



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

DAINA CHIU
CHAIR

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VICE-CHAIR

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COMMISSIONER

NOREEN AMBROSE
COMMISSIONER

LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: July 16, 2018

To: Members of the Ethics Commission

From: Jeff Pierce, Acting Director of Enforcement

Subject: **AGENDA ITEM 4 – Proposed Stipulation, Decision & Order in the Matter of UNITE Here Local 2 (Ethics Commission Case No. 1617-127)**

Summary

This memorandum provides information regarding the Proposed Stipulation appearing in this agenda item and what the Commission may do next regarding this Proposed Stipulation.

Action Requested

The Commission may approve the Proposed Stipulation by majority vote, or it may provide guidance to Commission Staff regarding the Proposed Stipulation.

Pursuant to the Enforcement Regulations the Commission adopted on January 19, 2018, and which became effective on March 20, 2018, 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.*

Commissioner Kopp requested that the attached Proposed Stipulation be reviewed in public session by the full panel of the Commission. Therefore, the Commission has not yet approved this Proposed Stipulation. *Id.* § 12(F). It may do so by majority vote, or it may provide guidance to Commission Staff regarding the Proposed Stipulation.

Members of the public may comment on the Proposed Stipulation.

1 LeeAnn Pelham
2 Executive Director
3 Eric Willett
4 Senior Investigative Analyst

5 San Francisco Ethics Commission
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7 San Francisco, CA 94102
8 (415) 252-3100 Telephone
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10
11 BEFORE THE SAN FRANCISCO
12 ETHICS COMMISSION
13

14 In the Matter of) SFEC Complaint No. 1617-127
15)
16 UNITE HERE LOCAL 2 PAC,)
17)
18)
19 Respondent.) **STIPULATION, DECISION**
20) **AND ORDER**
21)
22)
23)
24)
25)
26)
27)
28)

THE PARTIES STIPULATE AS FOLLOWS:

1. This Stipulation, Decision, and Order ("Stipulation") is made and entered into by and between Unite Here Local 2 PAC and the San Francisco Ethics Commission ("the Commission").

2. Respondent and the Commission agree to settle and resolve all factual and legal issues in this matter and to reach a final disposition without an administrative

1 hearing. Upon approval of this Stipulation and full performance of the terms outlined in
2 this Stipulation, the Commission will take no future action against Respondent, and this
3 Stipulation shall constitute the complete resolution of all claims by the Commission
4 against Respondent related to the violations of law described in Exhibits A, B, and C.
5 Respondent understands and knowingly and voluntarily waives all rights to judicial
6 review of this Stipulation and any action taken by the Commission or its staff on this
7 matter.
8

9
10 3. Respondent acknowledges responsibility for and agrees to pay an
11 administrative penalty in the amount of Five Thousand and Five Hundred Dollars
12 (\$5,500) for two violations of Government Code (the "PRA") section 84203, as set forth
13 in Exhibit A. Respondent agrees that \$5,500 is a reasonable administrative penalty.
14

15 4. Within ten (10) business days of the Commission's approval of this
16 Stipulation, Respondent shall deliver to the following address the sum of \$5,500 in the
17 form of a check or money order made payable to the "City and County of San
18 Francisco:"
19

20 San Francisco Ethics Commission
21 Attn: Enforcement & Legal Affairs Division
22 25 Van Ness Avenue, Suite 220
23 San Francisco, CA 94102

24 5. If Respondent fails to comply with the terms of this Stipulation, then the
25 Commission may reopen this matter and prosecute Respondent under Section C3.699-
26 13 of the San Francisco Charter for any available relief.
27

1 6. Respondent understands, and hereby knowingly and voluntarily waives,
2 any and all procedural rights under Section C3.699-13 of the San Francisco Charter and
3 the Commission's Enforcement Regulations with respect to this matter. These include,
4 but are not limited to, the right to appear personally at any administrative hearing held
5 in this matter, to be represented by an attorney at Respondent's expense, to confront
6 and cross-examine all witnesses testifying at the hearing and to subpoena witnesses to
7 testify at the hearing.
8

9
10 7. Respondent understands and acknowledges that this Stipulation is not
11 binding on any other government agency with the authority to enforce the San
12 Francisco Campaign & Governmental Conduct Code section 1.100 *et seq.*, and does not
13 preclude the Commission or its staff from cooperating with or assisting any other
14 government agency in its prosecution of Respondent for any allegations set forth in
15 Exhibit A, or any other matters related to those violations of law set forth in Exhibit A.
16

17
18 8. This Stipulation is subject to the Commission's approval. In the event the
19 Commission declines to approve this Stipulation, the Stipulation shall become null and
20 void, except Paragraph 9, which shall survive.
21

22 9. In the event the Commission rejects this Stipulation, and further
23 administrative proceedings before the Commission are necessary, Respondent agrees
24 that the Stipulation and all references to it are inadmissible. Respondent moreover
25 agrees not to challenge, dispute, or object to the participation of any member of the
26
27
28

Commission or its staff in any necessary administrative proceeding for reasons
stemming from his or her prior consideration of this Stipulation.

