. Because the alleged violations occurred in October 2010, Respondents were required to issue the forfeiture demand or take any other enforcement action by October 2014 – which they failed to do, as acknowledged by St. Croix in his June 15, 2015 letter to Petitioners.

44. Respondent SFEC began investigating the alleged violations in January 2011 and participated in interviews of witnesses and potential respondents in 2012, so had ample time to take action against Petitioners before the expiration of the statute of limitations in October 2014.

45. Respondent SFEC was put on notice of the alleged violation when CSV and Petitioner Farrell Committee filed reports in October 2010 disclosing their contributions, expenditures and vendors. It also received the complaint from Ms. Reilly in December 2010 and learned about the interactions between Lee and CSV during his interview in October 2012. Therefore, no relevant or material information about the potential coordination between CSV and Petitioner Farrell Committee was concealed from Respondent SFEC so that it could not act within the four year statute of limitations.

46. There are no grounds for tolling the four year statute of limitations. By waiting more than four years to send the forfeiture demand to Petitioners, Respondents violated the statute of limitations and are without legal authority to pursue this matter against Petitioners.

Forfeiture is Improper Because Petitioners Never Possessed the Money That Respondents Seek

47. The money Respondents seek was never possessed or controlled by Petitioners, and therefore Petitioners can not, and should not be ordered to, comply with the forfeiture demand. As the law never requires impossibilities (Cal. Civil Code section 3531), the forfeiture demand fails on this ground as well.

48. Demanding a political committee forfeit money to the City is only appropriate when the committee has received money which clearly does not comply with the City's campaign law – e.g., when it exceeds the $500 contribution limit, comes from a corporation, or when the committee's reports do not list the contributor's occupation or employer – and is not appropriate when there is a legal dispute over whether a contribution violates the law, as is present in this case.

49. If any committee accepted contributions in violation of City law which would require forfeiture, it was CSV – and yet Respondents have not pursued CSV or any of its agents.

50. The committee from which Respondents seek forfeiture is long defunct and has no funds.

51. Petitioner Farrell never received any money which he could now forfeit to the City; moreover, San Francisco Campaign and Governmental Conduct Code section 1.114 by its own terms applies only to committees, not individuals.

The Forfeiture Demand is Unlawful Because Respondent SFEC Failed to Follow the Law and Its Own Policies and Procedures

52. At all times relevant, Respondent SFEC had a clear, present and ministerial duty to follow the law, regulations, policies and procedures set forth in Charter section C3:699-13, the SFEC Enforcement Regulations, and the SFEC Forfeiture Policy, and to afford Petitioners the procedural rights included thereunder.

53. Respondent SFEC did not follow the policies and procedures governing the investigation of possible violations of the City's campaign laws required by the Charter and SFEC Enforcement Regulations: "The Commission shall conduct investigations in accordance with this subdivision of alleged violations of this Charter and City ordinances relating to campaign finance . . . ." (Charter section C3:G99-13; emphasis added.)

54. Respondent SFEC never issued a Probable Cause Report to Petitioners, never held a Probable Cause Hearing, never issued an Accusation to Petitioners, never

held a Hearing on the Merits, or followed any of the other procedural requirements set out in the Charter and SFEC Enforcement Regulations.

55. Respondent SFEC discussed the matter in open session at regularly scheduled monthly meetings, and publicly distributed the complaint and correspondence with Petitioners, despite the strict confidentiality provisions of City law. (Charter section C3.699-13 & SFEC Enforcement Regulations section XIII(B).)

56. Respondent SFEC did not follow the policies and procedures governing forfeitures required by the SFEC forfeiture policy.

57. Respondent SFEC's Commissioners overruled staff's decision to waive the forfeiture demand, despite the provision in Respondent SFEC's Forfeiture Policy giving sole authority over forfeiture decisions to staff.

The FPPC Stipulation Does Not Serve as an Adequate Legal Basis Upon Which to Demand Forfeiture

58. The FPPC stipulation serves as Respondents' sole basis for the forfeiture demand. Respondents, however, have failed to explain how the FPPC stipulation justifies the forfeiture demand or how it absolves Respondents' from proving their case against Petitioners, especially considering that it only details reporting violations by CSV and does not name Petitioners as respondents.

59. Petitioners were not parties to the FPPC stipulation and therefore can not be bound by the stipulation, which is a negotiated agreement between the FPPC, Lee and CSV.

60. The FPPC stipulation does not contain any Findings of Facts or Conclusions of Law, so can not be relied upon by Respondents as a purported justification for their forfeiture demand.

61. The FPPC stipulation addresses not only entirely different parties, but also completely different laws: the FPPC stipulation was based on Lee's violations of state law relating to the reporting requirements of candidate-controlled committees, while the

forfeiture demand is evidently based on an alleged violation of City law relating to illegal coordination between political committees.

62. Respondents used the FPPC stipulation in lieu of actually proving their case against Petitioners.

63. The FPPC and SFEC Executive Director St. Croix determined that Petitioners had not done anything wrong and should not be penalized in any way.

Petitioners Are Not Liable for the Acts or Debts of CSV Because Petitioners Did Not Control or Coordinate with CSV as a Matter of Law

64. Based on the undisputed facts, Lee's interactions with CSV did not rise to the level of influence necessary for CSV to be deemed controlled by Petitioners under California Government Code section 82016 or for CSV and Petitioners to be deemed to have coordinated under San Francisco Campaign & Governmental Conduct Code section 1.115.

The Forfeiture Demand Is Unlawful Because Respondent SFEC Violated Petitioners' Right to Equal Protection Under the Law

65. At all times relevant, Respondent SFEC had a clear, present and ministerial duty to provide Petitioners with their rights to equal protection under the law, as guaranteed by the 14th Amendment of the U.S. Constitution and Article I, Section 7(a) of the California Constitution.

66. In spite of this duty, and lacking any rationale basis for its decision, Respondent SFEC issued a forfeiture demand against Petitioners.

67. Respondent SFEC has never demanded forfeiture from a party when there is a genuine dispute about the facts and law which form the basis of the demand, yet issued a forfeiture demand against Petitioners when there is a genuine dispute over the facts and law which form the basis for this demand.

68. All previous forfeiture demands and waivers were decided solely by

Respondent SFEC's staff, yet Respondent SFEC's Commissioners took control of the forfeiture process in this matter and overruled the staff's decision to waive forfeiture.

69. Respondent SFEC's actions as described above violate not only their own laws, policies and procedures, but also those equal protection principles set forth in the United States and California Constitutions.

The Forfeiture Demand is Unlawful Because Respondent SFEC Violated Petitioners' Right to Due Process

70. At all time relevant, Respondent SFEC had a clear, present and ministerial duty to afford Petitioners with due process, as guaranteed by the 5th and 14th Amendments to the United States Constitution and Article I, Section 7(a) of the California Constitution.

71. In spite of the duty, Respondent SFEC summarily and without warning issued the forfeiture demand to Petitioners without providing Petitioners with meaningful notice or an opportunity to be heard before the issuance of the demand.

72. Respondent SFEC never responded to Petitioners' written objections to the forfeiture demand, either verbally or in writing, thus depriving Petitioners of their due process rights to meaningful notice of the charges against them.

73. Respondent SFEC never provided Petitioners with the charges against them or a written explanation for the forfeiture demand, thus depriving Petitioners of their due process rights to meaningful notice of the charges against them.

74. Respondent SFEC only allowed Petitioners' counsel to testify during the public comment period at Respondent SFEC meetings at which the matter was discussed, and had not provided Petitioners with the charges against them at or before the meetings, thus depriving Petitioners of their due process rights to a meaningful hearing.

75. Respondent SFEC discussed the forfeiture demand in open session on several occasions and publicly released the complaint and other documents about the matter, thus depriving Petitioners of their due process rights to have the matter handled confidentially.

76. SFEC Commissioner Keane was biased against Petitioners, thus denying Petitioners of their due process rights to a neutral and disinterested decision-maker.

77. Respondents' actions as described above violate not only their own laws, policies and procedures, but also those due process protections set forth in the United States and California Constitutions.

Second Cause of Action

(Declaratory Relief - CCP sections 1060 et seq.;

Against All Respondents and Defendants)

78. Petitioners reallege and incorporate herein by this reference paragraphs 1 through 38 and 40 through 77 of this Petition as if fully set forth herein.

79. An actual controversy now exists between the parties. Petitioners contend that Respondents: (a) acted outside the statute of limitations; (b) seek the forfeiture of property ($190,903.04) which never belonged to, and was never possessed by, Petitioners; (c) failed to follow their own laws, regulations, policies, and procedures; (d) violated Petitioners' right to equal protection of the law; (e) violated Petitioners' due process rights; and (f) acted on the basis of a FPPC settlement to which Petitioners were not a party. Moreover, Petitioners contend that they did not control or coordinate with CSV. Petitioners are informed and believe that Respondents contend that they: (a) acted within the statue of limitations; (b) are allowed to seek the forfeiture of property ($190,903.04) from Petitioners regardless of whether it ever belonged to, or was ever possessed by, Petitioners; (c) followed the law, regulations, policies, and procedures; (d) did not violate Petitioners' equal protection rights; (e) did not violate Petitioners' due process rights; and (f) are allowed to act solely on the basis of a FPPC settlement to which Petitioners were not a party. Moreover, Respondents contend that Petitioners controlled and coordinated with CSV.

80. Petitioners therefore seek this Court's declaration that: (a) Respondents

acted outside the statue of limitations; (b) Respondents seek forfeiture of property ($190,903.04) which never belonged to, and was never possessed by, Petitioners; (c) Respondents failed to follow their own laws, regulations, policies, and procedures; (d) Respondents violated Petitioners' right to equal protection of the law; (e) Respondents violated Petitioners' due process rights; and (f) Respondents impermissibly acted on the basis of a FPPC settlement to which Petitioners were not a party. Moreover, Petitioners seek a declaration that Respondents' forfeiture demand is without legal justification because they did not control or coordinate with CSV.

Third Cause of Action

(Injunctive Relief – CCP sections 525 et seq.;

Against All Respondents and Defendants)

81. Petitioners reallege and incorporate herein by this reference paragraphs 1 through 38 and 40 through 77 of this Petition as if fully set forth herein.

82. Unless the court grants the injunctive relief requested, Respondents will seek to enforce its forfeiture demand against Petitioners and to potentially assess additional penalties purportedly authorized by San Francisco Campaign and Government Conduct Code section 1.170.

83. Petitioners therefore seek a temporary restraining order, preliminary injunction, and permanent injunction prohibiting Respondents from enforcing the forfeiture demand, attempting to collect the amount demanded from Petitioners, or taking any other action against Petitioners with respect to the matters discussed herein.

Fourth Cause of Action

(*In the Alternative*, Petition for Writ of Administrative Mandamus to Compel Respondents and Defendants to Vacate Forfeiture Demand -

CCP sections 1094.5 et seq.;

Against All Respondents and Defendants)

84. Petitioners hereby reallege and incorporate herein by this reference

paragraphs 1 through 38 and 40 through 77 of this Petition as if fully set forth herein.

85. As part of this alternative cause of action, Petitioners allege that Respondents' actions constituted a final administrative order or decision, as contemplated in Code of Civil Procedure section 1094.5.

86. Petitioners further allege that the purported final administrative order or decision was the result of a purported proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in Respondents.

87. Petitioners further allege that: (a) Respondents have proceeded without, or in excess of, jurisdiction; (b) that there was not a fair proceeding; and (c) that there was a prejudicial abuse of discretion in that Respondents have not proceeded in the manner required by law, the order or decision is not supported by the findings, and/or the findings are not supported by the evidence.

88. Accordingly, as a further part of this an alternative cause of action, to the extent the Court determines that a final administrative order or decision, as contemplated in Code of Civil Procedure section 1094.5, has been made by any or all Respondents with regard to Petitioners, Petitioners request that this court issue a Writ of Administrative Mandamus compelling Respondents to vacate their forfeiture demand.

Fifth Cause of Action

(Deprivation of Constitutional Rights to Equal Protection – U.S.C. section 1983; Against All Respondents and Defendants)

89. Petitioners hereby reallege and incorporate herein by this reference paragraphs 1 through 38 and 40 through 77 of this Petition as if fully set forth herein.

90. The Ethics Commission handled this matter differently than it has administered every other prior forfeiture and enforcement matter, thereby depriving Petitioners of their rights to equal protection under the Fifth and Fourteenth Amendments to the U.S. Constitution.

91. Respondents, under color of statute, ordinance, regulation, custom, and/or usage, have subjected, or have caused to be subjected, Petitioners to the deprivation of rights, privileges, or immunities secured by the Constitution and laws – especially rights to equal protection – and therefore Respondents are liable to Petitioners pursuant to 42 U.S.C. section 1983.

Sixth Cause of Action

(Deprivation of Constitutional Rights to Due Process – U.S.C. section 1983; Against All Respondents and Defendants)

92. Petitioners hereby reallege and incorporate herein by this reference paragraphs 1 through 38 and 40 through 77 of this Petition as if fully set forth herein.

93. The Ethics Commission completely ignored the laws and rules governing its investigations and enforcement matters, thereby depriving Petitioners of their constitutional rights to due process under the Fifth and Fourteenth Amendments to the U.S. Constitution.

94. Respondents, under color of statute, ordinance, regulation, custom, and/or usage, have subjected, or have caused to be subjected, Petitioners to the deprivation of rights, privileges, or immunities secured by the Constitution and laws - especially rights to due process – and therefore Respondents are liable to Petitioners pursuant to 42 U.S.C. section 1983.

PRAYER

WHEREFORE, Petitioners pray:

On their First Cause of Action: That this court issue a Peremptory Writ of Mandate compelling Respondents to vacate their forfeiture demand.

On their Second Cause of Action: That this court issue a Declaration that: Respondents' forfeiture demand is barred by the statute of limitations; that Petitioners can not forfeit property which they never possessed; that Respondents violated the laws, regulations, policies, and procedures which govern the case at hand; that Respondents

violated Petitioners' equal protection rights; that Respondents violated Petitioners' due process rights; that the FPPC stipulation can not serve as the basis for the forfeiture demand; and that Petitioners did not control or coordinate with CSV.

On their Third Cause of Action: That this court issue a Preliminary and Permanent Injunction ordering Respondents to cease taking any further action against Petitioners related to the forfeiture demand or related to the matters discussed herein.

On their Fourth Cause of Action: In the alternative, to the extent the Court determines that a final administrative order or decision, as contemplated in Code of Civil Procedure section 1094.5, has been made by any or all Respondents with regard to Petitioners, that this court issue a Writ of Administrative Mandamus compelling Respondents to vacate their forfeiture demand.

On their Fifth Cause of Action: That this court find that Respondents, under color of statute, ordinance, regulation, custom, and/or usage, have subjected, or have caused to be subjected, Petitioners to the deprivation of rights, privileges, or immunities secured by the Constitution and laws - especially rights to equal protection – and therefore find Respondents liable to Petitioners pursuant to 42 U.S.C. section 1983.

On their Sixth Cause of Action: That this court find that Respondents, under color of statute, ordinance, regulation, custom, and/or usage, have subjected, or have caused to be subjected, Petitioners to the deprivation of rights, privileges, or immunities secured by the Constitution and laws - especially rights to due process – and therefore find Respondents liable to Petitioners pursuant to 42 U.S.C. section 1983.

On all Causes of Action:

1. For a stay of the forfeiture demand until final judgment is entered in this action.

2. For expungement of the forfeiture demand.

3. For costs of suit.

4. For attorneys' fees pursuant to CCP section 1021.5, 42 U.S.C. section 1988, or other applicable law.

5. For such other and further relief as may be just and proper.

Respectfully Submitted:

THE SUTTON LAW FIRM, PC
James R. Sutton, Esq.
Bradley W. Hertz, Esq.
Matthew C. Alvarez, Esq.

