



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: June 24, 2019

To: Members of the Ethics Commission

From: Jeff Pierce, Director of Enforcement & Legal Affairs

Subject: **AGENDA ITEM 4: Proposed Stipulation, Decision, and Order**
• ***In the Matter of Jane Kim and Jane Kim for Supervisor 2014***
(SFEC Complaint No. 28-151015)

Summary: This memorandum provides information regarding the Proposed Stipulation appearing on the Consent Calendar 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 at any time to resolve the factual and legal allegations in a complaint by way of a stipulated order (*i.e.* a negotiated settlement). Enf. 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. Enf. Reg. § 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.*

As of today, June 24, 2019, no Commissioner had requested review of the attached stipulated order in public session by the full panel of the Commission. It therefore appears on the Consent Calendar. The Commission may approve the stipulation by majority vote, or it may provide guidance to Commission Staff regarding the Proposed Stipulation. Enf. Reg. § 12(F).

Members of the public may comment on the stipulated order.

LeeAnn Pelham
Executive Director
Jeffrey Pierce, Cal. Bar No. 293085
Director of Enforcement & Legal Affairs

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

BEFORE THE SAN FRANCISCO
ETHICS COMMISSION

In the Matter of) SFEC Complaint No. 28-151015
)
)
JANE KIM and JANE KIM FOR SUPERVISOR, 2014)
)
) **STIPULATION, DECISION**
Respondents.) **AND ORDER**
)
)
)

THE PARTIES STIPULATE AS FOLLOWS:

1. This Stipulation, Decision, and Order ("Stipulation") is made and entered into by and between Jane Kim, Jane Kim for Supervisor 2014 ("Respondents") and the San Francisco Ethics Commission ("the Commission") (collectively, "the parties").

2. Respondents and the Commission agree to settle and resolve all factual and legal issues in this matter and to reach a final disposition without an administrative hearing. Upon approval of this Stipulation and full performance of the terms outlined in this Stipulation, the Commission will take no future action against Respondents, and this Stipulation shall constitute the complete resolution of all claims by the Commission against Respondents related to the violations of law described in Exhibit A.

1 Respondents understand and knowingly and voluntarily waive all rights to judicial review of this
2 Stipulation and any action taken by the Commission or its staff on this matter.

3 3. Respondents acknowledge responsibility for and agree to pay an administrative penalty
4 in the amount of \$8,750 for five counts in violation of the San Francisco Campaign and Governmental
5 Conduct Code ("SF C&GCC") as set forth in Exhibit A. Respondents agree that \$8,750 is a reasonable
6 administrative penalty.

7 4. Within ten business days of the Commission's approval of this Stipulation, Respondents
8 shall either pay the penalty through the City's online payment portal or otherwise deliver to the
9 following address the sum of \$8,750 in the form of a check or money order made payable to the "City
10 and County of San Francisco":
11

12 San Francisco Ethics Commission
13 Attn: Enforcement & Legal Affairs Division
14 25 Van Ness Avenue, Suite 220
15 San Francisco, CA 94102

16 5. If Respondents fail to comply with the terms of this Stipulation, then the Commission
17 may reopen this matter and prosecute Respondents under Section C3.699-13 of the San Francisco
18 Charter for any available relief.

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

25 7. Respondents understand and acknowledge that this Stipulation is not binding on any
26 other government agency with the authority to enforce the San Francisco Campaign & Governmental
27 Conduct Code section 1.100 *et seq.*, and does not preclude the Commission or its staff from cooperating
28

1 with or assisting any other government agency in its prosecution of Respondents for any allegations set
2 forth in Exhibit A, or any other matters related to those violations of law set forth in Exhibit A.

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

6 9. In the event the Commission rejects this Stipulation, and further administrative
7 proceedings before the Commission are necessary, Respondents agree that the Stipulation and all
8 references to it are inadmissible. Respondents moreover agree not to challenge, dispute, or object to
9 the participation of any member of the Commission or its staff in any necessary administrative
10 proceeding for reasons stemming from his or her prior consideration of this Stipulation.
11

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

17 11. This Stipulation shall be construed under, and interpreted in accordance with, the laws
18 of the State of California. If any provision of the Stipulation is found to be unenforceable, the remaining
19 provisions shall remain valid and enforceable.
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21 12. The parties hereto may sign different copies of this Stipulation, which will be deemed to
22 have the same effect as though all parties had signed the same document.
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1
2 Dated:

6/18/2019

LeeAnn Pelham, Executive Director
San Francisco Ethics Commission

4
5 Dated:

6/18/19

Jane Kim

7
8 Dated:

6/18/19

Jane Kim for Supervisor 2014

Jane Kim

Printed Name of Signatory for Jane Kim for Supervisor 2014

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2
3 **DECISION AND ORDER**

4 The foregoing Stipulation of the parties in the matter of “Jane Kim and Jane Kim for Supervisor
5 2014, SFEC Complaint No. 28-151015,” including the attached Exhibit A, is hereby accepted as the final
6 Decision and Order of the San Francisco Ethics Commission, effective upon execution below by the
7 Chairperson.