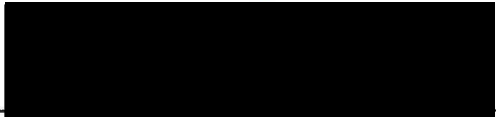
10. This Stipulation, along with the attached Exhibit A, reflects the entire
agreement between the parties hereto and supersedes any and all prior negotiations,
understandings, and agreements with respect to the transactions contemplated herein.

This Stipulation may not be amended orally. Any amendment or modification to this
Stipulation must be in writing duly executed by all parties and approved by the
Commission at a regular or special meeting.

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

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

Dated: 7/9/2018


LeeAnn Pelham, Executive Director
San Francisco Ethics Commission

Dated: 7/9/2018


UNITE Here Local 2 PAC
Ian Lewis, Assistant Treasurer

DECISION AND ORDER

The foregoing Stipulation of the parties in the matter of “UNITE Here Local 2 PAC; SFEC Complaint No. 1617-27,” including the attached Exhibits, is hereby accepted as the final Decision and Order of the San Francisco Ethics Commission, effective upon execution below by the Chairperson.

IT IS SO ORDERED.

Dated: _____

Daina Chiu, Chairperson
San Francisco Ethics Commission

Exhibit A

On January 17, 2017, the Ethics Commission (“the Commission”) issued an Audit Report summarizing the audit results of the committee, UNITE HERE Local 2 PAC, Identification Number 1243324 (“the Committee”), for the period from January 1, 2014 through December 31, 2015. The Commission determined that there was one finding with respect to the audit of the Committee: 1) the Committee failed to file FPPC Form 497 Late Contribution Report (FPPC Form 497) for two late contributions it made totaling \$9,100 of the \$144,490 required to be reported on FPPC Form 497, or 6 percent, in violation of Government Code sections 82036 and 84203. See Exhibit B.

I. Applicable Law

The San Francisco Campaign and Governmental Conduct Code (SF C&GCC) incorporates the California Government Code definition of “contribution” found in section 82015 as well as other provisions relating to local elections. SF C&GCC §§ 1.104, 1.106. In relevant part, California Government Code section 82015 defines a contribution as, “a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received.” California Government Code section 82036 identifies a late contribution as, “a contribution, including a loan, that totals in the aggregate one thousand dollars (\$1,000) or more and is made to or received by a candidate, a controlled committee, or a committee formed or existing primarily to support or oppose a candidate or measure during the 90-day period preceding the date of the election, or on the date of the election, at which the candidate or measure is to be voted on.”

Under California Government Code section 84203, each candidate or committee that makes or receives a late contribution, as defined in section 82036, is required to report the late contribution within 24 hours of the time it is made in the case of the candidate or committee that makes the contribution and within 24 hours of the time it is received in the case of the recipient. Additionally, under California Government Code section 84203, the committee must report the late contribution to each office with which the candidate or committee is required to file its next campaign statement pursuant to California Government Code section 84215. Committees formed or existing “primarily to support or oppose candidates or local measures to be voted upon in one city, and city general purpose committees shall file the original and one copy with the clerk of the city.” *Id.* § 84215(d).

SF C&GCC section 1.112(a)(1) states that whenever a committee is required by the California Government Code to file campaign disclosures statements or reports with the Ethics Commission, they must do so electronically. A general-purpose committee that receives contributions or make expenditures that total \$1,000 or more in a calendar year must file electronic copies of statements and reports with the Ethics Commission. SF C&GCC § 1.112(b)(1)(C).

San Francisco Charter section C3.699-11 authorizes the Commission to audit campaign statements that are filed with the Commission along with other relevant documents to determine whether a committee complied with applicable requirements of State and local laws.

II. Summary of Material Facts

The Committee, has a history of late penalty assessments for filing campaign statements, including from a few days after their deadlines and upon written notification from the Commission of delinquent filings. In October of 2012, the Commission assessed the Committee late penalties for filing 17 campaign statements past their deadlines. These statements included FPPC Form 496 Late Independent Expenditure Reports (FPPC Form 496), FPPC Form 465 Supplemental Independent Expenditure Reports (FPPC Form 465), FPPC Form 460 Recipient Committee Campaign Statements (FPPC Form 460), and Third-Party Disclosure forms (Form TPD). In September of 2015, the Committee was assessed a late penalty for filing a FPPC Form 497 Late Contribution Report (FPPC Form 497) past its deadline. In February of 2016, the Committee was assessed another late penalty for filing a FPPC Form 497 past its deadline.