Dated: April 29, 2016

By: _____
James R. Sutton, Esq.
Attorneys for Petitioners and Plaintiffs
MARK FARRELL FOR DISTRICT 2
SUPERVISOR 2010 and MARK FARRELL

VERIFICATION

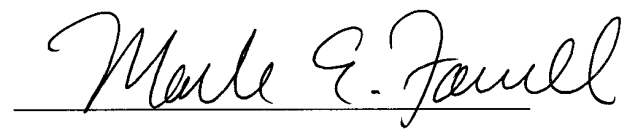
STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I, MARK FARRELL, am a party to this action. I have read the foregoing Verified Petition for Writ of Mandate and Complaint and know its contents.

The matters stated in the foregoing document are true and correct of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on April 28, 2016 at San Francisco, California.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Mark Farrell

EXHIBIT B

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CHERYL ADAMS, State Bar #164194
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Attorneys for Respondent
CITY AND COUNTY OF SAN FRANCISCO

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
05/31/2016
Clerk of the Court
BY: MAURA RAMIREZ
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 and MARK FARRELL,

Petitioners and Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO ETHICS COMMISSION; CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR; and DOES 1 to 100, inclusive,

Respondents and Defendants.

Case No. CGC-16-551745

RESPONDENT/DEFENDANT THE CITY AND COUNTY OF SAN FRANCISCO'S ANSWER TO PLAINTIFFS' VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT

Date Action Filed: April 29, 2016
Trial Date: Not set

Respondent/Defendant the City and County of San Francisco erroneously sued herein as the "San Francisco Ethics Commission" and "City and County of San Francisco Treasurer and Tax Collector" hereby responds to Petitioners' verified Petition for Writ of Mandate and Complaint as follows:

RESPONSE TO INTRODUCTION

The allegations set forth hereunder constitute Petitioners' legal conclusions, opinions and interpretation of the law, to which no response is required except as follows: Respondent admits that this action arises from Supervisor Farrell's campaign manager's contacts with the agents of Common Sense Voters before the committee was formally established. Respondent denies that Petitioners never solicited, received or possessed or otherwise controlled the funds the City now seeks, and, on information and belief, denies that Supervisor Farrell did not authorize or did not have knowledge of his campaign manager's actions.

RESPONSE TO PETITION FOR WRIT OF MANDATE

The allegations set forth hereunder constitute Petitioners' legal conclusions, opinions and interpretation of the law, to which no response is required.

PARTIES

1. Respondent admits that Mark Farrell for District 2 Supervisor 2010 was a campaign committee established by Mark Farrell for his 2010 election and denies the remaining allegations of paragraph 1 of the Petition.

2. Respondent admits the allegations of paragraph 2 of the Petition.

3. Respondent admits that the City and County of San Francisco is a subdivision of the State of California. The remaining allegations are legal conclusions to which no response is required.

4. Respondent admits that Dennis Herrera is the San Francisco City Attorney. The remaining allegations of paragraph 4 are legal conclusions to which no response is required.

5. Respondent admits that the San Francisco Ethics Commission is the City agency tasked with enforcing the City's campaign laws. The remaining allegations are legal conclusions to which no response is required.

6. Respondent admits that Paul Renne and four other Commissioners constitute the Ethics Commission, and that John St. Croix is the former Executive Director of the San Francisco Ethics Commission. The remaining allegations are legal conclusions to which no response is required.

7. Respondent admits that the City and County of San Francisco Treasurer and Tax Collector is the City office tasked with collecting debts on behalf of the City. The remaining allegations are legal conclusions to which no response is required.

8. Respondent admits that Jose Cisneros is the Treasurer and that David Augustine is the Tax Collector. The remaining allegations of paragraph 8 are legal conclusions to which no response is required.

9. The allegations of paragraph 9 are legal conclusions to which no response is required.

10. The allegations of paragraph 10 are legal conclusions to which no response is required.

JURISDICTION AND VENUE

11. The allegations of paragraph 11 are legal conclusions to which no response is required.

FACTUAL AND PROCEDURAL BACKGROUND

12. Respondent admits that Farrell formed the Farrell Committee in August 2009 in connection with his candidacy for the Board of Supervisors. Respondent admits that the Farrell Committee filed public reports with the Ethics Commission before and after the election, and that state and City law require such filings. Respondent denies the remaining allegations of paragraph 12 of the Petition.

13. Respondent admits the allegations of paragraph 13 of the Petition.

14. Respondent denies, on information and belief, that Petitioners did not authorize or have knowledge of Lee's September 2010 e-mails to agents for a political committee in the process of being set up named "Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor" ("CSV"), regarding committee formation, potential fundraising and initial campaign planning.

15. Respondent admits the allegations of paragraph 15 of the Petition.

16. Respondent admits the allegations of paragraph 16 of the Petition.

17. Respondent admits the allegations of paragraph 17 of the Petition.

FPPC Investigation and Settlement

18. Respondent admits the allegations of paragraph 18 of the Petition.

19. Respondent admits the allegations of paragraph 19 of the Petition.

20. Respondent admits the allegations of paragraph 20 of the Petition.

21. Respondent lacks sufficient information to admit or deny the allegations of paragraph 21 of the Petition.

22. Respondent lacks sufficient information to admit or deny the allegations of paragraph 22 of the Petition.

23. Respondent admits that the FPEC invited the SFEC to join in the settlement and/or comment on the proposed stipulation with CSV and Lee, and such is something that is often done between the FPPC and local enforcement agencies.

24. Respondent admits the allegations of paragraph 24 of the Petition.

25. Respondent admits the allegations of paragraph 25 of the Petition.

SFEC Forfeiture Demand

26. Respondent admits that the Ethics Commission sent a letter to Petitioners on December 9, 2014 stating that it considered the expenditures made by CSV to be contributions to Petitioners, and demanded that Petitioners forfeit $190,903.04 to the City. Respondent denies the remaining allegations of paragraph 26 of the Petition.

27. Respondent lacks sufficient information to admit or deny the allegation that forfeiture has only been demanded when the violation of City law was clear from the face of the campaign report filed by the committee. The remaining allegations of paragraph 27 are legal conclusions to which no response is required.

28. Respondent denies the allegations of paragraph 28 of the Petition.

29. Respondent admits the allegation of paragraph 29 of the Petition.

30. Respondent admits that the forfeiture demand appeared on the Ethics Commission's March 23, 2015 meeting agenda and was discussed in open session, and that counsel for Petitioners spoke during the public comment period at that meeting. Respondent denies the remaining allegations of paragraph 30 of the Petition.

31. Respondent admits that the SFEC held a regularly scheduled monthly meeting and again discussed the forfeiture demand in open session, and that counsel for Petitioners spoke during the public comment period at this meeting. Respondent denies the remaining allegations of paragraph 31 of the Petition.

32. Respondent denies that Executive Director St. Croix issued a letter granting Petitioners' request to waive the forfeiture demand.

33. Respondent denies the allegations of paragraph 33 of the Petition.

34. Respondent admits that the Ethics Commission held public meetings in March, April and June 2015, and that the forfeiture demand was discussed at such meetings, including by Ethics Commissioner Peter Keane. Respondent denies the remaining allegations of paragraph 34 of the Petition.

35. Respondent admits the allegations of paragraph 35 of the Petition.

36. Respondent admits the allegations of paragraph 36 of the Petition.

37. Respondent admits the allegations of paragraph 37 of the Petition.

38. The allegations of paragraph 38 are legal conclusions to which no response is required.

RESPONSE TO FIRST CAUSE OF ACTION

39. Respondent realleges and incorporates its responses to paragraphs 1 through 38.

40. The allegations of paragraph 40 are legal conclusions to which no response is required.

41. The allegations of paragraph 41 are legal conclusions to which no response is required.

42. The allegations of paragraph 42 are legal conclusions to which no response is required.

43. The allegations of paragraph 43 are legal conclusions to which no response is required.

44. Respondent admits that it participated in interviews of witnesses and potential respondents in 2012. Respondent denies the remaining allegations of paragraph 44 of the Petition.

45. Respondent admits that it received a complaint from Ms. Reilly in December 2010. Respondent denies the remaining allegations of paragraph 45 of the Petition.

46. The allegations of paragraph 46 are legal conclusions to which no response is required.

47. The allegations of paragraph 47 are legal conclusions to which no response is required.

48. The allegations of paragraph 48 are legal conclusions to which no response is required.

49. Respondent admits that it has not pursued CSV for the forfeiture demand. The remaining allegations of paragraph 49 are legal conclusions to which no response is required.

50. Respondent admits that CSV is no longer in existence. Respondent denies the remaining allegations of paragraph 50 of the Petition.

51. The allegations of paragraph 51 are legal conclusions to which no response is required.

52. The allegations of paragraph 52 are legal conclusions to which no response is required.

53. The allegations of paragraph 53 are legal conclusions to which no response is required.

54. Respondent admits that the Ethics Commission did not issue a Probable Cause Report to Petitioners or hold a Probable Cause Hearing, or issue an Accusation to Petitioners. Respondent denies the remaining allegations of paragraph 54 of the Petition.

55. Respondent admits that the matter was discussed in open session at regularly scheduled monthly meeting. The remaining allegations are either legal conclusions to which no response is required, or Respondent lacks sufficient information to admit or deny them.

56. The allegations of paragraph 56 are legal conclusions to which no response is required.

57. Respondent admits that the Ethics Commission did not accept its staff's recommendation to waive the forfeiture demand. The remaining allegations of paragraph 57 are legal conclusions to which no response is required.

58. Respondent admits that the FPPC stipulation does not name Petitioners as respondents. Respondent denies the remaining allegations of paragraph 58 of the Petition.

59. Respondent admits that Petitioners were not parties to the FPPC stipulation, and that the stipulation was negotiated between the FPPC, Lee and CSV. The remaining allegations of paragraph 59 are legal conclusions to which no response is required.

60. Respondent denies that the FPPC stipulation does not contain any findings of fact or conclusions of law. The remaining allegations of paragraph 60 are legal conclusions to which no response is required.

61. Respondent admits the allegations of paragraph 61 of the Petition.

62. The allegations of paragraph 62 are legal conclusions to which no response is required.

63. Respondent denies the allegations of paragraph 63 of the Petition.

64. The allegations of paragraph 64 are legal conclusions to which no response is required.

65. The allegations of paragraph 65 are legal conclusions to which no response is required.

66. Respondent admits that it issued a forfeiture demand to Petitioners. The remaining allegations of paragraph 66 are legal conclusions to which no response is required.

67. Respondent denies the allegations of paragraph 67 of the Petition.

68. Respondent lacks information sufficient to admit or deny the allegations of paragraph 68 of the Petition.

69. The allegations of paragraph 69 are legal conclusions to which no response is required.

70. The allegations of paragraph 70 are legal conclusions to which no response is required.

71. Respondent admits that there was no hearing prior to the Ethics Commission's issuance of the forfeiture demand to Petitioners. The remaining allegations are legal conclusions to which no response is required.

72. Respondent denies the allegations of paragraph 72 of the Petition.

73. Respondent denies the allegations of paragraph 73 of the Petition.

74. Respondent denies the allegations of paragraph 74 of the Petition.

75. Respondent admits that the forfeiture demand was discussed before the Ethics Commission in open session and denies the remaining allegations of paragraph 75 of the Petition.

76. The allegations of paragraph 76 are opinions to which no response is required.

77. The allegations of paragraph 77 are legal conclusions to which no response is required.

RESPONSE TO SECOND CAUSE OF ACTION

78. Respondent realleges and incorporates its responses to paragraphs 1 through 77.

79. The allegations of paragraph 79 are legal conclusions to which no response is required.

80. The allegations of paragraph 80 are legal conclusions to which no response is required.

RESPONSE TO THIRD CAUSE OF ACTION

81. Respondent realleges and incorporates its responses to paragraphs 1 through 80.

82. The allegations of paragraph 82 are legal conclusions to which no response is required.

83. The allegations of paragraph 83 are legal conclusions to which no response is required.

RESPONSE TO FOURTH CAUSE OF ACTION

84. Respondent realleges and incorporates its responses to paragraphs 1 through 83.

85. The allegations of paragraph 85 are legal conclusions to which no response is required.

86. The allegations of paragraph 86 are legal conclusions to which no response is required.

87. The allegations of paragraph 87 are legal conclusions to which no response is required.

88. The allegations of paragraph 88 are legal conclusions to which no response is required.

RESPONSE TO FIFTH CAUSE OF ACTION

89. Respondent realleges and incorporates its responses to paragraphs 1 through 88.

90. The allegations of paragraph 90 are legal conclusions to which no response is required.

91. The allegations of paragraph 91 are legal conclusions to which no response is required.

RESPONSE TO SIXTH CAUSE OF ACTION

92. Respondent realleges and incorporates its responses to paragraphs 1 through 91.

93. Respondent denies that it ignored the laws and rules governing its investigations and enforcement matters. The remaining allegations of paragraph 93 are legal conclusions to which no response is required.

94. The allegations of paragraph 94 are legal conclusions to which no response is required.

RESPONSE TO PRAYER FOR RELIEF

On all Causes of Action:

These paragraphs contain no factual allegations, but rather Petitioners' request for relief, a statement to which no response is required.

AFFIRMATIVE DEFENSES

First Affirmative Defense
(Failure to State a Claim)

The Petition for Writ of Mandate and Complaint fail to set forth a viable cause of action against any Respondent/Defendant in this case.

Second Affirmative Defense
(Statute of Limitations)

Each and every cause of action is barred by the statute of limitations as set forth in California Code of Civil Procedure § 335 *et seq.*, California Government Code § 945.6.

Third Affirmative Defense
(Standing)

The Petition for Writ of Mandate and Complaint are barred by Petitioners'/Plaintiffs' lack of standing to either bring or maintain this action or to obtain the relief sought.

Fourth Affirmative Defense
(Failure to Exhaust Administrative Remedies)

The Petition for Writ of Mandate/Complaint for Declaratory are barred by Petitioners'/Plaintiffs' failure to exhaust their administrative remedies.

Fifth Affirmative Defense
(Laches)

The Petition for Writ of Mandate/Complaint are barred by the doctrine of laches.

Sixth Affirmative Defense
(Good Faith)

At all times relevant to this action, Respondents/Defendants acted in good faith.

Seventh Affirmative Defense
(Due Care)

At all times relevant to this action, Respondents/Defendants exercised due care and acted only in the execution and enforcement of the law.

PRAYER FOR RELIEF

Wherefore, Respondents/Defendants pray for relief as follows:

1. That the Petition for Writ of Mandate and Complaint be dismissed with prejudice and Petitioners/Plaintiffs take nothing thereby;

2. That judgment be entered in favor of Respondents/Defendants, and each of them, and against Petitioners/Plaintiffs on every cause of action contained in the Petition for Writ of Mandate and Complaint;

3. That Respondents/Defendants recover their costs in this action; and

4. For such other and further relief as this Court may deem just and proper.

Dated: May 31, 2016

DENNIS J. HERRERA
City Attorney
CHERYL ADAMS
Chief Trial Deputy
DAVID W. AMMONS
Deputy City Attorney

By: */s/ David W. Ammons*
DAVID W. AMMONS

Attorneys for Respondent
CITY AND COUNTY OF SAN FRANCISCO

PROOF OF SERVICE

I, DEBORAH ROSAS declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On May 31, 2016, I served the following document(s):

RESPONDENT/DEFENDANT THE CITY AND COUNTY OF SAN FRANCISCO'S ANSWER TO PLAINTIFFS' VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT

on the following persons at the locations specified:

James R. Sutton, Esq.
Bradley W. Hertz, Esq.
Matthew C. Alvarez, Esq.
The Sutton Law Firm
150 Post Street, Suite 405
San Francisco, CA 94108
Tel: 415 732 7700
Fax: 415 732 7701
Email: jsutton@campaignlawyers.com
Attorneys for Petitioners and Plaintiffs
Mark Farrell for District 2 and
Mark Farrell

in the manner indicated below:

☒ **BY UNITED STATES MAIL**: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed May 31, 2016, at San Francisco, California.