8
9 IT IS SO ORDERED.

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11 Dated: _____

Daina Chiu, Chairperson
San Francisco Ethics Commission

Exhibit A

I. Applicable Law

Charter Sec. 15.103. Conflict of Interest.

Established in the Charter for the City and County of San Francisco in November 2003, Section 15.103 provides, in pertinent part, that “Public office is a public trust and all officers and employees of the City and County shall exercise their public duties in a manner consistent with this trust. The City may adopt conflict of interest and governmental ethics laws to implement this provision and to prescribe penalties. . . . All officers and employees of the City and County shall be subject to such conflict of interest and governmental ethics laws and the penalties prescribed by such laws.”

Board of Supervisors’ Statement of Incompatible Activities

The Board of Supervisors adopted its Statement of Incompatible Activities (SIA) pursuant to the requirements of SF C&GCC section 3.218. Each statement of incompatible activities must list those outside activities that are inconsistent, incompatible, or in conflict with the duties of the officers and employees of the department, board, commission, or agency of the City and County. Engaging in activities that the Statement prohibits may subject an officer or employee monetary fines and penalties. SF C&GCC § 3.242; SF Charter § 15.105. Before an officer or employee is subjected penalties for violations of this Statement, the officer or employee has an opportunity to explain why the activity is not incompatible with his or her City duties. SF C&GCC § 3.218.

Section IV(A) of the Board of Supervisors’ SIA provides that no officer or employee may use, nor allow any other person to use, City resources for any non-City purpose, including any political activity or personal purpose. City resources is defined to include, “without limitation, facilities, telephone, computer, copier, fax machine, e-mail, internet access, stationery and supplies.” Board of Supervisors’ SIA § IV(A). *See also* San Francisco City Attorney’s Good Government Guide, § III(G)(1) (“each City department’s statement of incompatible activities includes language prohibiting the use of time, facilities, equipment and supplies for personal or political activities.”). Section IV(A) of the Board of Supervisors’ SIA excludes from the prohibition against the misuse of City resources for non-City purposes “any incidental and minimal use of City resources.”

Advertising Disclaimer Requirements

The SF C&GCC incorporates the definition of “advertisement” that the Political Reform Act (PRA) and its enabling regulations set forth, and governs any advertisement that supports or opposes one or more City measures or candidates for City elective office. SF C&GCC § 1.104.

The PRA defines “advertisement” to mean “any general or public advertisement which is authorized and paid for by a person or committee for the purpose of supporting or opposing a candidate for elective office or a ballot measure or ballot measures.” Gov’t Code § 84501. By regulation, the Fair Political Practices Commission (FPPC), which administers and enforces the PRA, clarifies that an advertisement includes “an electronic media communication including a logo, icon, writing, image, recording, video, or other data posted, broadcast, or displayed electronically.” 2 Cal. Admin. Code § 18450.1(a)(2). Such electronic media communications include, but are not limited to, “advertisements in

electronic messages, electronic message attachments, text messages, or advertisements that appear on Internet websites or webpages, social media, blogs, [or] other generally accessible electronic communication systems.” *Id.*

The SF C&GCC requires that all committees making expenditures that support or oppose any candidate for City elective office or any City measure must comply not only with the disclaimer requirements that the PRA sets forth but also additional requirements. SF C&GCC § 1.161(a). Specifically, advertisements a candidate committee issues must include the disclaimers “Paid for by [candidate committee]” and “Financial disclosures are available at sfethics.org.” SF C&GCC § 1.161(a)(4).

Recordkeeping Requirements

Government Code section 84104 and SF C&GCC section 1.109 provide that every candidate, treasurer and elected officer must maintain detailed accounts, records, bills and receipts that are necessary to prepare campaign statements, and to retain the documents for a period of four years following the date the appropriate campaign statement is filed. Section 1.106 of the SF C&GCC incorporates Government Code section 84104.