On January 17, 2017, the Commission issued an Audit Report summarizing the audit results of the Committee for the period from January 1, 2014 through December 31, 2015. *See Exhibit B.* Commission auditors determined that the Committee made two late contributions totaling \$9,100, that it did not disclose on the required FPPC Form 497 within 24 hours of making the contributions during the 90-day periods preceding the November 4, 2014 and November 3, 2015 elections: a \$4,100 contribution made on August 28, 2014, to the David Campos for Assembly 2014 committee, and a \$5,000 contribution made on September 3, 2015, to the Committee to Save the Mission, Yes on Prop. I. These two contributions totaling \$9,100 represent six percent of the total amount required to be reported on FPPC Form 497. *See Exhibit C.*

III. Conclusions of Law

Count 1: Failure to File Late Contribution Report for August 28, 2014 Late Contribution

On August 28, 2014, the Committee made a late contribution of \$4,100 to the committee, David Campos for Assembly 2014, and failed to file a FPPC Form 497 in violation of California Government Code section 84203.

Count 2: Failure to File Late Contribution Report for September 3, 2015 Late Contribution

On September 3, 2015, the Committee made a late contribution of \$5,000 to, The Committee to Save the Mission, Yes on Prop. I, and failed to file a FPPC Form 497 in violation of California Government Code section 84203.

IV. Penalty Assessment

This matter consists of two violations of California Government Code section 84203, which is incorporated by the SF C&GCC section 1.106. The San Francisco Charter authorizes the Commission to assess a maximum administrative penalty of \$5,000 per violation or three times the amount which the Committee failed to report properly, meaning this matter could amount to a maximum administrative

penalty of \$27,300. SF Charter § C3.699-13(c).

When determining penalties, the Ethics Commission considers all of the relevant circumstances surrounding the case, including but not limited to: (1) the severity of the violation; (2) the presence or absence of any intention to conceal, deceive, or mislead; (3) whether the violation was willful; (4) whether the violation was an isolated incident or part of a pattern; (5) whether the respondent has a prior record of violations of law; (6) the degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations; and (7) the respondent's ability to pay will be considered a mitigating factor if the respondent provides documentation to the Director of Enforcement of such inability, which must include three years' worth of income tax returns and six months' worth of bank records or accounting statements, at a minimum. San Francisco Ethics Commission Enforcement Regulations § 9(D).

Applying the penalty factors enumerated above, the Respondent's violation is significant because as a committee active since 2002, it has a history of late penalty assessments with the Commission, and it knew or should have known it was required to report late contributions within 24 hours of the time they were made. Form 497s are required to be filed within 24 hours when contributions in the aggregate of \$1,000 are made to a committee in the 90 days prior to an election so that voters are more informed about the contributors during election campaigns. In this case, the two unreported contributions totaled \$9,100, which represents six percent of the total amount required to be reported on FPPC Form 497.

However, the Respondent fully cooperated with the investigation, Staff found no evidence that the violations were willful, and the contributions missing from the Respondent's Form 497 filings were disclosed on its timely filed Pre-Election Form 460 Recipient Committee Campaign Statement due October 6, 2014, for the November 4, 2014, election and its timely filed Semi-Annual Form 460 Recipient Committee Campaign Statement due February 1, 2016, for the November 3, 2015, election.

Therefore, penalties proposed for the violations of the Act are as follows: Count 1 - \$2,750 and Count 2 - \$2,750. The total proposed penalty for Counts 1 and 2 is \$5,500. The parties agree that the \$5,500 administrative penalty is warranted here because of the pattern of late filings by the Committee, the total penalty amount is reasonably comparable to the amount of late contributions the Respondent failed to disclose on its Form 497 filings, and because it is at a level that promotes a deterrent effect.



**SAN FRANCISCO ETHICS COMMISSION
AUDIT REPORT:
UNITE HERE Local 2 PAC, FPPC ID #1243324**

I. Introduction

This Audit Report summarizes the audit results of the committee, UNITE HERE Local 2 PAC, Identification Number 1243324 ("the Committee"), for the period from January 1, 2014 through December 31, 2015. The audit was conducted to determine whether the Committee materially complied with the requirements of the Political Reform Act ("the Act") (California Government Code section 81000, *et seq.*) and San Francisco's Campaign Finance Reform Ordinance ("CFRO") (San Francisco Campaign and Governmental Conduct Code section 1.100, *et seq.*). The Committee was selected for random audit from the 2015 audit cycle.