DEBORAH ROSAS

EXHIBIT C

DENNIS J. HERRERA, State Bar #139669
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CHERYL ADAMS, State Bar #164194
Chief Trial Deputy
DAVID W. AMMONS, State Bar #187168
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Attorneys for Cross-Complainant
CITY AND COUNTY OF SAN FRANCISCO

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
05/31/2016
Clerk of the Court
BY: MAURA RAMIREZ
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 and MARK FARRELL,

Petitioners and Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO ETHICS COMMISSION; CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR; and DOES 1 to 100, inclusive,

Respondents and Defendants.

CITY AND COUNTY OF SAN FRANCISCO, by and through its Ethics Commission,
Cross-complainant,

vs.

MARK FARRELL, an individual, and ROES 1 to 25, inclusive,

Cross-defendants.

Case No. CGC-16-551745

THE CITY AND COUNTY OF SAN FRANCISCO'S CROSS-COMPLAINT FOR VIOLATION OF CAMPAIGN AND GOVERNMENTAL CONDUCT CODE SECTION 1.114 AND CONCEALMENT

Cross-complainant the City and County of San Francisco ("the City or Respondent") acting by and through its Ethics Commission alleges as follows:

PARTIES

1. Plaintiff the City and County of San Francisco is a municipal corporation organized and existing under the laws of the State of California. The San Francisco Ethics Commission ("Ethics Commission") is a department of the City and County of San Francisco. The Ethics Commission serves the public, City officers and employees and candidates for public office through education through education and enforcement of campaign finance, conflict of interest, and ethics laws.

2. Defendant Mark Farrell is an individual, a resident of San Francisco, who was a candidate for the Board of Supervisors ("Board") in 2010 and a Supervisor serving on the Board since 2011.

3. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as ROES 1 through 25, inclusive ("Roes"), and therefore sues these Defendants by such fictitious names and will ask leave of the court to amend this Complaint to show their true names and capacities when the same are ascertained.

JURISDICTION

4. This suit is brought pursuant to San Francisco Campaign and Governmental Conduct Code section 1.168(b).

FACTS

5. The 2010 race for San Francisco's District 2 Supervisor was one of the closest in San Francisco's history. Supervisor Mark Farrell bested Janet Reilly by just 258 votes.

6. Former Supervisor Michela Alioto-Pier was the overwhelming favorite to win re-election to the seat until the California Court of Appeal ruled that she was ineligible to seek another term in office. Alioto-Pier's exit threw the District 2 race wide open to her challengers, primarily Farrell and Reilly. Once the Court of Appeal determined that Alioto-Pier could not seek another term, she endorsed Farrell for the District 2 seat.

7. While the Alioto-Pier endorsement gave needed momentum to the Farrell campaign, formed in August 2009, the race was nevertheless expected to be close between Farrell and Reilly.

8. Jack Helfand served on the campaign's fundraising committee. Prior to 2010, Helfand had been uninvolved in San Francisco campaigns. Helfand had previously worked with Farrell at a Bay Area law firm, Wilson Sonsini Goodrich & Rosati.

9. The Farrell campaign retained Chris Lee of Townsquare Consulting as its campaign consultant. On information and belief, Lee was acting within the course and scope of his retention at all times referenced herein.

10. In early September 2010, Helfand – even though he was a political novice – participated in the formation of an independent expenditure committee named Common Sense Voters, SF 2010, Vote for Mark Farrell for District 2 Supervisor ("CSV") to support Farrell's candidacy. CSV's campaign finance filings identified Helfand as the committee's principal officer.

11. By law, independent expenditure committees must operate, as their name states, independently from a candidate's own committee. Under state law, a candidate is generally prohibited from controlling, or exerting a significant influence over, more than one committee at a time. Further, campaign contributions made to independent expenditure committees are not subject to contribution limits that would otherwise apply to candidates, only if those independent expenditure committees are truly independent and separate from the candidate himself or the candidate's committee. Thus, while contributions made directly to the Farrell campaign would be subject to a $500 limit, contributions made to an independent expenditure committee that supports Farrell's campaign are not subject to any limit whatsoever – so long as the committee was actually independent.

12. The Farrell campaign, through its agent Lee, violated these contribution limits by coordinating with CSV, CSV's Principal Officer Helfand and CSV's campaign consultant Rich Schlackman.

13. On information and belief, the purpose of establishing CSV was to solicit campaign contributions well in excess of the $500 contribution limit. CSV received the following contributions:

Date of contribution	**Contributor**	**Contribution**
October 2, 2010	David Lamond	$2,000

October 2, 2010	Kamran Moghtaderi	$15,000
October 8, 2010	Sam W. Humphreys	$7,500
October 8, 2010	Mark R. Malcoun	$5,000
October 8, 2010	Raj Venkatesan	$1,000
October 18, 2010	Thomas J. Coates	$100,000
October 18, 2010	Diane B. Wilsey	$50,000
October 25, 2010	Thomas J. Coates	$41,000
TOTAL		**$221,500**

14. Lee was in contact with Helfand providing guidance to Helfand regarding CSV's formation.

15. CSV received $221,500 in donations, all in the month before the election. Several of CSV's donors also donated the maximum $500 amount to the Farrell campaign.

Date of contribution	**Contributor**	**Contribution**
August 10, 2009	Mark Malcoun	$500
August 12, 2009	Sam Humphreys	$500
December 20, 2009	Kamran Moghtaderi	$500
June 16, 2010	Raj Venkatesan	$500
September 15, 2010	David Lamond	$500

Notably, Helfand had no apparent connection or relationship to the two most significant contributors to CSV – Wilsey and Coates. During the FPPC's interview, Helfand could not even accurately recall their names.

16. On December 23, 2010, Charles Bell, an attorney representing Janet Reilly, filed a complaint against CSV and related supporters with the California Fair Political Practices Commission ("FPPC") and the Ethics Commission alleging that CSV had violated state and local law by making illegal independent expenditures. The complaint and accompanying documents requested that the

FPPC investigate Farrell's possible involvement, his controlled committee and his agents and supporters in coordinating with CSV.

17. This complaint was the first notice to the City and, on information and belief, the FPPC of any allegation of wrongdoing.

18. In late 2012 and early 2013, the FPPC conducted interviews as part of its investigation of CSV. The FPPC interviewed Lee on October 3, 2012, and questioned him about his communications with CSV during the 2010 campaign and whether Supervisor Farrell was aware of these communications.

19. After additional interviews and investigation, in November 2014, the FPPC adopted a Stipulation, Order and Decision ("the Stipulation"). The Stipulation identified Chris Lee as the Respondent, individually and on behalf of CSV. The Stipulation also concluded that Lee, as Farrell's campaign consultant and agent, was involved in "the setup, fundraising, and initial campaign planning of" CSV at the same time that he was working for Farrell as his campaign consultant. The Stipulation explained that, due to Lee's involvement, CSV became a "controlled committee of Mark Farrell" instead of an independent expenditure committee. As a controlled committee of Farrell, the contributions to CSV were the equivalent of contributions to Farrell's own campaign. Thus, all of the contributions to CSV were illegal contributions to Farrell, because they all exceeded the local $500 limit - by thousands or tens of thousands of dollars.

20. The Stipulation included five counts: (1) CSV's failure to file an amended statement of organization within 10 days to disclose the CSV was a Farrell-controlled committee; (2) CSV's failure to include Farrell's name on a October 17, 2010 mass mailer sent in support of Farrell and against Reilly; (3) CSV's failure to include Farrell's name on a October 19, 2010 mass mailer sent in support of Farrell and against Reilly; (4) CSV's failure to include Farrell's name on two October 20, 2010 mass mailers sent in support of Farrell and against Reilly; and (5) CSV's failure to include Farrell's name on a October 25, 2010 mass mailer sent in support of Farrell and against Reilly.

21. The Stipulation was not a joint settlement with the Ethics Commission, and it addressed only violations of state law, not local law.

22. On information and belief, defendant Farrell was personally involved in coordination with CSV, and was aware of Lee's activities in this regard.

23. Farrell not only failed to disclose his personal involvement, but has asserted, repeatedly, that he had no knowledge or involvement in the illegal coordinating activities. Farrell instead asserted that Lee was a "rogue" campaign consultant, acting without his authorization or knowledge. But Farrell has never explained Lee's motivation for acting in such an allegedly unauthorized manner. Most importantly, Farrell never explained why he - as the candidate - should not ultimately be held responsible for the actions of all persons working for his campaign. Defendant has denied any such knowledge or involvement notwithstanding the fact that hundreds of thousands of dollars poured into CSV just one month before the election from many of the same donors who contributed to his primary campaign committee.

24. On information and belief, these denials were made, and continue to made, with the intent to conceal the coordination activities.

25. As a candidate, Farrell had an affirmative duty to report any significant influence that he exerted on any political committees and accurately report the contributions received by any committees under his control.

26. On December 9, 2014, former Ethics Commission Executive Director John St. Croix sent a letter to Supervisor Farrell notifying him that based on the Stipulation, Supervisor Farrell was required to forfeit $190,903.04 to the City due to violations of the local $500 contribution limit. The letter explains that because CSV was a candidate-controlled committee (and not a truly "independent" expenditure committee), each contribution made to that committee was subject to the local $500 contribution limit.

27. Subsequently, Farrell, through his counsel in this matter, appeared at multiple Ethics Commission hearings regarding imposition of the forfeiture and has been provided multiple opportunities to address the basis for the December 9, 2014 letter sent by St. Croix. On several occasions, the Ethics Commission has invited Farrell - not just his counsel - to appear and respond to the allegations that he violated the City's local contribution limits. Farrell never appeared before the

Ethics Commission to answer questions or explain why he should not be held responsible for the actions he chose to employ for his campaign.

28. Given the unprecedented breadth of the violations here, the Ethics Commission voted to pursue the forfeiture demand.

FIRST CAUSE OF ACTION
(Violation Of SF C & GC Section 1.114(a)

29. Plaintiff hereby re-alleges and incorporates herein by reference paragraphs 1 through 28 of this Cross-Complaint as if fully set forth herein.

30. SF C & GC section 1.114(a) bar "candidate committees" from soliciting or accepting contributions that exceed $500. SF C & GC section 1.104, in turn, defines "candidate committee" as any committee "controlled by a candidate."

31. CSV was a "controlled committee" because defendant Farrell's agent Lee and, on information and belief, defendant Farrell himself exerted significant influence over that committee's fundraising activity.

32. Under local law, candidates are personally liable for the actions of their controlled committees. (*See* SF C & GC 1.170(g)) Hence, defendant Farrell is personally liable for all CSV violations, including the full $190,903.04 in illegal contributions to CSV.

33. These activities were actively concealed from plaintiff by Lee's denials into 2014 that he had any involvement with CSV. Lee finally admitted his illegal conduct in the November 2014 FPPC stipulation. Defendant Farrell's similar denials continue to this day.

34. Plaintiff had no reason to suspect or know of these violations until the Bell FPPC complaint filed on December 23, 2014.

SECOND CAUSE OF ACTION
(Fraudulent Concealment)

35. Plaintiff hereby re-alleges and incorporates herein by reference paragraphs 1 through 34 of this Cross-Complaint as if fully set forth herein.

36. Farrell and his agent Lee concealed the coordinating activities between his campaign and CSV.

37. Farrell had a duty to disclose all donations received by all committees under his control.

38. Farrell and Lee intended to prevent the City's enforcement of its campaign finance laws by concealing or suppressing the coordination between the Farrell campaign and CSV.

39. The City was unaware of the coordination and would have acted sooner had it known of the concealed facts.

40. The City sustained damage as a result of the concealment and suppression of these facts.

WHEREFORE, Plaintiff prays for judgment as follows:

1. For defendant Farrell's forfeiture to the City of illegal contributions to CSV in the amount of $190,903.04;

2. For prejudgment interest on that amount at the legal rate;

3. For costs of suit;

4. For such further relief as the Court deems just.

Dated: May 31, 2016

DENNIS J. HERRERA
City Attorney
CHERYL ADAMS
Chief Trial Deputy
DAVID W. AMMONS
Deputy City Attorney

By: */s/ David W. Ammons*
DAVID W. AMMONS

Attorneys for Cross-Complainant
CITY AND COUNTY OF SAN FRANCISCO

PROOF OF SERVICE

I, DEBORAH ROSAS declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On May 31, 2016, I served the following document(s):

THE CITY AND COUNTY OF SAN FRANCISCO'S CROSS-COMPLAINT FOR VIOLATION OF CAMPAIGN AND GOVERNMENTAL CONDUCT CODE SECTION 1.114 AND CONCEALMENT

on the following persons at the locations specified:

James R. Sutton, Esq.
Bradley W. Hertz, Esq.
Matthew C. Alvarez, Esq.
The Sutton Law Firm
150 Post Street, Suite 405
San Francisco, CA 94108
Tel: 415 732 7700
Fax: 415 732 7701
Email: jsutton@campaignlawyers.com
Attorneys for Petitioners and Plaintiffs
Mark Farrell for District 2 and
Mark Farrell

in the manner indicated below:

☒ **BY UNITED STATES MAIL**: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed May 31, 2016, at San Francisco, California.

DEBORAH ROSAS

EXHIBIT D

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Attorneys for Cross-Defendant
MARK FARRELL

ELECTRONICALLY
FILED
Superior Court of California, County of San Francisco
07/06/2016
Clerk of the Court
BY: ROMY RISK
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 and MARK FARRELL,

Petitioners and Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO ETHICS COMMISSION; CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR; and DOES 1 to 100, inclusive,

Respondents and Defendants.

CITY AND COUNTY OF SAN FRANCISCO, by and through its Ethics Commission,
Cross-complainant,

vs.

MARK FARRELL, an individual, and ROES 1 to 25, inclusive,

Cross-defendants.

Case No. CGC-16-551745

CROSS-DEFENDANT MARK FARRELL'S ANSWER TO CROSS-COMPLAINANT CITY AND COUNTY OF SAN FRANCISCO'S CROSS-COMPLAINT

Date Action Filed: **April 29, 2016**
Trial Date: **Not Set**

Cross-defendant MARK FARRELL ("Cross-defendant") hereby responds to Cross-complainant CITY AND COUNTY OF SAN FRANCISCO's ("Cross-complainant") cross-complaint as follows:

PARTIES

1. Cross-defendant admits the allegations contained in paragraph 1 of the cross-complaint.

2. Cross-defendant admits the allegations contained in paragraph 2 of the cross-complaint.

3. The allegations contained in paragraph 3 of the cross-complaint are legal conclusions to which no response is required.

JURISDICTION

4. The allegations contained in paragraph 4 of the cross-complaint are legal conclusions to which no response is required.

FACTS

5. Cross-defendant lacks sufficient information to admit or deny the allegation contained in the first sentence of paragraph 5 of the cross-complaint. Cross-defendant admits the allegation contained in the second sentence of paragraph 5 of the cross-complaint.

6. Cross-defendant lacks sufficient information to admit or deny the allegations contained in the first and second sentences of paragraph 6 of the cross-complaint. Cross-defendant admits the allegation contained in the third sentence of paragraph 6 of the cross-complaint.

7. Cross-defendant lacks sufficient information to admit or deny the allegations contained in paragraph 7 of the cross-complaint.

8. Cross-defendant lacks sufficient information to admit or deny the allegations contained in the first sentence of paragraph 8 of the cross-complaint because the terms "the campaign" and "fundraising committee" are vague and ambiguous. Cross-defendant lacks sufficient information to admit or deny the allegations contained in the second sentence of

paragraph 8 of the cross-complaint. Cross-defendant admits the allegations contained in the third sentence of paragraph 8 of the cross-complaint.

9. Cross-defendant admits the allegations contained in the first sentence of paragraph 9 of the cross-complaint. Cross-defendant denies each of the allegations contained in the second sentence of paragraph 9 of the cross-complaint.