Use of Campaign Funds

SF C&GCC section 1.122(b)(1) provides that a candidate may expend funds from his or her campaign account only on behalf of the candidacy for the office specified in the candidate’s declaration of intention, or for expenses associated with holding that office, provided that such expenditures are reasonably related to a legislative, governmental, or political purpose. It further provides that contributions solicited or accepted for a candidate may not be expended for donations to a charitable organization.

Accrued Expense Provision

SF C&GCC section 1.118 provides that a candidate committee that accepts goods or services on credit must pay for such accrued expenses in full no later than 180 calendar days after receipt of a bill or invoice, or no later than 180 calendar days after the last calendar day of the month in which the goods were delivered or the services rendered, unless it is clear from the circumstances that the failure to pay is reasonably based on a good faith dispute.

Government Code section 82015 defines “contribution” to include the forgiveness of a loan. SF C&GCC section 1.104 incorporates the state law definition of contribution, and further provides that it includes “loans of any kind or nature.” SF C&GCC section 1.114(a) limits contributions to candidates to \$500. The Ethics Commission clarifies in Regulation section 1.118-1 that any amount over \$500 that remains unpaid at the time of a committee’s termination, or that has been forgiven by the creditor, constitutes a violation of the \$500 contribution limit that SF C&GCC section 1.114(a) establishes.

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II. Summary of Material Facts

Background

On November 2, 2010, Respondent Kim was first elected to the Board of Supervisors to represent the residents of District 6. She assumed office on January 8, 2011.

On August 5, 2013, Respondent Kim filed her Candidate Intention Statement (FPPC Form 501) announcing her intention to seek reelection for the office of District 6 Supervisor. Respondent Kim did not participate in San Francisco's public financing program and her reelection campaign did not receive public funds.

On September 3, 2013, the City Attorney distributed to all elected City officials, all City Board and Commission members, and all City department heads its annual memorandum entitled "Political Activity By City Officers and Employees," which provided the basic legal rules restricting political activities by City commissions, departments, officers, and employees.

The City Attorney's memo on political activities provided, in part, "No one—including City officers and employees and City volunteers and contractors—may use City resources to advocate for or against candidates or ballot measures. City resources include, without limitation, City employees' work time, City computers, City e-mail systems and City-owned or controlled property." It added that "[a]s a general rule, City officers and employees may support or oppose candidates and ballot measures in their personal capacities, while off duty and outside of City-owned or controlled property. City officers and employees may reference their City titles in campaign materials as long as it is clear that they are using the titles only for identification purposes." The memorandum provided the following illustration: "On his lunch hour, a City employee uses his City computer to send invitations to a fundraiser for a candidate. The employee has misused City resources by using his City computer for political activity. The fact that he was on his lunch hour or used his personal e-mail account does not excuse this improper use of City resources."

In February or March 2014, Respondent Committee obtained a new treasurer. The new treasurer was simultaneously an intern in Respondent Kim's District 6 Supervisorial office, which she had joined in the fall of 2013. That individual also served as a part-time campaign coordinator for Respondent Kim's reelection campaign. In April or May 2014, that individual became a full-time campaign coordinator for Respondent Committee and ceased working as an intern in Respondent Kim's District 6 Supervisorial office. In August 2014, this individual became Respondent Kim's full-time Campaign Manager.

On September 3, 2014, the City Attorney again distributed to all elected City officials and others his annual memorandum entitled "Political Activity By City Officers and Employees." That memorandum included, in relevant part, all the same language of the September 3, 2013 version.

On November 4, 2014, Respondent Kim won reelection to the Board of Supervisors to represent District 6.

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District 6 Newsletters

Respondent Kim began issuing District 6 newsletters as early as April 2011. She distributed the newsletters roughly monthly throughout her tenure as a Supervisor. By early 2018, during her second term as Supervisor, Respondent Kim's Board of Supervisors distribution list contained more than 2500 subscribers.

Respondent Kim and her staff created and distributed these newsletters using the online email marketing service MailChimp. The newsletters informed recipients about Respondent Kim's legislative office hours, events within the district, updates about legislation or policy initiatives, the interns and staff working for Respondent Kim, and other items of interest to constituents. Every District 6 newsletter prominently featured the following masthead across the top:



Generally, when Respondent Kim was not running for reelection, a legislative aide within the District 6 Supervisorial office served as point person in the creation of District 6 newsletters, using content provided by a legislative aide or intern. In drafting newsletter content, those individuals used City-owned computers.