II. Audit Authority

San Francisco Charter section C3.699-11 authorizes the Ethics Commission ("the Commission") to audit campaign statements that are filed with the Commission along with other relevant documents to determine whether a committee complied with applicable requirements of State and local laws. Section 1.150(a) of the CFRO requires the Commission to audit all candidates who receive public financing.

III. Audit Scope and Procedures

This audit was performed in accordance with generally accepted auditing standards. The audit involved a review of the Committee's records for the period covered by the audit. This review was conducted to determine:

- A. Compliance with all disclosure requirements pertaining to contributions, expenditures, accrued expenditures, and loans, including itemization when required;
- B. Compliance with applicable filing deadlines;
- C. Compliance with restrictions on contributions, loans, and expenditures;
- D. Accuracy of total reported receipts, disbursements, and cash balances as compared to bank records;
- E. Compliance with all record-keeping requirements;
- F. Compliance with all provisions related to the Commission's public financing program; and
- G. Any unexpended public funds that must be returned to the City up to the amount of public funds received by the candidate.

The Commission posts audit reports to its web site and, in cases of apparent violations of law, forwards them to the appropriate enforcement agency.

IV. Committee Information

The Committee qualified as a committee on January 1, 1990 to conduct political activities for its sponsor, Unite Here Local 2. For the period covered by the audit, Lamoin Warlein-Jaen served as the treasurer and Ian Lewis served as assistant treasurer. At the time this report was issued, the treasurer was Tina Chen and Ian Lewis was the assistant treasurer. Also, the Committee had not terminated as of the date of this report.

V. Audit Findings

For the period covered by the audit, the Committee received \$406,446 in contributions (including non-monetary contributions of \$32,898) and incurred \$374,273 in campaign expenditures.

The Commission determined that there was one finding with respect to the audit of the Committee: 1) the Committee failed to file FPPC Form 497 Late Contribution Report (FPPC Form 497) for two late contributions it made totaling \$9,100 of the \$144,490 required to be reported on FPPC Form 497, or 6 percent, in violation of Government Code sections 82036 and 84203.

Government Code Sections 82036 and 84203: Late Contribution Reports

Government Code section 82036 identifies a late contribution as a contribution, including a loan, that totals in the aggregate one thousand dollars (\$1,000) or more and is made to or received by a candidate, a controlled committee, or a committee formed or existing primarily to support or oppose a candidate or measure during the 90-day period preceding the date of the election, or on the date of the election, at which the candidate or measure is to be voted on. Government Code section 84203 requires each candidate or committee that makes or receives a late contribution, as defined in Section 82036, to report the late contribution within 24 hours of the time it is made in the case of the candidate or committee that makes the contribution and within 24 hours of the time it is received in the case of the recipient.

The Committee made 22 late contributions totaling \$144,490 that it was required to disclose on FPPC Form 497 within 24 hours of making the contributions. Of these 22 late contributions, the Committee reported 20 late contributions totaling \$135,390 on FPPC Form 497. The Committee did not file FPPC Form 497 for two contributions totaling \$9,100, which represents 6% of the total amount required to be reported on FPPC Form 497. The contributions for which the Committee did not file late contributions reports were made during the 90-day periods preceding the November 4, 2014 and November 3, 2015 elections. See Attachment A to Audit Report.

VI. Committee's Response to Findings

The Committee provided the following comment in response to the audit finding:

"We have reviewed the draft audit report and do not dispute the preliminary finding. The two contributions were reported later on Form 460 but due to an oversight we failed to report them within 24 hours on Form 497. This was entirely inadvertent. These contributions represent a very small portion of the contributions we have made—which were otherwise found to have been correctly reported—and we have always attempted to fully comply with all provisions of the Political Reform Act and Campaign Finance Reform Ordinance. Unfortunately, we did not do so in this case, but we will do our best to make sure this does not happen again."

Late Contributions for Which FPPC Form 497 Late Contribution Report Was Not Filed

Exhibit C to Stipulation

Election Date	Name of Committee to whom Contribution was made	Date of Contribution	Amount	Type of Contribution
11/03/2015	Committee to Save the Mission, Yes on Prop. I	09/03/2015	\$5,000	Monetary
11/04/2014	David Campos for Assembly 2014	08/28/2014	\$4,100	Monetary

Total Not Reported on Form 497 Late Contribution Report **\$9,100**

Percentage of Contribution Amount Not Reported on Form 497 Late Contribution Report **6%**