10. Cross-defendant lacks sufficient information to admit or deny the allegations contained in the first sentence of paragraph 10 of the cross-complaint. Cross-defendant admits the allegations contained in the second sentence of paragraph 10 of the cross-complaint.

11. The allegations contained in paragraph 11 of the cross-complaint are legal conclusions to which no response is required.

12. Cross-defendant denies each of the allegations contained in paragraph 12 of the cross-complaint.

13. Cross-defendant lacks sufficient information to admit or deny the allegations contained in paragraph 13 of the cross-complaint.

14. Cross-defendant lacks sufficient information to admit or deny the allegations contained in paragraph 14 of the cross-complaint.

15. Cross-defendant admits that the five individuals listed in paragraph 15 of the cross-complaint made contributions of $500 to the Mark Farrell for District 2 Supervisor 2010 committee, but lacks sufficient information to admit or deny the remaining allegations in paragraph 15 of the cross-complaint.

16. Cross-defendant admits the allegations contained in paragraph 16 of the cross-complaint.

17. Cross-defendant denies each of the allegations contained in paragraph 17 of the cross-complaint.

18. Cross-defendant admits the allegations contained in the first sentence of paragraph 18 of the cross-complaint. Cross-defendant lacks sufficient information to admit or deny the allegations contained in the second sentence of paragraph 18 of the cross-complaint.

19. Cross-defendant admits the allegations contained in the first sentence of paragraph 19 of the cross-complaint. The allegations contained in the second, third, and fourth sentences of paragraph 19 of the cross-complaint refer to a legal document that speaks for itself and to which no response is required. Cross-defendant denies the allegations contained in the fifth and sixth sentence of paragraph 19 of the cross-complaint.

20. The allegations contained in paragraph 20 of the cross-complaint refer to a legal document that speaks for itself and to which no response is required.

21. The allegations of paragraph 21 of the cross-complaint are legal conclusions to which no response is required.

22. Cross-defendant denies each of the allegations in paragraph 22 of the cross-complaint.

23. Cross-defendant denies the allegations of the first sentence of paragraph 23 of the cross-complaint. Cross-defendant admits the allegations of the second sentence of paragraph 23 of the cross-complaint. Cross-defendant admits the allegations contained in the third sentence of paragraph 23 of the cross-complaint. Cross-defendant denies the allegations contained in the fourth sentence of paragraph 23 of the cross-complaint. Cross-defendant admits the allegations contained in the fifth sentence of paragraph 23 of the cross-complaint.

24. Cross-defendant denies each of the allegations in paragraph 24 of the cross-complaint.

25. The allegations in paragraph 25 of the cross-complaint are legal conclusions to which no response is required.

26. Cross-defendant admits the allegations contained in the first portion of in paragraph 26 of the cross-complaint – that a letter was sent to him. The allegations contained in the second sentence of paragraph 26 of the cross-complaint refer to a legal document that speaks for itself and to which no response is required.

27. Cross-defendant admits the allegations contained in the first sentence of paragraph 27 of the cross-complaint, but denies that the opportunities to address the Ethics Commission

have been sufficient. Cross-defendant denies the allegations contained in the second sentence of paragraph 27 of the cross-complaint. Cross-defendant denies the allegations contained in the third sentence of paragraph 27 of the cross-complaint, in that he appeared through his counsel, and in that he did not employ or otherwise take the specified actions for his campaign as alleged in the cross-complaint.

28. Cross-defendant denies each of the allegations contained in the first clause of paragraph 28 of the cross-complaint. Cross-defendant lacks sufficient information to admit or deny the allegations contained in the second clause of paragraph 28 of the cross-complaint.

RESPONSE TO FIRST CAUSE OF ACTION

29. Cross-defendant realleges and incorporates herein by this reference his responses to paragraphs 1 through 28 of the cross-complaint as if fully set forth herein.

30. The allegations contained in paragraph 30 are legal conclusions to which no response is required.

31. Cross-defendant denies each of the allegations contained in paragraph 31 of the cross-complaint.

32. The allegations contained in the first sentence of paragraph 32 of the cross-complaint are legal conclusions to which no response is required. Cross-defendant denies each of the allegations contained in the second sentence of paragraph 32 of the cross-complaint.

33. Cross-defendant denies each of the allegations contained in the first and third sentences of paragraph 33 of the cross-complaint. The allegations contained in the second sentence of paragraph 33 of the cross-complaint refer to a legal document that speaks for itself and to which no response is required.

34. Cross-defendant denies each of the allegations contained in paragraph 34 of the cross-complaint.

RESPONSE TO SECOND CAUSE OF ACTION

35. Cross-defendant realleges and incorporates herein by this reference his responses to paragraphs 1 through 34 of the cross-complaint as if fully set forth herein.

36. Cross-defendant denies each of the allegations contained in paragraph 36 of the cross-complaint.

37. The allegations contained in paragraph 37 of the cross-complaint are legal conclusions to which no response is required.

38. Cross-defendant denies each of the allegations contained in paragraph 38 of the cross-complaint.

39. Cross-defendant lacks sufficient information to admit or deny the allegations contained in paragraph 39 of the cross-complaint. Notwithstanding the foregoing, Cross-defendant denies that there was coordination and denies that he concealed any facts.

40. Cross-defendant denies each of the allegations contained in paragraph 40 of the cross-complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense

(Failure to State a Claim Upon Which Relief Can Be Granted)

41. The cross-complaint, and each of its causes of action, fail to set forth sufficient facts upon which relief can be granted and fail to set forth a viable cause of action against cross-defendant.

Second Affirmative Defense

(Statute of Limitations)

42. The cross-complaint, and each of its causes of action, are barred by the applicable statutes of limitation, including, but not limited to, those set forth in San Francisco Campaign and Government Conduct Code section 1.168(c) and California Code of Civil Procedure section 335 et seq.

Third Affirmative Defense

(Standing)

43. The cross-complaint, and each of its causes of action, are barred by cross-complainant's lack of standing to bring and/or maintain this action or to obtain the relief sought.

Fourth Affirmative Defense

(Failure to Exhaust Administrative Remedies)

44. The cross-complaint, and each of its causes of action, are barred by cross-complainant's failure to exhaust their administrative remedies.

Fifth Affirmative Defense

(Laches, Waiver, and Estoppel)

45. The cross-complaint, and each of its causes of action, are barred by the doctrines of laches, waiver, and estoppel.

Sixth Affirmative Defense

(Failure to Plead Fraud with Particularity)

46. The cross-complaint, and its second cause of action, fail to plead with particularity the circumstances constituting the alleged fraud.

Seventh Affirmative Defense

(Unclean Hands)

47. The cross-complaint, and each of its causes of action, are barred by the doctrine of unclean hands.

Eighth Affirmative Defense

(Deprivation of Constitutional Rights to Due Process)

48. Cross-complainant has deprived cross-defendant of his constitutional rights to due process.

Ninth Affirmative Defense

(Deprivation of Constitutional Rights to Equal Protection)

49. Cross-complainant has deprived cross-defendant of his constitutional rights to equal protection of the laws.

Tenth Affirmative Defense

(Factual and Legal Innocence)

50. Cross-defendant is factually and legally innocent of the charges that cross-

complainant has leveled against him.

Eleventh Affirmative Defense

(Ethics Commission Complaint Dismissed)

51. Cross-complainant previously dismissed the complaint filed with the Ethics Commission against cross-defendant, and having done so, is barred from pursuing this cross-complaint.

Twelfth Affirmative Defense

(Actions of Others)

52. Any wrongs or violations that may have been committed were done so by parties other than cross-defendant or parties who were not acting in the course or scope of their agency or other legal relationship with cross-defendant.

Thirteenth Affirmative Defense

(Impossibility of Forfeiture)

53. The law does not support impossibilities or absurd results. Given that neither cross-defendant nor his agents were ever in possession of the allegedly improper funds, cross-defendant cannot forfeit such funds.

Fourteenth Affirmative Defense

(Forfeiture Demand Rescinded)

54. Cross-complainant previously rescinded its forfeiture demand, and having done so, is barred from rescinding such rescission.

Fifteenth Affirmative Defense

(Cross-Complainants' Failure to Follow the Law)

55. Cross-complainant has failed to follow its own laws and procedures and thus is barred from pursuing this cross-complaint.

RESERVATION OF RIGHTS

The cross-defendant reserves the right, upon completion of its investigation and discovery, to file such additional affirmative defenses as many be appropriate.

PRAYER

WHEREFORE, cross-defendant prays for relief as follows:

1. That the cross-complaint be dismissed with prejudice and that cross-complainant takes nothing thereby;

2. That judgment be entered in favor of cross-defendant and against cross-complainant on every cause of action contained in the cross-complaint;

3. That cross-defendant recovers his costs in this action; and

4. For such other and further relief as this Court may deem just and proper.

Respectfully Submitted:

THE SUTTON LAW FIRM, PC
James R. Sutton, Esq.
Bradley W. Hertz, Esq.
Matthew C. Alvarez, Esq.

Dated: July 3, 2016

By: _____
James R. Sutton, Esq.
Attorneys for Cross-Defendant MARK FARRELL

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I, MARK FARRELL, am a party to this action. I have read the foregoing "Answer to Cross-Complainant City and County of San Francisco's Cross-Complaint" and know its contents.

The matters stated in the foregoing document are true and correct of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 3, 2016 at San Francisco, California.

Mark F. Farrell

Mark Farrell

James R. Sutton, Esq. (SBN 135930)
Bradley W. Hertz, Esq. (SBN 138564)
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Attorneys for Cross-Defendant
MARK FARRELL

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
08/04/2016
Clerk of the Court
BY:CAROL BALISTRERI
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 and MARK FARRELL,

Petitioners and Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO ETHICS COMMISSION; CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR; and DOES 1 to 100, inclusive,

Respondents and Defendants.

CITY AND COUNTY OF SAN FRANCISCO, by and through its Ethics Commission,
Cross-complainant,

vs.

MARK FARRELL, an individual, and ROES 1 to 25, inclusive,

Cross-defendants.

Case No. CGC-16-551745

CROSS-DEFENDANT MARK FARRELL'S REPLY TO CITY AND COUNTY OF SAN FRANCISCO'S OPPOSITION TO SPECIAL MOTION TO STRIKE

[CODE OF CIVIL PROCEDURE SECTION 425.16; "ANTI-SLAPP" STATUTE]

Judge: Hon. Harold E. Kahn
Date: August 11, 2016
Reservation #: 07180811-01
Time: 9:30am
Dept: 302

COMPLAINT FILED: 4/29/16
TRIAL DATE: NONE

I. INTRODUCTION.

The City has failed to rebut that the cross-complaint is a SLAPP suit with no probability of success. It has failed to refute Supervisor Farrell's showing that the cross-complaint arises out of the exercise of his free speech rights to raise and spend money and to communicate with voters as part of his campaign for public office. It has failed to justify why the SFEC could not take action within four years from the date of the alleged violations. It has failed to explain how Supervisor Farrell can be expected to "forfeit" $190,903.04 which neither he nor his political committee ever received, or why the City is not pursuing forfeiture from CSV – the political committee which actually received the money in question. Because the City's cross-complaint stems from Supervisor Farrell's free speech rights, and the City has not shown that it is likely to prevail, the Court should dismiss the cross-complaint in its entirety.

II. THE ANTI-SLAPP STATUTE APPLIES TO THE CITY'S CROSS-COMPLAINT.

The City's lack of understanding of the scope of the anti-SLAPP statute is apparent at the beginning of the Opposition Brief ("Opp.") where the City asserts that "Farrell argues that the [City] should not be able to pursue a remedy . . . because the illegal actions at issue in the case . . . were undertaken in furtherance of Farrell's right to run for elected office." (Opp., 1:2-7.) This one sentence demonstrates – in four ways – how the City fundamentally misunderstands the anti-SLAPP statute.

First, Supervisor Farrell is not claiming that the anti-SLAPP statute blocks the City from pursuing a judicial remedy. To the contrary, the City has a right to sue – with the caveat that it may proceed if, and only if, it can demonstrate a probability of prevailing. The anti-SLAPP statute thus is not a bar to litigation, but instead merely a hurdle. Second, the City rushes to judgment by claiming "illegal actions were undertaken." Not only does Supervisor Farrell absolutely deny any wrongdoing, but that is a question for this Court to decide, and not for the City simply to assume. Third, Supervisor Farrell is not asserting that illegal actions were undertaken in furtherance of his constitutional rights.

Quite the opposite, the position is that the "cross-complaint arises from [his] acts or alleged acts in furtherance of his free speech rights." (Farrell's Points & Authorities ("PA"), 1:6-7; emphasis added.) This position is supported by the plain language of the statute that "it shall be construed broadly" (CCP section 425.16(a)), as well as the long line of cases applying the anti-SLAPP statute to political campaigns. (PA, 5:5-21.) Fourth, the free speech rights in which Supervisor Farrell was engaging (and which bring him under the purview of the anti-SLAPP statute) were not, as the City tries to claim, so narrow as to apply only to his candidacy. The actions which form the basis of the City's cross-complaint related to raising and spending funds to be used to communicate with voters about policy issues and his qualifications for office.

A. Supervisor Farrell's Actions Clearly Furthered His Free Speech Rights.

The City sets up a "straw man" argument by focusing solely on Supervisor Farrell's decision to run for public office and whether this decision is a free speech right. (Opp., 10:8-11:18.) The City's cross-complaint is not, as the City contends in its Opposition, based on Supervisor Farrell's right to run for public office, but rather stems from his right to raise and spend campaign funds and communicate with voters. (MP, 1:7, 16-17; and 5:22-26.) The City never challenges that its cross-complaint stems from raising and spending campaign funds (because it so obviously does) or that raising and spending campaign funds is protected by the First Amendment (because it so obviously is). After all, "the constitutional guarantee [of free speech] has its fullest and most urgent application precisely to the conduct of campaigns for public office." (Beilenson v. Superior Court (1996) 44 Cal.App.4th 944,949, quoting Buckley v. Valeo (1976) 424 U.S. 1.) (MP, 5:3-26.) The City's cross-complaint clearly arises out of Supervisor Farrell's free speech rights and therefore the anti-SLAPP statute applies unless the City can avail itself of an exception to the statute.

B. The City Can Not Avail Itself of the Public Prosecutor Exception.

Anticipating that the City would seek to use the "public prosecutor" exception to escape the anti-SLAPP statute's broad reach, Supervisor Farrell addressed this issue in his moving papers, citing to the most recent and well-reasoned appellate authority on the issue: Colton v. Singletary (2012) 206 Cal.App.4th 751. (PA, 5:27-6:12.) The City's Opposition desperately tries to fit its cross-complaint within the public prosecutor exception (Opp., 3:18-7:2) by mistakenly relying on the now-discredited Long Beach case (111 Cal.App.4th 302). However, the City "protests too much" in a convoluted effort to fit into the exception.

The City has it backwards when it engages in such a lengthy discussion of the Long Beach case and gives such short shrift to the Colton case. The Colton court conducted a detailed, comprehensive and well-reasoned analysis of the Long Beach case, and rejected its holding as unpersuasive. Instead of "legislating from the bench," as was done in Long Beach, the Colton court looked to:

> "the well-settled rule of statutory construction that 'we look first to the words of the statute, giving the language its usual ordinary meaning. If there is no ambiguity in the language, then we presume the Legislature meant what it said[1], and the plain meaning of the statute governs.'" (Colton at 777.) [The] "language of section 425.16[d] is clear and unambiguous: [it] applies only to lawsuits 'brought in the name of the people of the State of California.' There is nothing confusing or contradictory about the statutory language. Accordingly, we disagree with the Long Beach opinion's reasoning because it goes beyond the plain language of the statute, despite the clarity of the statute's wording." (Colton at 777.)