Respondent Kim changed the newsletter procedures at some point during her re-election campaign. Beginning in late spring or early summer of 2014, Respondent Kim reassigned the responsibility of newsletter point person to her campaign treasurer and campaign coordinator, who had simultaneously served until that time as an intern in her office and who had worked on District 6 newsletters in her capacity as an intern. After that person ceased to work as an intern within the District 6 office, she worked on the newsletter outside of City Hall on her own computer. According to Respondent Kim, she reassigned the production of the newsletter to her campaign staffer in order to ensure city resources would not be used for campaign purposes. That individual remained the newsletter point-person through the 2014 election.

Respondent Kim seldom generated content for newsletters but reviewed and edited the newsletters after hours, generally at home, and provided final authorization to distribute them.

Distribution and Content of District 6 Newsletters

Respondent Kim distributed all of her newsletters using a contact list entitled "Board of Supervisors." Respondent Kim or a campaign staffer had created this distribution list in MailChimp on May 4, 2010, during Respondent Kim's first campaign for the position of District 6 Supervisor. As the only source of contacts she used to distribute her newsletter, Respondent Kim used this list during the

period when she campaigned for office in 2010, during the period of her first term as Supervisor, during the period when she simultaneously served as Supervisor and sought reelection as Supervisor, and during her second term as Supervisor after having secured reelection. At all times Respondent Kim's committees paid for the MailChimp account where the list was maintained.

Some contacts on the "Board of Supervisors" distribution list signed up during one of Respondent Kim's 2010 or 2014 campaigns, by visiting her campaign website or at a campaign event. Others on the list subscribed during periods in which Respondent Kim held office and was not seeking election or reelection. Respondent Kim's District 6 Supervisorial office staff invited constituents and correspondents to subscribe to that newsletter by including at the bottom of their official City correspondence, from email addresses at the domain @sfgov.org, the text "Sign Up For Our Newsletter" hyperlinked to the web address www.janekim.org/connect/newsletter.

Stipulation Exhibit A, Illustration 1 summarizes the 15 newsletters that Respondent Kim distributed during calendar year 2014. Respondent Committee paid the cost of the MailChimp distribution and paid the salary of the campaign staffer who oversaw the newsletter production beginning in late spring or early summer of 2014.

Beginning with Respondent Kim's March 2014 newsletter and continuing through the October 8, 2014 newsletter, nine newsletters included both Supervisorial office content (such as legislative updates and community event announcements), and campaign content. The evidence indicates that the legislative updates were drafted by District 6 staffers and, as to the community event announcements, District 6 staffers forwarded, through their City email accounts, relevant items to the campaign staffer for inclusion in the newsletters. While each of these nine newsletters was produced and paid for by Respondent Committee, only five identified "Jane Kim for Supervisor 2014" as the sender. Four newsletters during this period instead identified "Supervisor Jane Kim & D6 Office" as the sender, which—in addition to these four newsletters—was the custom both before and after the reelection campaign. Beginning with Respondent Kim's October 22, 2014 newsletters and continuing through the November 4, 2014 newsletter, four newsletters contained only campaign advocacy. All newsletters during this period (as they were before and after the reelection campaign) were distributed to the "Board of Supervisors" list developed from Respondent Kim's campaigns and Supervisorial office sign-ups.

Respondent Kim maintains that she viewed all the newsletters from March 2014 through the election as "campaign newsletters" because they were produced by her campaign. There is no evidence that any of the content that was campaign related was produced by City employees or District 6 staffers on City time or using City resources.

Audit of Respondent Committee

Ethics Commission audit staff conducted a random audit of Respondent Committee for the 2014 election under authority of SF C&GCC section 1.150(a) and completed that audit with a written audit report issued in July 2017.

The audit report found that Respondent Committee failed to maintain campaign records as required by SF C&GCC section 1.109 for expenditures totaling \$11,648, approximately five percent of its total campaign expenditures. Expenditures for which Respondent Committee had not maintained

records included expenditures reported for food, polling and survey research, and other unitemized expenditures.

The audit also found that Respondent Committee failed to comply with the ban on use of campaign funds to charitable organizations established in section 1.122(b)(1) by using campaign funds to make one charitable donation – to a local charitable organization – totaling \$250.

