



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: May 3, 2018

To: Members of the Ethics Commission

From: Jeff Pierce, Acting Director of Enforcement

Subject: **AGENDA ITEM 3 – Stipulation, Decision & Order in the Matter of Alice B. Toklas Lesbian and Gay Democratic Club PAC (Ethics Commission Case No. 1617-110, 1617-112)**

Summary

This memorandum provides information regarding the Stipulation appearing on the Consent Calendar.

Action Requested

This memorandum is for informational purposes. No separate Commission action on this memorandum is required.

Pursuant to the Enforcement Regulations the Commission adopted on January 19, 2018, and which became effective on March 20, 2018, the attached Stipulation, Decision, and Order appears on the Commission's Consent Calendar for this meeting.

The Commission's Enforcement Regulations provide that the Executive Director may enter negotiations with a respondent(s) at any time to resolve the factual and legal allegations in a complaint by way of a stipulated order (i.e. a negotiated settlement). Enforcement Reg. § 12(A). The Regulations require that the stipulated order 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. *Id.*

Immediately after the Executive Director enters a stipulated order with a respondent, the Executive Director must inform the Commission of the proposed stipulation. *Id.* § 12(E). Thereafter, any member of the Commission may request that the stipulated order be reviewed in public session by the full panel of the Commission during its next meeting. *Id.*

Because no Commission member requested review of the attached stipulated order in public session by the full panel of the Commission, this stipulation has been ratified and settles the above-titled matter with the full force of a final order of the Commission. *Id.* § 12(F).

And because no Commission member requested review of the attached stipulated order in public session, it has been placed on the Consent Calendar of this meeting's public agenda. *Id.* § 12(E). Members of the public may comment on any stipulated order listed on the Consent Calendar.

1 LeeAnn Pelham
2 Executive Director
3 Jeffrey Zumwalt
4 Investigative Analyst

5 San Francisco Ethics Commission
6 25 Van Ness Avenue, Suite 220
7 San Francisco, CA 94102
8 (415) 252-3100 Telephone
9 (415) 252-3112 Facsimile

10 BEFORE THE SAN FRANCISCO
11 ETHICS COMMISSION

12 In the Matter of) SFEC Complaint No. 1617-110, 1617-112
13)
14 Alice B. Toklas Lesbian and Gay Democratic Club)
15 PAC,)
16 Respondent.) **FIXED PENALTY STIPULATION, DECISION,
17 AND ORDER**
18)
19)

20 The Enforcement and Legal Affairs program ("Enforcement") of the San Francisco Ethics
21 Commission has proposed this Fixed Penalty Stipulation, Decision, and Order ("Stipulation") with Alice B.
22 Toklas Lesbian and Gay Democratic Club PAC ("Respondent") pursuant to the Ethics Commission's Fixed
23 Penalty Policy and for approval by the San Francisco Ethics Commission ("the Commission").

24 THE PARTIES STIPULATE AS FOLLOWS:

25 1. Respondent and Enforcement agree to settle and resolve all factual and legal issues in
26 this matter by reaching a final disposition without an administrative hearing. Upon the Commission's
27 approval of this Stipulation and full performance of the terms outlined here, the Commission will take
28 no future action against Respondent related to the violation of San Francisco Campaign and
Governmental Conduct Code section 1.161(a), as described herein.

2. This Stipulation shall constitute the complete resolution of all claims by the Commission
against Respondent related to this violation of law. Respondent understands and knowingly and

voluntarily waives all rights to judicial review of this Stipulation and any action taken by the Commission or its staff on this matter.

Fixed Penalty Stipulation

3. Respondent agrees to pay a fixed penalty in the total amount of Four Thousand Five Hundred Dollars (\$4,500) for violations of San Francisco Campaign & Governmental Conduct Code ("SF C&GCC") section 1.161(a), as described in detail below.