The City attempts to rehabilitate Long Beach by focusing on the fact that the case also dealt with political campaign activity. However, the subject matter of the underlying cause of action is irrelevant to the application of the public prosecutor exception. What is relevant is the language and

[1] "The Legislature clearly knows how to create an exemption from the anti-SLAPP statute when it wishes to do so," and the California Supreme Court has cautioned against creating such exemptions. (Jarrow Formulas v. LaMarche (2003) 31 Cal.4th 728.) Moreover, "exceptions to the general provisions of a statute are to be narrowly construed." (San Francisco v. Ballard (2006) 136 Cal.App.4th 381, 400.)

underlying purpose of the exception, which demonstrates that the exception does not apply in this case.

Notably, the City failed to cite Los Angeles v. Animal Defense League (2006) 135 Cal.App.4th 606, in which the Second District Court of Appeal seriously questioned, and limited the reach of, its own Long Beach decision. "[A]lthough this court departed from the express language of [CCP section 425.16(d) in Long Beach] when we applied the exemption to a civil enforcement action that had not been brought literally 'in the name of the people of the State of California,' any further erosion of the specific requirements of that provision is unwarranted in light of the Supreme Court's subsequent admonition in [Jarrow Formulas] that the plain language of section 425.16 is to be respected and that exceptions to the statute's broad reach must not be lightly implied." (Id. at 620; emphasis added.)

The City conveniently does not mention that the exception has only been extended when the government is seeking an injunction or civil penalties, and not when it is seeking damages or similar remedies. (See Animal Defense League at 618–19, citing People v. Health Laboratories (2001) 87 Cal.App.4th 442.) Unlike the governmental entity in the Long Beach case, the City here has admitted that it is not seeking a monetary penalty. (Opp., 13:23.) Rather, the cross-complaint states that "[t]he City sustained damage" (cross-complaint, 8:6), and the Opposition states that the City does not view the remedy of forfeiture as an injunction or civil penalty. (Opp., 13:23-14:4.) Therefore, the City's own briefs support the position that the public prosecutor exception does not apply to the cross-complaint.

Moreover, the City's discussions of the "public interest exception" and the "absurd results exception" (Opp., 5:20-6:10), its references to CCP section 998 (Opp., 4:26-28), and various aspects of legislative history[2] do not undermine the soundness of the Colton ruling. As the Colton court

[2] The City incorrectly claims that Long Beach based its broad reading of the exception on the legislative history of the anti-SLAPP statute. The case actually looked solely at the legislative history

makes clear, the "public interest exception" can be invoked, if applicable, by both public and private parties, so the City's self-serving distinctions in this regard provide no support for its claims. (Colton at 777-778.) Even reading Government Code section 36900 as portrayed by the City does not help its argument. Simply put, the City did not sue Supervisor Farrell in the name of the People of State of California, but instead merely cross-complained against Supervisor Farrell for damages (in the form of "forfeiture"). The public prosecutor exception thus cannot shield the City from the anti-SLAPP statute.

C. The City Can Not Avail Itself of the Illegality Exception.

The City again misses the point when it attempts to rely on the "illegality exception." The mere fact that the City is alleging illegality does not enable it to invoke the exception; if that were the case, the exception would swallow the rule. Even Flatley v. Mauro (2006) 39 Cal.4th 299 (cited by the City at Opp., 7:6-11) makes clear that only where the party "concedes, or the evidence conclusively establishes, that the assertedly protected speech or petition activity was illegal as a matter of law [is] the [cross-] defendant precluded from using the anti-SLAPP statute to strike the [cross-complainant's] action." (Flatley at 320.) Clearly, Supervisor Farrell has not conceded any illegality. Nor has the evidence conclusively established (or established at all) that Supervisor Farrell's activity was illegal; instead, that is the City's burden as part of the second prong of this motion.

In this regard, the City's discussion of criminal, as opposed to civil, violations of law again obfuscates the actual issue at hand – whether or not Supervisor Farrell violated the law (which he vehemently denies and which the City has failed to prove). Further, the City's overbroad and unsupported claim that "conclusive evidence of a violation of any law triggers the [illegality] exception" (Opp., 7:12; emphasis added) borders on the absurd. As Paul for Council v. Hanyecz

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of a different statute – CCP section 998. Though the language in the two statutes may be the same, there is nothing in the legislative history of the anti-SLAPP statute which supports the argument that the Legislature intended such a broad reading in the context of a SLAPP.

(2001) 85 Cal.App.4th 1356 made clear, it was because "defendants ha[d] effectively conceded the illegal nature of their election campaign finance activities . . . such activities were not a valid exercise of constitutional rights as contemplated by section 425.16." Paul for Council emphasized that "there was no dispute on the point" [of Hanyecz's illegal acts] but "had there been a factual dispute as to the legality of defendant's actions, then we could not so easily have disposed of defendants' motion." (Id. at 1361, as cited in Soukup v. Law Offices of Herbert Hafif (2006) 39 Cal.4th 260, at 284-285.) Accordingly, as there is a genuine factual (and legal) dispute as to the legality of Supervisor Farrell's actions, the City cannot use the "illegality exception" to avoid the anti-SLAPP statute.

III. THE CITY CAN NOT DEMONSTRATE A PROBABILITY OF PREVAILING.

All of the City's arguments about why it is likely to prevail on the merits are post-hoc justifications for a baseless decision by the SFEC. The City has thrown several arguments against the wall hoping one will stick; instead of proving its case, however, it has put out contradictory positions, mis-cited authority, and attempted to recreate history. The cross-complaint and the arguments made in the Opposition are no more than a desperate attempt to justify an unjustifiable action.

A. The City Cannot Justify Its Own Delay.

The City is asking this Court for the extraordinary remedy of extending a clear four-year statute of limitations despite its inability to articulate even a simple excuse for why the City did not solely cause the very delay from which it now seeks relief. (Community Cause v. Boatwright (1981) 124 Cal.App.3d 888, 900 [plaintiffs must justify failure to discover facts within statutory period and must not be at fault for late discovery]; cross-complaint ¶¶16-17.) Not a single word of the City's brief is dedicated to explaining why it could not act by October 2014. It was put on notice of the alleged violations by filings made with the SFEC in October 2010. It then interviewed several witnesses and reviewed hundreds of documents. All the City needed to do to toll the statute of limitations was prepare a one-page Probable Cause report. It had four years to do that. It had both its

own and the FPPC's resources at its disposal. Yet somehow, and without explanation, the City missed the statutory deadline and is now asking for extraordinary relief from the consequences of its own idleness.[3]

B. The Delayed Discovery and Fraudulent Concealment Doctrines Do Not Apply.

Contrary to the City's assertions, the delayed discovery and fraudulent concealment doctrines do not apply here.

First, the United States Supreme Court held in Gabelli v. SEC (2013) 133 S.Ct. 1216 that government agencies enforcing statutory schemes cannot avail themselves of the delayed discovery rule to extend the time in which they must bring an enforcement action. (Id. at 1224.) The City attempts to distinguish Gabelli from the current matter with the absurd argument that the SFEC (a local agency in a jurisdiction with fewer than 900,000 residents) has less staffing and resources than the SEC (a federal agency overseeing securities issues throughout a nation of over 320 million people), as if this somehow allows the SFEC to bring tardy claims. More importantly, just as the SEC "has many legal tools at hand to aid" its investigations (Id. at 1222), the SFEC has all the tools needed to identify, investigate and prosecute violations of the City's campaign laws on a timely basis. (Charter § 15.100 & SFEC Enf. Regs §§ III(C), V, X, XII, XII(C) [SFEC's powers include subpoenaing witnesses and records, compelling testimony, administering oaths, deposing witnesses, initiating complaints, introducing and rebutting evidence, etc.].)

Moreover, the City obfuscates the central premise and holding of Gabelli. That Gabelli dealt with a federal agency and federal law is a meaningless factual distinction. The core holding of Gabelli

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[3]A statute of limitations can only be equitably tolled in two scenarios: if the defendant's wrongful conduct prevented the plaintiff from asserting a claim on time, or if extraordinary circumstances beyond the plaintiff's control make timely filing impossible. (See Seattle Audubon Soc. v. Robertson (1991) 931 F.2d 590, 565.) Neither of these two scenarios is present here. No conduct by Supervisor Farrell or anyone else prevented the SFEC from asserting its claim on a timely basis, and nothing occurred that made it even remotely difficult for the SFEC to act within four years.

is that all government agencies, unlike private plaintiffs, have a duty to investigate violations and enforce statutory schemes in a timely manner. If, as the City argues, the SFEC's duty to investigate was based solely on when private citizens file complaints, then the statute of limitations would be rendered meaningless, "leav[ing] defendants exposed to Government enforcement action" not only for the statutory period but also for "an additional uncertain period into the future." (Gabelli, supra at 1223.)

The City also tries to disparage Gabelli's relevance because it cannot locate any cases in which it has been applied to state or local enforcement agencies, as if applying the holding of a Supreme Court case to this matter is contingent on other courts having applied it in other contexts. One explanation for the lack of cases citing Gabelli (in addition to the short time since it was decided) is that other government enforcement agencies understand they are responsible for uncovering possible violations of their laws within the time periods set out in their own rules. Whether or not other courts have had reason to apply Gabelli's holding in the short time since the case was handed down does not change the fact that the holding and reasoning apply in this matter, and that the case's holding and reasoning foreclose the City's ability to rely on the delayed discovery rule.

Second, an independent reason for the Court to strike the City's fraudulent concealment cause of action is because the City did not make that claim within four years, even though courts have found that, where fraudulent concealment is plead as a separate cause of action, the claim must be made within the applicable statutory period. (See, e.g., Aerojet General Corp v. Superior Court (1986) 177 Cal.App.3d 950, 956 [plaintiffs must put defendants on notice of fraudulent concealment allegation within the statute of limitations period so that the defendant "may assemble a defense while the facts are still fresh"].) The City was therefore required to notify Supervisor Farrell of its fraudulent concealment allegation within the statutory period – yet the City's cross-complaint, filed more than 5 ½ years after the alleged violations, is the first and only time that the City has accused Supervisor

Farrell or anyone else of fraudulent concealment. (Cross-Complaint at ¶¶ 35-40.) Neither the forfeiture demand letter, the FPPC stipulation, nor any other document issued by the City or FPPC ever alleged fraudulent concealment, let alone formally accused Supervisor Farrell or anyone else of such actions. In addition to the Gabelli holding, for this reason alone, the City is not likely to prevail on its fraudulent concealment cause of action.

Third, in June 2015, the Executive Director explicitly admitted that "the Commission does not have any evidence before it that you committed an act of fraud." (Alvarez Dec., Exh. H.) The City's cross-complaint and Opposition conveniently omit this clear and explicit finding by the SFEC. This admission by the head of the agency which investigated this matter, coupled with the fact that the City has not proferred any new evidence of fraud, makes it extremely unlikely that it can prevail on its cause of action for fraudulent concealment.

The City tries to make much out of the fact that Mr. Lee did not tell anyone that he sent emails to CSV as the committee was being set up. (Opp., 12:8-16.) This argument not only contradicts the statement by the Executive Director that there was no evidence of fraudulent concealment, but also effectively claims that the City has no duty to act unless and until a defendant comes forward and admits guilt. This argument not only flies in the face of fundamental constitutional protections, but also renders the statute of limitations in the City's campaign law meaningless – and in fact guts the entire legal doctrine behind statutes of limitations.

C. No Nexus Exists Between Alleged Wrongdoing And The Money To Be Forfeited.

The City makes no showing of any nexus between the money raised and spent by CSV and the money the City now seeks – Supervisor Farrell's personal funds. (See, e.g., People v. $47,050 (1993) 17 Cal.App.4th 1319 [funds to be forfeited must have some nexus to illegal activity].) The City does not even attempt to connect Supervisor Farrell's personal funds and CSV's funds, instead relying sole on the provision in City law which imposes personal liability on candidates for the violations of their

committees. (SFCGCC section 1.170(g).) However, this provision does not replace the requirement that the government must prove a link between the funds to be forfeited and the alleged illegal activity.

Moreover, the City ignores that its own law only requires "committees" to pay forfeitures, not any individual personally. (SFCGCC section 1.114(e).) Yet instead of seeking forfeiture from CSV, the City is pursuing Supervisor Farrell only. Nothing suggests, and the City has not cited to any authority, that a candidate is personally liable to comply with a forfeiture demand for money which he did not raise, receive, spend, or in any way control. (Baca v. Minier (1991) 229 Cal.App.3d 1253, 1265 ["Statutes imposing forfeitures are not favored and are to be strictly construed in favor of the persons against whom they are sought to be imposed."].)

IV. CONCLUSION

For the reasons stated above, the court should grant Supervisor Farrell's anti-SLAPP motion and dismiss the City's cross-complaint in its entirety.

Dated: August 4, 2016

Respectfully Submitted:

By: _____

James R. Sutton
Bradley W. Hertz
Matthew C. Alvarez
The Sutton Law Firm, PC
Attorneys for Cross-Defendant
MARK FARRELL

PROOF OF SERVICE

I, Matthew C. Alvarez, declare:

I am over 18 years of age, not a party to the within action, am an associate attorney at the Sutton Law Firm, PC. My business address is 150 Post Street, Suite 405, San Francisco, CA 94108, and my electronic service address is malvarez@campaignlawyers.com. I have personal knowledge of the facts recited herein, and could and would testify competently hereto as to the service of the documents listed below if asked to do so:

CROSS-DEFENDANT MARK FARRELL'S REPLY TO CITY AND COUNTY OF SAN FRANCISCO'S OPPOSITION TO SPECIAL MOTION TO STRIKE

On August 4, 2016, I electronically served the document listed above, by E-Service through File & ServeXpress, during business hours (at approximately 3:00 p.m.) to opposing counsel Yvonne R. Mere, Esq. and Sara J. Eisenberg, Esq., who represent Cross-defendants the City and County of San Francisco, San Francisco Ethics Commission and San Francisco Treasurer and Tax Collector AND Cross-complainant the City and County of San Francisco, at their electronic service addresses (yvonne.mere@sfgov.org and sara.eisenberg@sfgov.org) as set forth below.

Yvonne R. Mere, Esq. Sara J. Eisenberg, Esq. Office of the City Attorney 1390 Market Street, 7th Floor San Francisco, CA 94102 yvonne.mere@sfgov.org sara.eisenberg@sfgov.org	Counsel for Cross-defendants the City and County of San Francisco, San Francisco Ethics Commission and San Francisco Treasurer and Tax Collector AND Cross-complainant the City and County of San Francisco

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 4, 2016.

Matthew C. Alvarez

James R. Sutton, Esq. (SBN 135930)
Bradley W. Hertz, Esq. (SBN 138564)
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MARK FARRELL

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
08/08/2016
Clerk of the Court
BY:DAVID YUEN
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

MARK FARRELL FOR DISTRICT 2 SUPERVISOR 2010 and MARK FARRELL,

Petitioners and Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO ETHICS COMMISSION; CITY AND COUNTY OF SAN FRANCISCO TREASURER AND TAX COLLECTOR; and DOES 1 to 100, inclusive,

Respondents and Defendants.

CITY AND COUNTY OF SAN FRANCISCO, by and through its Ethics Commission,
Cross-complainant,

vs.

MARK FARRELL, an individual, and ROES 1 to 25, inclusive,

Cross-defendants.

Case No. CGC-16-551745

CROSS-DEFENDANT MARK FARRELL'S REQUEST FOR JUDICIAL NOTICE RE: HIGHLY RELEVANT AUGUST 8, 2016 CALIFORNIA SUPREME COURT RULING

Judge: Hon. Harold E. Kahn
Date: August 11, 2016
Reservation #: 07180811-01
Time: 9:30am
Dept: 302

COMPLAINT FILED: 4/29/16
TRIAL DATE: NONE

Cross-Defendant Mark Farrell ("Supervisor Farrell") respectfully requests that this Court take judicial notice, pursuant to California Evidence Code section 451(a), of the decisional law of this state as embodied in today's California Supreme Court opinion in City of Montebello v. Vasquez, Case No. S219052 (Montebello). A true and correct copy of the Supreme Court's opinion, printed from the Supreme Court's website today, is attached hereto as Exhibit A and incorporated herein by this reference, and located here: http://www.courts.ca.gov/opinions/documents/S219052.PDF.