Finally, the audit found that Respondent Committee failed to comply with section 1.118 by failing to pay for \$6,875 in expenses within 180 calendar days of incurring those expenses, as follows: \$1,250 to Pearce Law Offices, an LLC; \$1,625 to John Stricklin, an individual; and \$4,000 to the Harvey Milk LGBT Democratic Club, a membership organization.

III. Conclusions of Law

Count 1: In permitting her Supervisorial office staff to use City resources for a campaign-related purpose, Respondent Kim violated the Board of Supervisors' Statement of Incompatible Activities as incorporated by SF C&GCC section 3.218.

During her reelection campaign, Respondent Kim improperly used City resources for non-City purposes by allowing District 6 Supervisorial content (such as legislative and policy updates) to appear in newsletters that served a campaign purpose and which were produced by her campaign. She likewise distributed newsletters that had a campaign purpose to a subscriber list created over several years that contained subscribers collected by her Supervisorial office. The evidence indicates that some of the District 6 Supervisorial content that appeared in the newsletters distributed between March 2014 and October 8, 2014 was drafted by Respondent Kim's Supervisorial office staff and/or interns. Further, and on numerous occasions, City staff used their City email accounts to forward to Respondents' campaign staffer community event notifications, which they had received from the public, to include in the newsletters, as had been the custom throughout Respondent Kim's use of District 6 newsletters prior to her campaign for reelection.

However, there was no evidence suggesting that any Supervisorial staff or interns drafted any of the specific campaign content for the newsletters on City time or using City resources. Nonetheless, by blurring the line between her officeholding and her campaign functions, Respondent Kim violated section IV(A) the Board of Supervisors' Statement of Incompatible Activities, as incorporated by SF C&GCC section 3.218.

Count 2: By failing to include required campaign advertising disclaimer language on 13 newsletters paid for by Respondent Committee that advocated for Respondent Kim's reelection, Respondents violated SF C&GCC section 1.161.

Respondent Kim's 13 newsletters from March 2014 through November 4, 2014 constituted political advertisements because they were authorized and paid for by a person or committee for the purpose of supporting Respondent Kim's campaign for elective office. SF C&GCC § 1.104; Gov't Code § 84501; 2 Cal. Admin. Code § 18450.1(a)(2). Because the newsletters were advertisements, Respondents were required to comply with disclaimer requirements of the Political Reform Act and two additional requirements of SF C&GCC section 1.161(a). Here, five of the 13 newsletters indicated "Paid for by Jane Kim for Supervisor 2014." None of the 13 newsletters indicated that financial disclosures were available at sfethics.org. Respondents therefore violated SF C&GCC section 1.161.

Count 3: By failing to maintain records for approximately five percent of Respondent Kim's 2014 re-election campaign expenditures, Respondent Committee violated SF C&GCC section 1.109.

Respondent Committee failed to maintain campaign records for expenditures totaling \$11,648, or five percent of total campaign expenditures, and therefore violated Government Code section 84104, as incorporated by SF C&GCC section 1.106, and SF C&GCC section 1.109.

Count 4: By using campaign funds to make one contribution to a charitable organization, Respondent Committee violated SF C&GCC section 1.122.

In August 2013, Respondent Kim filed her 2014 re-election Candidate Intention Statement (FPPC Form 501) announcing her intention to seek reelection for District 6 Supervisor. In making a charitable donation totaling \$250—to a local nonprofit organization—Respondent Committee expended funds for an impermissible use and therefore violated SF C&GCC section 1.122.

Count 5: By failing to pay for all expenditures within 180 days of incurring them, Respondent Committee violated SF C&GCC section 1.118.

SF C&GCC section 1.118 provides that a candidate committee that accepts goods or services on credit must pay for those goods or services in full no later than 180 calendar days after receiving a bill or invoice, or no later than 180 calendar days after the last calendar day of the month in which the goods were delivered or the services rendered, unless it is clear from the circumstances that the failure to pay is reasonably based on a good faith dispute. Here, there were no circumstances demonstrating that Respondent Committee's failure to timely pay for \$6,875 in goods and services was due to a good faith dispute. Respondents therefore violated SF C&GCC section 1.118.

Because the definition of contribution includes the forgiveness of a loan, and because Regulation 1.118-1 provides that any expense incurred on credit and which remains unpaid after 180 days is presumed to be a loan forgiven, any amount over \$500 may be considered a contribution in excess of the limit in SF C&GCC section 1.114(a). The excess contributions therefore resulting from Respondent Committee's failure to pay timely for goods and services as required by section 1.118 are: \$750 from Pearce Law Offices; \$1,125 from John Stricklin; and \$3,500 from the Harvey Milk LGBT Democratic Club. These contributions in excess of the \$500 limit established by SF C&GCC section 1.114(a) total \$5,375.