4. SF C&GCC section 1.161(a) prohibits a committee from distributing more than 200 substantially similar mass mailed communications and flyers without identifying who paid for them in a minimum 14-point font in a lettering color that contrasts with the background. Billboards are required to identify who paid for them in text that is 5% of the height of the advertisement in contrasting color. This ordinance also requires that disclaimer contain a reference to financial disclosures available at sfethics.org. When a general purpose committee is making independent expenditure advertisements on candidates, the disclaimer must also contain "This advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office." Respondent distributed the following advertisements in violation of the City's Campaign Finance Reform Ordinance:

Count	Type of mass mailer	Violation Date	Nature of the violation	Penalty
1	Slate mass mailer in support of candidates for City elective office and ballot measures	September 9, 2016	Failure to include in the disclaimer statement: <ul style="list-style-type: none">- "This advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office"- "Financial disclosures are available as sfethics.org" in violation of SF C&GCC Section 1.161(a)	\$750
2	Slate walkcard in support of candidates for City	September 9, 2016	Failure to include in the disclaimer statement: <ul style="list-style-type: none">- "This advertisement was not authorized or paid for by a	\$750

	elective office and ballot measures		<p>candidate for this office or a committee controlled by a candidate for this office"</p> <ul style="list-style-type: none"> - "Financial disclosures are available as sfethics.org" in violation of SF C&GCC Section 1.161(a) 	
3	Billboard in support of Alex Rudolph, candidate for San Francisco Community College Board	September 18, 2016	<p>Failure to include in the disclaimer statement:</p> <ul style="list-style-type: none"> - "This advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office" - "Financial disclosures are available as sfethics.org" in violation of SF C&GCC Section 1.161(a) 	\$750
4	Billboard in support of Joshua Arce, candidate for Board of Supervisors District 1	September 18, 2016	<p>Failure to include in the disclaimer statement:</p> <ul style="list-style-type: none"> - "This advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office" - "Financial disclosures are available as sfethics.org" in violation of SF C&GCC Section 1.161(a) 	\$750
5	Billboard in support of Joshua Arce, candidate for Board of Supervisors District 1, London Breed, candidate for Board of Supervisors District 5, and Ahsha Safai, candidate for Board of Supervisors District 11	September 18, 2016	<p>Failure to include in the disclaimer statement:</p> <ul style="list-style-type: none"> - "This advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office" - "Financial disclosures are available as sfethics.org" in violation of SF C&GCC Section 1.161(a) 	\$750
6	Slate walkcard in support of candidates for City elective office and ballot measures	September 26, 2016	<p>Failure to include in the disclaimer statement:</p> <ul style="list-style-type: none"> - "This advertisement was not authorized or paid for by a candidate for this office or a 	\$750

			committee controlled by a candidate for this office" - "Financial disclosures are available as sfethics.org" in violation of SF C&GCC Section 1.161(a)	
			Total penalty:	\$4,500

5. Respondent acknowledges the violations described in Paragraph 4 and agree to pay the administrative penalty of \$4,500.

6. Respondent has filed with the Commission's staff all outstanding statements or reports in connection with these violations.

7. Within ten days of the Commission's approval of this Stipulation, Respondent shall deliver to the following address the sum of \$4,500 in the form of a check or money order made payable to the "City and County of San Francisco:"

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

8. If Respondent fails to pay the penalty as described in paragraph 5 and 7 or if Respondent's payment does not clear, then the Commission may reopen this matter and prosecute Respondent under Section C3.699-13 of the San Francisco Charter for relief, including the full penalty of \$5,000 per violation.

Respondent's waiver of hearing rights by settling this matter

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

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

3 10. Respondent understands and acknowledgse that this Stipulation is not binding on any
4 other government agency with the authority to enforce the San Francisco Campaign & Governmental
5 Conduct Code section 1.100 *et seq.*, and does not preclude the Commission or its staff from cooperating
6 with or assisting any other government agency in its prosecution of Respondent for the violations
7 described in this Stipulation.

8 11. Enforcement will present this settlement to the Commission at its next regularly
9 scheduled meeting, or as soon after that the matter can be heard.

10 12. This Stipulation is subject to the Commission's approval. In the event the Commission
11 declines to approve this Stipulation, the Stipulation shall become null and void, except Paragraph 13,
12 which shall survive.

13 13. In the event the Commission rejects this Stipulation, and further administrative
14 proceedings before the Commission are necessary, Respondent agrees that the Stipulation and all
15 references to it are inadmissible. Respondent also agrees not to challenge, dispute, or object to the
16 participation of any member of the Commission or its staff in any necessary administrative proceeding
17 for reasons stemming from the Commissioner or staff member's prior consideration of this Stipulation.
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19 14. This Stipulation reflects the entire agreement between the parties and supersedes any
20 and all prior negotiations, understandings, and agreements with respect to the violations described in
21 this Stipulation.