The Montebello ruling is of particular importance to Supervisor's Farrell's Special Motion to Strike the City and County of San Francisco's cross-complaint, which motion is scheduled to be heard on Thursday, August 11, 2016 at 9:30 a.m. The Montebello decision specifically addresses the "Public Prosecutor Exemption" (sometimes referred to as the "Public Enforcement Exemption") to the Anti-SLAPP statute, and resolves the circuit split between City of Colton v. Singletary (2012) 206 Cal.App.4th 751 and City of Long Beach v. California Citizens for Neighborhood Empowerment (2003) 111 Cal.App.4th 302.

Specifically, on page 11 of the Montebello opinion, the Court holds that the exemption only applies if an action is "brought *both* 'in the name of the people of the State of California' *and* 'by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.'" (Emphasis in original.) Insofar as the City devotes a substantial amount of space in its opposition papers (at pages 3 – 7) on this exemption (which clearly does not apply), it is particularly important that the Trial Court is conversant with the Montebello decision prior to issuing its tentative ruling and to hearing this matter.

Dated: August 8, 2016

Respectfully Submitted:

By: _____

James R. Sutton
Bradley W. Hertz
Matthew C. Alvarez
The Sutton Law Firm, PC
Attorneys for Cross-Defendant
MARK FARRELL

EXHIBIT

A

Filed 8/8/16

IN THE SUPREME COURT OF CALIFORNIA

CITY OF MONTEBELLO, Plaintiff and Respondent, v. ROSEMARIE VASQUEZ et al., Defendants and Appellants; ARAKELIAN ENTERPRISES INC., Intervener and Respondent.	S219052 Ct.App. 2/1 B245959 Los Angeles County Super. Ct. No. BC488767

The City of Montebello sued three of its former councilmembers and a former city administrator, claiming they violated Government Code section 1090 by voting on a waste hauling contract in which they held a financial interest.[1] It sought to invalidate the contract and force defendants to disgorge campaign contributions made by the company that was awarded the contract. Defendants

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1 "[C]ity officers or employees shall not be financially interested in any contract made by them in their official capacity . . . ." (Gov. Code, § 1090, subd. (a).) We sometimes refer to Montebello as the "City."

SEE CONCURRING AND DISSENTING OPINION

moved to strike the complaint under the anti-SLAPP statute. (Code Civ. Proc., § 425.16.)[2] The trial court denied the motion, and the Court of Appeal affirmed.

We hold, as did the courts below, that this case does not come within the statutory anti-SLAPP exemption for public enforcement actions. However, the votes cast in favor of the contract at issue were protected activity under section 425.16. The Court of Appeal's judgment to the contrary is reversed.

I. BACKGROUND

In 2008, the franchise for residential waste collection in Montebello was held by intervener Arakelian Enterprises, doing business as Athens Disposal Company (Athens). Athens had been the City's residential waste hauler for over 40 years, but a number of companies provided commercial waste services. Athens's executive vice-president, Dennis Chiapetta, was approached by defendant Robert Urteaga, who suggested that Athens consider seeking an exclusive commercial waste hauling contract.[3]

During subsequent negotiations over adjustments to the residential contract, City representatives invited Athens to submit a proposal for a commercial and industrial waste hauling contract. Chiapetta agreed. He negotiated primarily with the city administrator, defendant Richard Torres, but also with the city attorney. Chiapetta said Torres had previously opposed the idea of an exclusive contract, but changed his mind because the waste hauling industry was undergoing

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2 SLAPP is an acronym for "strategic lawsuit against public participation." (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 57 (*Equilon*).) Hereafter, unspecified statutory references are to the Code of Civil Procedure.

3 The timing of Urteaga's initial contact with Chiapetta is not entirely clear. Chiapetta's deposition testimony unequivocally stated both that it occurred in 2008, and that Urteaga was not yet a member of the city council. However, Urteaga was elected in 2007. The complaint alleges that the meeting occurred "[e]ither before or shortly after his election."

consolidation, landfills were preparing to close, and the City faced compliance issues under the Integrated Waste Management Act (Pub. Resources Code, § 40000 et seq.). Under a proposed comprehensive contract, Athens would pay the City $500,000, improve its residential services, and indemnify the City for any failure to comply with the Integrated Waste Management Act.

At a city council meeting, more than 20 people spoke against the contract. Nevertheless, it was approved by a three to two vote. Urteaga and codefendants Kathy Salazar and Rosemarie Vasquez voted in favor. Mayor William Molinari was in the minority. When presented with the finalized contract, Molinari declined to sign it because of various misgivings. He sought the advice of the city attorney, who told him he had a ministerial duty to execute the document. The city attorney advised Molinari in writing that a decision not to sign would "warrant a determination that for purposes of this Agreement only, you are deemed 'absent' thus vesting in the mayor pro tem the authority to execute this contract." The city attorney stated he would instruct the mayor pro tem to sign, with an annotation reflecting her authority to perform that duty in the mayor's absence.

Acting as mayor pro tem, Vasquez signed the contract with the city attorney's annotation. Thereafter, Molinari asked the Los Angeles County District Attorney's office to investigate possible money laundering by Salazar, along with Brown Act violations by all three councilmembers who had voted for the contract. (See Gov. Code, § 3500 et seq.) The office responded that Brown Act violations could not be investigated without some evidence of an illegal closed session, but that it would look into the money laundering allegation.

The district attorney's office ultimately filed no charges against Salazar. Its investigation revealed no impropriety in her alleged use of campaign donations from Athens to make loans to a nonprofit organization where she served as

executive director. Nor did Athens's donations to that organization disqualify Salazar from voting on the Athens contract. There was no evidence she had offered to vote for the contract in exchange for money. While a technical conflict of interest might "possibly" be established under Government Code section 1090, the district attorney did not believe Salazar had a corrupt motive in voting on the Athens contract.

Montebello resident Mike Torres sued the City in April 2009, seeking to invalidate the Athens contract on various grounds.[4] The trial court denied an anti-SLAPP motion filed by the City, and it appealed. Mayor Molinari and Councilmember Vasquez were up for reelection in November 2009. Montebello voters qualified a recall of Councilmembers Urteaga and Salazar, and a special election was set for February 2010. Athens contributed $37,300 to defeat Molinari, $45,000 to reelect Vasquez, and $352,912.73 to defeat the recall.[5] Despite those efforts Molinari was reelected, Vasquez was not, and Urteaga and Salazar were recalled. Richard Torres announced his retirement as city administrator shortly after the November election.

The City abandoned its appeal in the Mike Torres action, and substituted new counsel in place of the city attorney. In May 2011 it filed an amended answer, declaring it no longer disputed the material allegations of the petition. Athens, however, continued to defend its contract as real party in interest in the Mike Torres litigation.

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4 Mike Torres is evidently unrelated to defendant Richard Torres. His lawsuit is distinct from the suit subsequently filed by the City, which is the subject of this appeal.

5 The City does not dispute defendants' claim that these contributions were properly reported; indeed, it relies on the forms Athens filed with the Fair Political Practices Commission as supporting evidence.

The City filed the action now before us in July 2012, represented by the same outside counsel who took over in the Mike Torres case. The complaint states a single cause of action against Urteaga, Salazar, Vasquez, and Richard Torres for conflict of interest in violation of Government Code section 1090. It seeks a declaration that the Athens contract is void, and an order requiring the councilmember defendants to disgorge the campaign contributions they received from Athens.

Three days after the City filed its complaint, the trial court in the Mike Torres action issued a writ of mandate setting aside the Athens contract.[6] Defendants then moved to strike the City's complaint under the anti-SLAPP statute. Noting that the Athens contract had been voided, they contended the City's action was little more than a politically driven attempt to punish them for exercising their constitutional right of free speech in connection with issues of public interest related to their official duties. The City claimed its action fell within the public enforcement exemption of section 425.16, subdivision (d) (hereafter, § 425.16(d)). Alternatively, the City argued that voting by public officials is not protected under the First Amendment, citing *Nevada Commission on Ethics v. Carrigan* (2011) 564 U.S. 117 (*Carrigan*). If the court were to disagree and consider the likelihood of the lawsuit succeeding, the City maintained that its case was sufficiently strong.

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6 The court declared the contract void both because it imposed an unconstitutional property-related fee, and because Vasquez lacked the authority to sign it as mayor pro tem. That judgment was ultimately affirmed. The Court of Appeal sustained the trial court's findings that the contract was not validly executed, and that Salazar had no improper financial interest in it. (*Torres v. City of Montebello* (2015) 234 Cal.App.4th 382, 389.)

The trial court denied the motion to strike. It ruled that the public enforcement exemption did not apply because, contrary to the requirements of section 425.16(d), the action was not "brought in the name of the people" by the city attorney as a public prosecutor. Deciding that defendants' actions were protected activity for purposes of section 425.16, the court went on to consider the likelihood the City would prevail. (§ 425.16, subd. (b)(1).) It found sufficient evidence of a conflict of interest in the showing that Urteaga and Richard Torres had encouraged Athens to seek an exclusive contract, and that Athens contributed to the campaigns of Urteaga, Salazar, and Vasquez after the contract was approved.

The Court of Appeal affirmed. It agreed that the public enforcement exception did not apply. However, it held that defendants' votes on the contract were *not* protected activity under section 425.16. Accordingly, the court did not review the question of whether the City could establish a probability it would prevail. We address the exemption first, because its application would take the case entirely out of the anti-SLAPP statutory scheme.

II. DISCUSSION

A. *The Public Enforcement Exemption*

The Legislature enacted section 425.16 in 1992, noting "a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." (§ 425.16, subd. (a).) The statute authorizes defendants to file a special motion to strike in order to expedite the early dismissal of unmeritorious claims. (§ 425.16, subds. (b)(1), (f).) "[T]o encourage continued participation in matters of public significance," and to ensure "that this participation should not be chilled through abuse of the judicial process," the Legislature has specified that the anti-SLAPP statute "shall be construed broadly." (§ 425.16, subd. (a).)

The statute has always included an exemption for public enforcement actions. (Stats. 1992, ch. 726, pp. 3523-3524.) Section 425.16(d) provides: "This section shall not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor." A split of authority has developed on the scope of this exemption. On one side, two opinions from the Second District Court of Appeal have taken an expansive view. (*City of Long Beach v. California Citizens for Neighborhood Empowerment* (2003) 111 Cal.App.4th 302 (*City of Long Beach*); *City of Los Angeles v. Animal Defense League* (2006) 135 Cal.App.4th 606 (*City of Los Angeles*).) On the other, the Fourth District has applied the statutory language narrowly. (*City of Colton v. Singletary* (2012) 206 Cal.App.4th 751 (*City of Colton*).) We conclude that the narrow interpretation is consistent with the statutory language and with our decisions construing exceptions to the anti-SLAPP statute.

In *City of Long Beach*, the city sued an organization and its treasurer for violating municipal campaign contribution limits. (*City of Long Beach, supra*, 111 Cal.App.4th at p. 304.) In response to the defendants' anti-SLAPP motion, the city claimed its action was exempt. The defendants argued that the exemption did not apply because the action was "not brought in the name of the people of the State of California," as required by section 425.16(d). The Court of Appeal agreed. It relied on legislative history to conclude that the public enforcement exemption was meant to apply to actions in the name of local authorities, as well as the people of California. In a brief opinion, the court conceded that the history of section 425.16 was silent on this point. It referred instead to comments in a bill analysis pertaining to a different statute: section 998, which governs cost awards after offers to compromise. The Legislature added a public enforcement

exemption to section 998 in 2001, using terms identical to those of section 425.16(d). (§ 998, subd. (g)(2); Stats. 2001, ch. 153, § 1, p. 1444.)

The section 998 bill analysis explained that when section 425.16 was enacted in 1992, subdivision (d) was included "[a]t the request of the Attorney General's office." (Sen. Com. on Judiciary, Analysis of Assem. Bill No. 732 (2001–2002 Reg. Sess. July 3, 2001, p. 5.) "Legislative staff involved in the drafting of the [anti-SLAPP] bill report that this provision was not included to provide a special exemption that otherwise would have been considered nonexistent, but rather to confirm the existence of the prosecutorial exemption assumed by the drafters." (*Ibid.*) The *City of Long Beach* court relied on this passage to support its belief that the section 998 exemption was intended to "apply broadly to 'civil enforcement actions' seeking injunctions, restitution and civil penalties, but not damages." (*City of Long Beach*, *supra*, 111 Cal.App.4th at p. 307.) Based on that inference, the court reasoned that nearly a decade after the anti-SLAPP statute was enacted, "the Legislature understood the language at issue in this case (albeit in the context of section 998) to encompass the type of lawsuit now before us." (*Ibid.*)

The court also noted that a committee analysis of the first anti-SLAPP bill, which was ultimately vetoed, had reflected the Attorney General's concern over the unintended consequence of hindering enforcement of consumer protection laws by local as well as state agencies. (*City of Long Beach*, *supra*, 111 Cal.App.4th at pp. 307-308.) It pointed out that the anti-SLAPP statute was meant to thwart abusive lawsuits intended to chill the exercise of First Amendment rights, whereas " '[t]he prosecutor's motive derives from the constitutional mandate to assure that the laws of the state are uniformly enforced and to prosecute any violation of these laws . . . .' " (*Id.* at p. 308.) The court declared its unwillingness to allow political committees to "use section 425.16 as a shield

behind which to hide from otherwise valid local election regulations." (*Id.* at p. 309.)

City of Los Angeles, decided by the same division of the Second District, reaffirmed the *City of Long Beach* holding but declined to extend it further. Los Angeles sought protective orders against animal rights activists who had protested at a city employee's home. (*City of Los Angeles*, *supra*, 135 Cal.App.4th at pp. 609-610.) The court reversed the denial of the protesters' special motions to strike. It maintained its earlier view that "although the express language of the statute limits the exemption to enforcement actions 'brought in the name of the People of the State of California,' an otherwise exempted enforcement action brought in the name of a city or county itself, rather than 'the People' is not necessarily outside the ambit" of section 425.16 (d). (*City of Los Angeles*, at p. 618, citing *City of Long Beach*, *supra*, 111 Cal.App.4th at pp. 307-308.) Nevertheless, the court reasoned that "only actions brought by a governmental agency to enforce laws aimed generally at public protection qualify for this exemption to anti-SLAPP scrutiny." (*City of Los Angeles*, at p. 618.) Because the city was acting as an employer to protect its employee, not as a prosecutor protecting the public interest, the exemption did not apply. (*Id.* at p. 619.)

The *City of Los Angeles* court acknowledged that *City of Long Beach* was out of step with this court's subsequent anti-SLAPP jurisprudence. "[A]lthough [we] departed from the express language of section [425.16(d)], in [*City of Long Beach*], *supra*, 111 Cal.App.4th at pages 307-308, when we applied the exemption to a civil enforcement action that had not been brought literally 'in the name of the people of the State of California,' any further erosion of the specific requirements of that provision is unwarranted in light of the Supreme Court's subsequent admonition in *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 735, that the plain language of section 425.16 is to be respected and that exceptions to

the statute's broad reach must not be lightly implied: 'The Legislature clearly knows how to create an exemption from the anti-SLAPP statute when it wishes to do so.' (*Jarrow Formulas, Inc. v. LaMarche*, at p. 735.)" (*City of Los Angeles*, *supra*, 135 Cal.App.4th at p. 620.)[7]

Subsequently, a divided court in the Fourth District disagreed with *City of Long Beach*. In *City of Colton*, *supra*, 206 Cal.App.4th 751, a developer sued to enforce a contract with the city even though he had been convicted of procuring it through bribery. When the city cross-complained, the developer filed an anti-SLAPP motion to strike the city's causes of action for unfair business practices and injunctive relief. (*Id.* at pp. 758-759.) The *City of Colton* court rejected the city's claim that its cross-action qualified for the public enforcement exemption. The majority disagreed with *City of Long Beach* over whether an action must be brought in the name of the people to qualify for the exemption. It found the reasoning in *City of Long Beach* inconsistent with the "clear and unambiguous" terms of section 425.16(d). (*City of Colton*, at p. 777.)[8] The dissent agreed that the public enforcement exception did not apply, but for a different reason: it deemed section 425.16(d) inapplicable because the action was not brought by the city attorney. Therefore, the dissent found it unnecessary to disagree with *City of Long Beach*. (*City of Colton*, at p. 794 (dis. opn. of Richli, Acting P. J.).)