IV. Penalty Assessment

The Campaign & Governmental Conduct Code establishes a range of laws designed to uphold accountability and transparency in election campaigns and in the exercise of governmental duties. Adopted under the provisions of San Francisco Campaign & Governmental Conduct Code section 3.218, Statements of Incompatible Activities were established to further guide officers about the kinds of activities that are incompatible with their public duties and are therefore prohibited. Engaging in the activities that are prohibited by an SIA may subject an officer to monetary fines and penalties. (C&GC Code § 3.242; Charter § 15.105.)

This matter consists of five counts, as set forth above. Each carries a maximum total administrative penalty of \$5,000, or three times the amount that Respondents failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater. SF Charter § C3.699-13(c).

When determining penalties, the Ethics Commission must consider all of the relevant circumstances surrounding the matter, 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, which will be considered a mitigating factor if the respondent provides documentation of such inability. Enforcement Regulations § 9(D).

The Ethics Commission's Conflict of Interest Regulations, at section 3.218-8(b), further require the Commission to assess (1) the impact of a Respondent's activities on the City as a whole; (2) Respondent's compliance with other applicable laws and rules; (3) whether the violation was an isolated incident or part of a pattern of violations; (4) whether a Respondent or others were inappropriately enriched by the activity; (5) whether the violation was negligent, knowing, or intentional; and (6) the intent and spirit of the SIA.

Enforcement Regulation section 9(D)(5) requires the Ethics Commission to consider a Respondent's prior violations of law.

In May 2015, Respondent Kim entered into a Stipulation, Decision, and Order with the Ethics Commission (SFEC Complaint Number 24-101021) in which Respondent Kim and *Jane Kim for Supervisor 2010* agreed to a penalty of \$5,700 for four campaign finance counts that included a failure to maintain supporting documentation for more than \$40,000 in expenditures, or approximately 17 percent of all expenditures, as required by SF C&GCC section 1.109(a).

In June 2015, Respondent Kim entered into a subsequent Stipulation, Decision, and Order with the Ethics Commission (SFEC Complaint Number 12-141110) for conduct occurring during her 2014 reelection campaign. There, Respondent Kim and Respondent Committee agreed to a penalty of \$2,500 for one count of using her re-election campaign funds to pay \$28,000 to produce and air a television advertisement to support a ballot measure authored by Respondent Kim in her capacity as a Supervisor, in violation of SF C&GCC § 1.122(b)(1).

In the instant matter, as discussed above, Staff notes that Respondent Kim blurred the line between using her newsletter for a governmental purpose and using it for a campaign purpose. Respondent Kim allowed legislative updates likely generated by her Staff using City resources to appear in her newsletters that also advocated for her reelection. Specifically, around the time that she began to run for re-election, she reassigned the responsibility for producing the newsletter to campaign staff, so it could include campaign advocacy and campaign information. Although those newsletters were produced outside City Hall, they continued to include Supervisorial content likely produced inside City Hall, to feature the District 6 masthead, to come in several instances from "Supervisor Jane Kim & D6 Office," and to reach individuals who were added to the distribution list by virtue of their interaction with the District 6 office. Using public resources to produce and distribute a newsletter to advance a reelection effort fails to adhere to a core requirement that the campaign activities of public officials must remain distinct from their governmental duties. Such conduct improperly leverages the power of incumbency in election matters and compromises public trust in governmental institutions. In addition, Respondent's conduct regarding newsletter production and distribution spanned eight months and involved nine newsletters. As such, the conduct was not isolated but part of a pattern. The City

Attorney's Memorandum on Political Activity by City Officers and Employees was provided to City officers in each of 2011, 2012, and 2013, and again in early September 2014. In addition, according to statements she filed with the Ethics Commission, Respondent Kim completed the ethics training "Rules of Conduct for Public Officials," prepared by the City Attorney's Office and highlighting the improper use of City resources, in December 2011 and in December 2013. Respondent Kim, therefore, had reason to know about provisions governing the use of City resources during an election season. Because allowing the use of City resources to advance a private, non-City interest does not uphold the public trust in governmental institutions, this violation constitutes one of the more serious violations of the SF C&GCC.