22 15. This Stipulation can only be amended or modified in writing between the parties, and
23 then such amendment or modification must be approved by the Commission.

24 16. This Stipulation is interpreted and enforced under California law. If any part of the
25 Stipulation is found to be unenforceable, the remaining parts shall remain valid and enforceable.
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1 17. The parties may sign different copies of this Stipulation, which will have the same effect
2 as though all parties had signed the same document.
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4 Dated 3/9/18

[Redacted Signature]

On Behalf of Alice B. Toklas Lesbian and Gay Democratic Club PAC

Printed Name Scott Nielsen

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7 Dated 4/5/18

[Redacted Signature]

LeeAnn Pelham, Executive Director of the Ethics Commission

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11 **Decision and Order of the Commission**

12 This settlement has been adopted by a majority vote of the San Francisco Ethics Commission as its
13 final Decision and Order. It is effective upon the signature of the Commission Chair below.

14 It is so ordered.

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16 Dated _____

Daina Chiu, Ethics Commission Chairperson

Exhibit A: Penalty Calculation

This matter consists of six violations of the SF C&GCC carrying a maximum total administrative penalty of \$5,000.

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

However, in 2013, the Ethics Commission approved policies to establish fixed penalties for violations of certain provisions of SF C&GCC, including violations of SF C&GCC section 1.161. Staff is bound by the adopted policies regarding these violations until changed by the Commission. The Commission retains the authority to approve or disapprove the stipulation and settlement amounts.

According to the fixed penalty policy, if no exonerating evidence is presented prior to the 14-day deadline, Staff will propose penalties to the Commission for its consideration according to the following schedule:

- \$1,000 per violation will be proposed for a Stipulation signed prior to the issuance of the Probable Cause Report;
- \$2,500 per violation will be proposed for a Stipulation signed after the issuance of the Probable Cause Report; and
- \$4,000 per violation will be proposed for a Stipulation signed after the Commission makes a finding of probable cause.

In addition, the policy states that the Commission will consider each mitigating or aggravating factor to determine how much weight should be given to each factor. The following lists of mitigation and aggravation factors are not exhaustive.

Mitigation Factors:

- Absence of any intention to conceal, deceive, or mislead
- Violation was negligent or inadvertent
- Violation was isolated and not part of a pattern
- No prior record of violations of law with the Commission
- The degree to which the Respondent cooperated with the investigation
- The degree to which the Respondent demonstrated a willingness to remedy any violations (only applicable if a Respondent agrees to a stipulation prior to issuance of Probable Cause Report)

- Respondent filed all required disclosure statements and/or amendments within 14 days of initial contact by Enforcement staff
- A disclosure containing the required information appeared on a mass mailing, electioneering communication, or campaign advertisement, but the disclosure was in font size that was not 14 point

Aggravation Factors:

- Evidence shows an intent to conceal, deceive, or mislead
- Violation was deliberate
- Violation was part of a pattern
- Prior record of violations of law with the Commission
- The degree to which the Respondent was uncooperative with the investigation
- The degree to which the Respondent failed to demonstrate a willingness to remedy any violations
- Respondent failed to file required disclosure statements and/or amendments within 14 days of initial contact by Enforcement staff

In this matter, the proposed Stipulation was signed prior to the issuance of the Probable Cause Report. Therefore, the proposed penalty according to the policy is \$1,000 per violation. Staff requests that the Commission consider the following mitigating factors for this matter: Respondent Alice B. Toklas Lesbian and Gay Democratic Club PAC's violations were absent of any intention to conceal, deceive, or mislead. The Respondent cooperated with the investigation, demonstrated a willingness to remedy any violations, and responded to the inquiry within 14 days of initial contact by Enforcement Staff. Staff does conclude that the six disclaimer violations demonstrate evidence that the violations were part of a pattern.

RECOMMENDATION

After consideration of the facts of this case, the fixed penalty policy, and previous investigations, Ethics Commission Staff recommend the imposition of the agreed upon penalty of Four Thousand Five Hundred Dollars (\$4,500) for six violations of SF C&GCC section 1.161(a).