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[7] In *Jarrow Formulas, Inc. v. LaMarche*, *supra*, 31 Cal.4th at page 735, we declined to infer an exemption from section 425.16 for malicious prosecution actions, mentioning section 425.16(d) to make the point that the Legislature knows how to articulate exemptions when it so desires.

[8] Addressing the *City of Long Beach* court's concern that violations of local campaign contribution laws might be shielded by the anti-SLAPP statute, the *Colton* majority noted that violations of city ordinances may be prosecuted in the name of the People of the State of California under Government Code section 36900, subdivision (a). (*City of Colton*, *supra*, 206 Cal.App.4th at p. 777.)

Both the majority and the dissent in *City of Colton* are correct. The terms of section 425.16(d) unambiguously limit the scope of the exemption to enforcement actions brought *both* "in the name of the people of the State of California" *and* "by the Attorney General, district attorney, or city attorney, acting as a public prosecutor." The Legislature's choice of this specific language reflects its understanding that actions brought in the name of local entities, or by attorneys other than the public officers identified in the statute, are not included in the exemption.[9]

As to section 425.16, we have said that " '[t]he plain language of the statute establishes what was intended by the Legislature.' [Citation.) ' "If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to [extrinsic] indicia of the intent of the Legislature . . . ." ' [Citation.]" (*Jarrow Formulas, Inc. v. LaMarche*, *supra*, 31 Cal.4th at p. 735; see *Equilon*, *supra*, 29 Cal.4th at p. 61.) We may consult the legislative record to supply context, but the fragments of history recited by the *City of Long Beach* court are at best inconclusive. Moreover, expansive interpretation of exemptions from the anti-SLAPP statute is inconsistent with the Legislature's express intent that the statute's core provisions "shall be construed broadly." (§ 425.16, subd. (a).) We have repeatedly emphasized that the exemptions are to be "narrowly construed." (*Simpson Strong-Tie Co. v. Gore* (2010) 49 Cal.4th 12, 22 [commercial speech exemption of § 425.17, subd. (c)]; *Club Members for an Honest Election v. Sierra*

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9 We note that various statutes authorize city attorneys to prosecute actions in the name of the People of the state, including the Government Code section noted by the *City of Colton* majority. (Gov. Code, § 36900; see, e.g., Bus. & Prof. Code, § 17206 [civil penalties for unfair competition under the UCL]; Civ. Code, § 52.1 [interference with civil rights]; Code Civ. Proc., § 731 [action to abate public nuisance].)

Club (2008) 45 Cal.4th 309, 316 [public interest exemption of § 425.17, subd. (a)].)[10]

Here, the City's action was not brought in the name of the People by the city attorney's office, acting as a public prosecutor. Instead, with private counsel and in its own name, the City seeks to set aside a contract and obtain disgorgement of campaign contributions. The action does not qualify for the public enforcement exemption.

B. *Protected Activity*

In the absence of an applicable exemption, a special motion to strike under section 425.16 involves a two-step process. First, the moving defendant must make a prima facie showing "that the act or acts of which the plaintiff complains were taken 'in furtherance of the [defendant]'s right of petition or free speech under the United States or California Constitution in connection with a public issue,' as defined in the statute." (*Equilon, supra*, 29 Cal.4th at p. 67.) If the defendant makes this initial showing of protected activity, the burden shifts to the plaintiff at the second step to establish a probability it will prevail on the claim. (*Ibid.*) The plaintiff need only state and substantiate a legally sufficient claim. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 820.) The plaintiff's evidence is accepted as true; the defendant's evidence is evaluated to determine if it defeats the plaintiff's showing as a matter of law. (*Ibid.*) The procedure is meant to prevent abusive SLAPP suits, while allowing "claims with the requisite minimal merit [to] proceed." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 94.)

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10 *City of Long Beach v. California Citizens for Neighborhood Empowerment, supra*, 111 Cal.App.4th 302, and *City of Los Angeles v. Animal Defense League, supra*,135 Cal.App.4th 606, are disapproved insofar as they are inconsistent with this opinion.

The City contends defendants cannot make the threshold showing that their votes fell within the scope of section 425.16. It relies on *Carrigan*, *supra*, 564 U.S. 117, for the proposition that voting by elected officials is not protected under the First Amendment. In *Carrigan*, the Nevada Commission on Ethics ruled that a city councilmember had violated a conflict of interest statute by voting to approve a hotel/casino project on which his long-time friend and campaign manager had worked as a paid consultant. (*Id.* at p. 120.) The councilmember challenged the constitutionality of the statute. The Nevada Supreme Court sustained the challenge, holding that the act of voting by a public officer is speech protected by the First Amendment. (*Id.* at pp. 120-121; see *Carrigan v. Commission on Ethics* (Nev. 2010) 236 P.3d 616, 621.)

The high court reversed, noting that conflict of interest rules are a long-established feature of federal and state law. (*Carrigan*, *supra*, 564 U.S. at pp. 122-124.) It reasoned that "restrictions upon legislators' voting are not restrictions upon legislators' protected speech," because "a legislator's vote is the commitment of his apportioned share of the legislature's power to the passage or defeat of a particular proposal. The legislative power thus committed is not personal to the legislator but belongs to the people; the legislator has no personal right to it." (*Id.* at pp. 125-126.) "[T]he act of voting [is] . . . nonsymbolic conduct engaged in for an independent governmental purpose." (*Id.* at p. 127.)

The Court of Appeal below found *Carrigan* controlling. It concluded that defendants' votes on the Athens contract did not implicate their right to free speech or convey any symbolic message. "To hold otherwise," said the court, "would cause the anti-SLAPP statute to swallow all city council actions and require anyone seeking to challenge a legislative decision on any issue to first make a prima facie showing of the merits of their claim."

Carrigan, however, is not dispositive here. The Legislature did not limit the scope of the anti-SLAPP statute to activity protected by the constitutional rights of speech and petition. It went on to include "any act . . . *in furtherance* of" those rights. (§ 425.16, subd. (b)(1), italics added.) We must give meaning to this statutory term, under settled principles of statutory construction. (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1118.) The Legislature's directive that the anti-SLAPP statute is to be "construed broadly" so as to "encourage continued participation in matters of public significance" supports the view that statutory protection of acts "in furtherance" of the constitutional rights incorporated by section 425.16 may extend beyond the contours of the constitutional rights themselves. (§ 425.16, subds. (a), (b)(1); see *Briggs*, at pp. 1119-1120.)[11]

The Legislature spelled out the kinds of activity it meant to protect in section 425.16, subdivision (e): "As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral

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11 As defendants point out, the Legislature saw fit to include the free speech protections of both the state and federal Constitutions in the anti-SLAPP statute, and "the California liberty of speech clause is broader and more protective than the free speech clause of the First Amendment." (*San Leandro Teachers Assn. v. Governing Bd. of San Leandro Unified School Dist.* (2009) 46 Cal.4th 822, 842; see § 425.16(b)(1).) The Court of Appeal gave no consideration to defendants' rights under our state Constitution. On the other hand, defendants make no specific argument supporting broader protection under the liberty of speech clause than under the First Amendment for votes cast by elected officials. We need not consider that constitutional issue, given our conclusion on the scope of the statutory protection provided by section 425.16.

statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest."

Because of these specifications, courts determining whether a cause of action arises from protected activity are not required to wrestle with difficult questions of constitutional law, including distinctions between federal and state protection of free expression. "The only means specified in section 425.16 by which a moving defendant can satisfy the requirement is to demonstrate that the defendant's conduct . . . falls within one of the four categories described in subdivision (e), defining subdivision (b)'s phrase, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue.' " (*Equilon*, *supra*, 29 Cal.4th at p. 66; see *Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 17-18 (*Vargas*); *Jarrow Formulas, Inc. v. LaMarche*, *supra*, 31 Cal.4th at p. 734; *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.) As explained in *Schaffer v. City and County of San Francisco* (2008) 168 Cal.App.4th 992, courts determining whether conduct is protected under the anti-SLAPP statute look not to First Amendment law, but to the statutory definitions in section 425.16, subdivision (e). (*Schaffer*, at p. 1001; accord, City of Costa Mesa v. D'Alessio *Investments* (2013) 214 Cal.App.4th 358, 372; see *Haight Ashbury Free Clinics, Inc. v. Happening House Ventures* (2010) 184 Cal.App.4th 1539, 1548-1549.)

Requiring the moving party to make a constitutional case in support of every anti-SLAPP motion would be inconsistent with the Legislature's desire to

establish an efficient screening mechanism for "disposing of SLAPP's quickly and at minimal expense to taxpayers and litigants." (*Equilon*, *supra*, 29 Cal.4th at p. 66.) The statutory categories provided in section 425.16, subdivision (e) provide objective guidelines that lend themselves to adjudication on pretrial motion. (See *Equilon*, at p. 65.) Here, the councilmembers' votes, as well as statements made in the course of their deliberations at the city council meeting where the votes were taken, qualify as "any written or oral statement or writing made before a legislative . . . proceeding." (§ 425.16, subd. (e)(1).) Anything they or City Administrator Torres said or wrote in negotiating the contract qualifies as "any written or oral statement or writing made in connection with an issue under consideration or review by a legislative . . . body . . . ." (§ 425.16, subd. (e)(2).)

No conflict arises between *Carrigan*'s rule that city council votes are not protected by the First Amendment and the definitions of section 425.16, subdivision (e), due to the leeway provided by the "in furtherance" term of the statute. The councilmembers' participation in the meeting that preceded the vote was constitutionally protected activity. "[P]ublic meetings, at which council members discuss matters of public interest and legislate, are conduct in furtherance of the council members' constitutional right of free speech in connection with public issues and issues of public interest. 'Under the First Amendment, legislators are "given the widest latitude to express their views" and there are no "stricter 'free speech' standards on [them] than on the general public." [Citation.]' (*Levy v. City of Santa Monica* (2004) 114 Cal.App.4th 1252, 1261.)" (*Holbrook v. City of Santa Monica* (2006) 144 Cal.App.4th 1242, 1247-1248; see *Bond v. Floyd* (1966) 385 U.S. 116, 136; *Carrigan*, *supra*, 564 U.S. at pp.129-132, conc. opn. of Kennedy, J.) The councilmember defendants' votes were cast in

furtherance of their rights of advocacy and communication with their constituents on the subject of the Athens contract.[12]

There is an important exception to the protections established by the statutory categories set out in section 425.16, subdivision (e). In *Flatley v. Mauro* (2006) 39 Cal.4th 299 (*Flatley*), we held that "section 425.16 cannot be invoked by a defendant whose assertedly protected activity is illegal as a matter of law and, for that reason, not protected by constitutional guarantees of free speech and petition." (*Flatley*, at p. 317.) We emphasized that section 425.16 was expressly intended to protect *valid* speech and petitioning activity. (*Flatley*, at p. 317; see § 425.16, subd. (a); *Paul for Council v. Hanyecz* (2001) 85 Cal.App.4th 1356, 1365.)

The City contends the illegal conflict of interest that infected the councilmember defendants' votes deprives them of protection under section 425.16. This assertion of illegality is premature. The first step of the anti-SLAPP analysis is limited to whether a claim arises from protected activity. We made it clear in *Flatley* that conduct must be illegal *as a matter of law* to defeat a defendant's showing of protected activity. The defendant must concede the point, or the evidence conclusively demonstrate it, for a claim of illegality to defeat an

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12 We note that *Carrigan*'s holding has no application to defendant Richard Torres. As the city administrator, he had no vote on the contract.

We also note that, unlike *Carrigan*, this case presents no issue concerning the constitutionality of a statute restricting legislators' participation in debate. (See *Carrigan*, *supra*, 564 U.S. at pp. 121-122 ["If Carrigan was constitutionally excluded from voting, his exclusion from 'advocat[ing]' at the legislative session was a reasonable time, place and manner limitation"].) If the councilmember defendants in this case had no conflict of interest, as they claim, there was no restriction on their participation in the debate at the council or in their consultations with constituents, even though *Carrigan* establishes that their votes were not constitutionally protected.

anti-SLAPP motion at the first step. (*Flatley*, *supra*, 39 Cal.4th at pp. 316-318, 320.)

We do not minimize the seriousness of the City's conflict of interest allegations. However, at this early stage of the litigation, defendants vigorously dispute those allegations, both as a matter of law and a question of fact. As to the law, they rely on *Woodland Hills Residents Assn., Inc. v. City Council* (1980) 26 Cal.3d 938, 945-947, which held that the Political Reform Act (Gov. Code, § 8100 et seq.) does not bar city councilmembers from acting on matters involving contributors. We noted that campaign contributions are constitutionally protected, and "do not automatically create an appearance of unfairness." (*Woodland Hills*, at p. 947.) The bribery statutes, as well as the Political Reform Act itself, provide "[a]dequate protection against corruption and bias." (*Ibid.*) In *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1091-1092, we observed that Government Code section 1090 et seq. are in pari materia with the Political Reform Act. *Lexin* involved a statutory exception to Government Code section 1090's conflict of interest provision. (*Lexin*, at p. 1085 et seq.) We construed the relevant Government Code provisions to be consistent with parallel Political Reform Act provisions, rendering the laws regulating "government contracts consistent with the laws governing government decisions more generally." (*Lexin*, at p. 1092.)

On the facts, defendants deny any quid pro quo in connection with the Athens campaign contributions. The City concedes that its claim depends on inferences to be drawn from circumstantial evidence of the councilmember defendants' advocacy and votes in favor of the Athens contract, followed by their receipt of the campaign contributions. This state of the case forecloses a resolution at the first step of the anti-SLAPP inquiry. "If . . . a factual dispute exists about the legitimacy of the defendant's conduct, it cannot be resolved within the first step but must be raised by the plaintiff in connection with the plaintiff's

burden to show a probability of prevailing on the merits." (*Flatley, supra*, 39 Cal.4th at p. 316.)

Accordingly, the City's reliance on the alleged illegality of defendants' conduct gains it no traction on the question of whether its cause of action arises from protected activity. The Court of Appeal did not reach the second-step issue of whether the City could establish a likelihood of success. It will have the opportunity to do so on remand.

We address one other matter that troubled the Court of Appeal: the concern that affording anti-SLAPP protection to these defendants would chill the rights of those seeking to challenge legislative decisions. The court's apprehension was based on a misreading of *San Ramon Valley Fire Protection Dist. v. Contra Costa County Employees' Retirement Assn.* (2004) 125 Cal.App.4th 343 (*San Ramon*). In *San Ramon*, a fire district challenged a county retirement board's decision to increase contributions payable by the district and its employees. (*Id.* at pp. 347-348.) The court affirmed the denial of an anti-SLAPP motion, holding that the board's "collective action" in requiring additional contributions did not implicate its "rights of free speech or petition." (*Id.* at p. 353.)

The *San Ramon* court drew a distinction between action taken by a government body and the expressive conduct of individual representatives. "[T]he fact that a complaint alleges that a public entity's action was taken as a result of a majority vote of its constituent members does not mean that the litigation challenging that action *arose from* protected activity, where the measure itself is not an exercise of free speech or petition. Acts of governance mandated by law, without more, are not exercises of free speech or petition." (*San Ramon, supra*,

125 Cal.App.4th at p. 354.)[13] The court noted that "an action against individual lawmakers, challenging their vote cast in the exercise of individual legislative prerogative," might arguably "be held to arise from conduct in the furtherance of the exercise of speech rights, protected by section 425.16." (*San Ramon*, at p. 356.) No individual board members were sued in *San Ramon*, however, so the court did not reach that question.