In mitigation, there was no evidence that City staff drafted any content that was specifically campaign-related or used any City resources to produce such content. Further, the Supervisorial content generally consisted of a photograph and very brief blurbs of a few sentences about legislation or an event, and therefore took little effort to produce.

Regarding the disclaimer violations, failure to provide full disclaimers on 13 newsletters over a period of approximately eight months establishes a pattern of noncompliance. Respondent, however, was an experienced candidate, running two prior campaigns for the San Francisco Board of Education (in 2004 and in 2006) and one prior campaign for the San Francisco Board of Supervisors (in 2010). Respondent, therefore, had ample opportunity to be aware of the San Francisco Campaign & Governmental Conduct Code and with advertising disclaimer requirements.

Both the Campaign & Governmental Conduct Code and the Political Reform Act it incorporates establish reporting and recordkeeping requirements for local candidates that serve to inhibit improper activities and assist voters in making informed electoral decisions. Audits help promote accountability by campaign committees and provide a public record of the degree to which committees comply with required laws. The public and other candidates who abide by the laws suffer an injury when committees fail to fully report their activities as required or to provide documentation sufficient for auditors to verify the accuracy of the activities they did report.

When candidates receive contributions in excess of the limits established under SF C&GCC section 1.114, subsection 1.114(f)¹ gives the Commission authority to order Respondents to forfeit to the City's General Fund any contributions that exceed those limits "in addition to any other penalty." It further provides that the Ethics Commission may waive or reduce the forfeiture. Here, Respondents timely reported in their campaign filings the campaign expenditures that form the basis of this count. Further, there was no evidence that Respondents intended to conceal, deceive, or mislead. Respondents maintain that the payees failed to timely cash the payments. Respondents cooperated with the audit and with the subsequent investigation and do not have a history of violating this provision of law. Respondent Committee maintains that it wrote checks to these payees but the payees never cashed the checks.

In general mitigation, Staff has no evidence that Respondent Kim willfully committed any of the violations at issue or that she attempted to conceal any unlawful conduct from the public. To the contrary, Respondent Kim's newsletters were public by their nature, and in some instances included a copyright notation by Respondent Committee or explicitly indicated that Respondent Committee had paid for them. In addition, Respondent Kim and her staff cooperated with the investigation, and sought ways to come into compliance with the law once they learned of Staff's investigation. Finally, regarding

¹ At the time of the conduct at issue, the forfeiture provision was at SF C&GCC section 1.114(e).

the audit issues, Respondents' Committee did not accept any public funding for her campaign, such that none of the campaign finance violations resulted in any loss of public funds.

The maximum administrative penalty for Counts 1 through 4 is \$5,000 each, while the maximum administrative penalty for Count 5 is \$5,000 or three times the amount unlawfully received, or \$16,125. After evaluating the penalty factors above and prior analogous cases, Staff proposes the following penalties: Count 1: \$3,000; Count 2: \$2,000; Count 3: \$1,500; Count 4: \$250; Count 5: \$2,000, for a total administrative penalty of \$8,750. Ethics Commission Staff and Respondents have agreed upon this administrative penalty as set forth in the Stipulation, Decision, and Order.

Stipulation Exhibit A, Illustration 1: Summary Information re: Respondent Kim's Newsletters

Newsletter (Email Subject)	Campaign Content	Supervisory Content	Copyright	MailChimp Paid by	Distributed From / Distributed To
January 2014 (The Year That Was - And What's On Tap for 2014)	None	2013 legislative recap; 2014 expectations; Community Office Hours	Copyright © 2014 Jane Kim, District 6 Supervisor	Jane Kim for Supervisor 2010	info@janekim.org "Board of Supervisors"
February 2014 (Gung Hay Fat Choy – Let's Paint February Red!)	None	Newsletter survey (re: whether to continue distributing it); Community Office Hours survey (to identify issues to workshop); legislative updates, community events and office hours	Copyright © 2014 Jane Kim, District 6 Supervisor	Jane Kim for Supervisor 2010	info@janekim.org "Board of Supervisors"
March 2014 (March Newsletter 2014)	First announces reelection campaign	Community Outreach Hours (Join D6 Office); Calendar of Community Events	Copyright © 2014 Jane Kim, District 6 Supervisor - & - Paid for by Jane Kim for Supervisor, 2014	Jane Kim for Supervisor 2014 (\$120 payment in 1/1/14- 6/30/14)	"Jane Kim for Supervisor 2014" info@janekim.org "Board of Supervisors"
April 2014 (April Gold: This Month Is Chock-Full of Goodness!)	Refers to reelection campaign kickoff event, and recruits volunteers to sign up for shifts through a campaign staffer	Affordable housing update, Prop M; Community Office Hours; Walk to Work Day, D6 Pedestrian Safety, Vision Zero	Copyright © 2014 Jane Kim, District 6 Supervisor - & - Paid for by Jane Kim for Supervisor, 2014	Jane Kim for Supervisor 2014 (\$120 payment in 1/1/14- 6/30/14)	"Supervisor Jane Kim & D6 Office" info@janekim.org "Board of Supervisors"
May 2014 (Happy Bike Month & The Return of the Listening Booth!)	"Jane Kim for Supervisor Listening Booth Tour 2014"	D6 Bike Contingent, Bike to Work Day, Vision Zero; Movie Night; Charter Amendment re: public education;	Copyright © 2014 Jane Kim, District 6 Supervisor - & - Paid for by Jane Kim for	Jane Kim for Supervisor 2014 (\$120 payment in 1/1/14- 6/30/14)	"Supervisor Jane Kim & D6 Office" info@janekim.org "Board of Supervisors"