Here, the Court of Appeal seized on the *San Ramon* court's observation that holding acts of governance to be protected activity under section 425.16 "would significantly burden the petition rights of those seeking mandamus review for most types of governmental action. Many of the public entity decisions reviewable by mandamus or administrative mandamus are arrived at after discussion and a vote at a public meeting. [Citation.] If mandamus petitions challenging decisions reached in this manner were routinely subject to a special motion to strike," the result would be to "chill the resort to legitimate judicial oversight over potential abuses of legislative and administrative power . . . ." (*San Ramon, supra*, 125 Cal.App.4th at pp. 357-358.)

These comments pertained only to the *San Ramon* court's reservations about burdening actions challenging *government decisions*, not the acts of

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13 In *Vargas*, we made it clear that when a public entity's act *is* one taken in furtherance of the right of free expression, it is protected by section 425.16. At issue in that case were a city's publicly funded communications opposing a pending ballot measure. We concluded that this advocacy was protected activity: "[T]he statutory remedy afforded by section 425.16 extends to statements and writings of governmental entities and public officials on matters of public interest and concern that would fall within the scope of the statute if such statements were made by a private individual or entity." (*Vargas, supra*, 46 Cal.4th at p. 17.) The *Vargas* holding has no application here. Defendants' participation in the making of a government contract is not expressive activity of the kind that might be engaged in by private individuals or entities.

individual officials. It is not necessary to sue government officers in their personal capacities to challenge the propriety of a government action. Notably, here the Athens contract was successfully challenged in a citizen's suit brought against the City. We have observed that the Legislature was specifically concerned with actions against public officials *as individuals* when it reconsidered the scope of section 425.16 in 1997. (*Vargas, supra*, 46 Cal.4th at pp. 18-19.)

"Section 425.16 was first enacted in 1992. In 1997, in response to several Court of Appeal decisions that had narrowly construed the scope of the statute, the Legislature amended the measure to clarify its intent that the provisions of the statute are to be interpreted broadly. (Stats. 1997, ch. 271, § 1 [amending § 425.16, subd. (a)].) A legislative analysis of this amendment approvingly quoted a passage from a then recent law review article that identified as 'a typical SLAPP suit scenario' a situation in which an abusive lawsuit is brought against both public officials and private individuals. (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 1296 (1997–1998 Reg. Sess.) as amended June 23, 1997, p. 2, quoting Sills, *SLAPPS: How Can the Legal System Eliminate Their Appeal?* (1993) 25 Conn. L.Rev. 547 (Sills article)." (*Vargas, supra*, 46 Cal.4th at p. 19, fn. 9.) " 'Just as SLAPPs filed against individuals have a 'chilling' effect on their participation in government decision making, SLAPPs filed against public officials, who often serve for little or no compensation, may likely have a similarly 'chilling' effect on their willingness to participate in governmental processes.' " (*Ibid.*, quoting the Sills article, *supra*, at p. 550.)

The *San Ramon* court's distinction between public agencies and individual officials was reaffirmed in *Schwarzburd v. Kensington Police Protection & Community Services Dist. Bd.* (2014) 225 Cal.App.4th 1345 (*Schwarzburd*), which also centered on votes by public representatives. There, a local board as well as individual board members were named respondents in a writ proceeding

challenging a merit bonus awarded to a city official. (*Id.* at p. 1349.) The court followed *San Ramon* in holding that the action did not arise from protected activity insofar as it targeted the board as an entity. (*Id.* at p. 1353.) However, it held that the actions of the individual board members were protected by the anti-SLAPP statute. The petition claimed they had violated board policy by voting to extend a meeting, and discussing and voting on a matter that was not properly noticed. They were sued not "simply because they voted, but based on *how* they voted and expressed themselves." (*Id.* at p. 1355.)

The *Schwarzburd* court noted that the claims against the board members arose out of "protected First Amendment voting and legislative deliberative activities," without considering *Carrigan*'s holding precluding First Amendment protection for votes. (*Schwarzburd, supra*, 225 Cal.App.4th at p. 1353.) Its conclusion, however, is consistent with our reasoning that votes taken after a public hearing qualify as acts *in furtherance* of constitutionally protected activity. And *Schwarzburd*, like this case, demonstrates that elected officials may assert the protection of section 425.16 when sued over how they voted without chilling citizens' exercise of their right to challenge government action by suing the public entity itself.

III. DISPOSITION

We reverse the Court of Appeal's judgment, and remand for further proceedings consistent with the views expressed above.

CORRIGAN, J.

WE CONCUR:

CANTIL-SAKAUYE, C. J.
WERDEGAR, J.
CHIN, J.
CUÉLLAR, J.

CONCURRING AND DISSENTING OPINION BY LIU, J.

The City of Montebello (City) sued three of its former councilmembers and a former city administrator, claiming they violated Government Code section 1090 by voting for a waste-hauling contract in exchange for campaign contributions from the contractor. Defendants filed an anti-SLAPP motion under Code of Civil Procedure section 425.16, subdivision (b)(1) (hereafter section 425.16(b)(1)), claiming that their votes were acts in furtherance of their constitutional right to free speech. Settled law makes clear that the vote of a legislator is not protected activity under the First Amendment to the United States Constitution, and the free speech clause of the California Constitution (art. I, § 2, subd. (a)) provides no independent basis for such protection. Yet the court concludes that the anti-SLAPP statute protects the councilmembers' votes anyway.

Today's decision expands the anti-SLAPP statute beyond its proper bounds, making it harder to combat public corruption in government contracting and other abuses of power. Because the anti-SLAPP statute does not cover the act of voting by an elected official, I respectfully dissent from today's contrary holding.

Government Code section 1090, subdivision (a) states that "city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members." This statute reflects the "truism that a person cannot serve two masters simultaneously." (*Thomson v. Call* (1985) 38 Cal.3d 633, 637.) "The duties of public office demand the absolute loyalty and undivided, uncompromised allegiance of the

individual that holds the office." (*People v. Honig* (1996) 48 Cal.App.4th 289, 314.) Section 1090 recognizes that " 'an impairment of impartial judgment can occur in even the most well-meaning men when their personal economic interests are affected by the business they transact on behalf of the Government.' " (*Stigall v. City of Taft* (1962) 58 Cal.2d 565, 570, quoting *U.S. v. Mississippi Valley Generating Co.* (1961) 364 U.S. 520, 549.)

The defendant councilmembers, facing a lawsuit alleging that their votes on the waste-hauling contract violated Government Code section 1090, filed an anti-SLAPP motion pursuant to section 425.16(b)(1), which states: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." The question is whether the councilmembers' votes were acts in furtherance of their constitutional right of free speech under section 425.16(b)(1).

In *Nevada Commission on Ethics v. Carrigan* (2011) 564 U.S. 117 (*Carrigan*), the United States Supreme Court held that a legislator's vote is not an exercise of speech protected by the First Amendment. Instead, "a legislator's vote is the commitment of his apportioned share of the legislature's power to the passage or defeat of a particular proposal. The legislative power thus committed is not personal to the legislator but belongs to the people; the legislator has no personal right to it. . . . [T]he legislator casts his vote 'as trustee for his constituents, not as a prerogative of personal power.' In this respect, voting by a legislator is different from voting by a citizen. While 'a voter's franchise is a personal right,' '[t]he procedures for voting in legislative assemblies . . . pertain to

legislators not as individuals but as political representatives executing the legislative process.' " (*Id.* at pp. 125–126.)

Although the California Constitution's free speech clause (Cal. Const., art. I, § 2, subd. (a)) has sometimes been interpreted more broadly than the First Amendment, "defendants make no specific argument supporting broader protection under the liberty of speech clause than under the First Amendment for votes cast by elected officials." (Maj. opn., *ante*, at p. 14, fn. 11.) Nothing in the language or history of California's free speech clause suggests a concern with protecting legislative votes, and I see no reason to depart from *Carrigan*'s sound analysis in construing our state constitutional guarantee. The act of voting by a municipal legislator is not an exercise of the "right of petition or free speech under the United States Constitution or the California Constitution." (§ 425.16(b)(1).)

Today's opinion nonetheless concludes that the councilmembers' votes are protected activity under section 425.16(b)(1) because, in the court's view, the statute's language covering "any act . . . in furtherance of" the constitutional right of petition or free speech broadens the scope of protected activities "beyond the contours of the constitutional rights themselves." (Maj. opn., *ante*, at p. 14.) Code of Civil Procedure section 425.16, subdivision (e) (hereafter section 425.16(e)) defines the phrase " 'act in furtherance of [a constitutional] right of petition or free speech' " to include "(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law" and "(2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law." The court says the councilmembers' votes fall within these definitions. (Maj. opn., *ante*, at p. 16.)

I do not read today's opinion to mean that a legislator's act of voting qualifies as a "written or oral statement or writing" under sections 425.16(e)(1) and 425.16(e)(2) simply because it involves the legislator writing or saying the word "yea" or "nay" during a legislative proceeding. If that were the case, then arguably electronic voting (pushing a button "yea" or "nay") would fall outside the scope of this language. As the catchall category of section 425.16(e) makes clear, sections 425.16(e)(1) and 425.16(e)(2) are intended to capture types of "conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (§ 425.16(e)(4).) The dispositive question here is whether a legislator's act of voting is a type of conduct in furtherance of the constitutional right of free speech.

On this question, the court says: "Beyond doubt, the councilmembers' participation in the meeting that preceded the vote was constitutionally protected activity. '[P]ublic meetings, at which council members discuss matters of public interest and legislate, are conduct in furtherance of the council members' constitutional right of free speech in connection with public issues and issues of public interest. "Under the First Amendment, legislators are 'given the widest latitude to express their views' and there are no 'stricter "free speech" standards on [them] than on the general public.' [Citation.]" [Citation.]' [Citations.] The councilmember defendants' votes were cast in furtherance of their rights of advocacy and communication with their constituents on the subject of the Athens contract." (Maj. opn., *ante*, at pp. 16–17, fn. omitted.)

But this last sentence characterizing the councilmembers' votes runs directly counter to the reasoning in *Carrigan*. There the high court considered and rejected the argument that a legislator's act of voting has an " 'expressive character' " (*Carrigan, supra*, 564 U.S. at p. 128) of the sort posited above:

"Carrigan and Justice Alito say that legislators often ' "us[e] their votes to express deeply held and highly unpopular views, often at great personal or political peril." ' [Citation.] How do they express those deeply held views, one wonders? Do ballots contain a check-one-of-the-boxes attachment that will be displayed to the public, reading something like '( ) I have a deeply held view about this; ( ) this is probably desirable; ( ) this is the least of the available evils; ( ) my personal view is the other way, but my constituents want this; ( ) my personal view is the other way, but my big contributors want this; ( ) I don't have the slightest idea what this legislation does, but on my way in to vote the party Whip said vote "aye" '? There are, to be sure, instances where action conveys a symbolic meaning—such as the burning of a flag to convey disagreement with a country's policies, [citation]. But the act of voting symbolizes nothing. It *discloses*, to be sure, that the legislator wishes (for whatever reason) that the proposition on the floor be adopted, just as a physical assault discloses that the attacker dislikes the victim. But neither the one nor the other is an act of communication. [Citation.]

"Moreover, the fact that a nonsymbolic act is the product of deeply held personal belief—even if the actor would like it to *convey* his deeply held personal belief—does not transform action into First Amendment speech. Nor does the fact that action may have social consequences—such as the unpopularity that cost John Quincy Adams his Senate seat resulting from his vote in favor of the Embargo Act of 1807, [citation]. However unpopular Adams' vote may have made him, and however deeply Adams felt that his vote was the right thing to do, the act of voting was still nonsymbolic conduct engaged in for an independent governmental purpose." (*Carrigan, supra*, 564 U.S. at pp. 126–127.)

Suppose a councilmember in this case had said before casting his vote, "I am voting for this waste-hauling contract because I believe it's the best value for the City's money." What *Carrigan* elucidates is that while this statement has

expressive value and is protected speech, the councilmember's *act of voting itself* has no additional expressive value over and above the accompanying statement. (See *Carrigan, supra*, 564 U.S. at p. 127 [analogizing to *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.* (2006) 547 U.S. 47, 66, as an instance where "expressive value was 'not created by the conduct itself but by the speech that accompanies it' "].) As noted, "a legislator's vote is the commitment of his apportioned share of the legislature's power to the passage or defeat of a particular proposal"; beyond that, it "symbolizes nothing." (*Carrigan*, at pp. 125–126.) A legislator's vote therefore cannot be understood as an act "in furtherance of" the constitutional right of free speech within the meaning of section 425.16.

The court's contrary holding will make it harder to enforce civil laws against public corruption. "[U]nder Code of Civil Procedure section 425.16, subdivision (c), any SLAPP defendant who brings a successful motion to strike is entitled to mandatory attorney fees. The fee-shifting provision was apparently intended to discourage such strategic lawsuits against public participation by imposing the litigation costs on the party seeking to 'chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.' (*Id.*, subd. (a).)" (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131.) We have recognized that a fee-shifting statute that awards attorney fees to prevailing defendants carries the risk of chilling meritorious lawsuits. (*Williams v. Chino Valley Independent Fire Dist.* (2015) 61 Cal.4th 97, 101.) Today's extension of anti-SLAPP protections, including attorney fees for prevailing defendants, to the act of voting by legislators will potentially lead to underenforcement of Government Code section 1090 as well as other conflict of interest laws designed to ensure integrity and deter abuse of power in government decisionmaking on matters beyond public contracting. (See Gov. Code, §§ 8920, subd. (b)(5), 84308, subd. (c), 87100 et seq.)

For the reasons above, I would affirm the judgment of the Court of Appeal on the ground that the defendant councilmembers' votes were not protected by Code of Civil Procedure section 425.16. In all other respects, I join the opinion of the court.

LIU, J.

I CONCUR:

KRUGER, J.

See next page for addresses and telephone numbers for counsel who argued in Supreme Court.

Name of Opinion City of Montebello v. Vasquez

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Original Proceeding
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PROOF OF SERVICE

I, Matthew C. Alvarez, declare:

I am over 18 years of age, not a party to the within action, am an associate attorney at the Sutton Law Firm, PC. My business address is 150 Post Street, Suite 405, San Francisco, CA 94108, and my electronic service address is malvarez@campaignlawyers.com. I have personal knowledge of the facts recited herein, and could and would testify competently hereto as to the service of the documents listed below if asked to do so:

CROSS-DEFENDANT MARK FARRELL'S REQUEST FOR JUDICIAL NOTICE RE: HIGHLY RELEVANT AUGUST 8, 2016 CALIFORNIA SUPREME COURT RULING

On August 8, 2016, I electronically served the document listed above, by E-Service through File & ServeXpress, during business hours (at approximately 1:00 p.m.) to opposing counsel Yvonne R. Mere, Esq. and Sara J. Eisenberg, Esq., who represent Cross-defendants the City and County of San Francisco, San Francisco Ethics Commission and San Francisco Treasurer and Tax Collector AND Cross-complainant the City and County of San Francisco, at their electronic service addresses (yvonne.mere@sfgov.org and sara.eisenberg@sfgov.org) as set forth below.

Yvonne R. Mere, Esq. Sara J. Eisenberg, Esq. Office of the City Attorney 1390 Market Street, 7th Floor San Francisco, CA 94102 yvonne.mere@sfgov.org sara.eisenberg@sfgov.org	Counsel for Cross-defendants the City and County of San Francisco, San Francisco Ethics Commission and San Francisco Treasurer and Tax Collector AND Cross-complainant the City and County of San Francisco

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 8, 2016.

Matthew C. Alvarez