Indicates newsletter that contained both District 6 Supervisory office content and campaign advocacy in support of Respondent Kim's reelection effort.



Indicates newsletter that contained only campaign advocacy in support of Respondent Kim's reelection effort.

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		D6 calendar of events	Supervisor, 2014		
June 2014 (Color D6 w/ PRIDE! Your monthly dosage for June...)	Campaign & Listening Booth Update; thanked volunteers for qualifying Respondent Kim for the November ballot	Legislative update; D6 calendar of events; RSVP to campaign staff for D6 Pride event	Copyright © 2014 Jane Kim, District 6 Supervisor - & - Paid for by Jane Kim for Supervisor, 2014	Jane Kim for Supervisor 2014 (\$120 payment in 1/1/14-6/30/14)	"Supervisor Jane Kim & D6 Office" info@janekim.org "Board of Supervisors"
July 2014 (Hot In the City: Housing Balance & #FightFor15)	"Listening Booth Update – See Jane Run!"; donate at www.janekim.org , Respondent Kim's campaign website	D6 Pride; Budget Victory; Vision Zero; Housing Balance & Minimum Wage ballot measures; D6 Updates, job training center	Copyright © 2014 Jane Kim, District 6 Supervisor - & - Paid for by Jane Kim for Supervisor, 2014	Jane Kim for Supervisor 2014 (\$120 payment in 7/1/14-9/30/14)	"Supervisor Jane Kim & D6 Office" info@janekim.org "Board of Supervisors"
August 2014 (Affordable Housing, Children/Families, #FightFor15: November, Here We Come!)	Yes on C, J & K (C Jane Kim Run!); Listening Booth	November ballot propositions re: families, minimum wage, affordable housing, D6 National Night Out	Copyright © 2014 Jane Kim for Supervisor, 2014, FPPC #1361734	Jane Kim for Supervisor 2014 (\$120 payment in 7/1/14-9/30/14)	"Jane Kim for Supervisor 2014" info@janekim.org "Board of Supervisors"
September 11, 2014 (Re-Election Season is Here!)	New Campaign HQ; Listening Booth	Flower Mart update, merchant signs, earthquake preparedness, community events	Copyright © 2014 Jane Kim for Supervisor, 2014, FPPC #1361734	Jane Kim for Supervisor 2014 (\$120 payment in 7/1/14-9/30/14)	"Jane Kim for Supervisor 2014" info@janekim.org "Board of Supervisors"
September 24, 2014 (Rally, Rally! Gimme a G, J, K!)	New Campaign Staff; volunteer recruitment; Listening Booth Tour; Campaign Headquarters Grand Opening	Movie night; community events	Copyright © 2014. Jane Kim for Supervisor, 2014. FPPC# 1361734	Jane Kim for Supervisor 2014 (\$120 payment in 7/1/14-9/30/14)	"Jane Kim for Supervisor 2014" info@janekim.org "Board of Supervisors"



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October 8, 2014 (T Minus 4 Weeks!)	Volunteer & Weekend Mobilizations; Yes on A, B, G, J & K No on L	Community events	Copyright © 2014 Jane Kim for Supervisor, 2014. FPPC# 1361734	Jane Kim for Supervisor 2014 (\$30 payment 10/1- 10/18/14)	"Jane Kim for Supervisor 2014" info@janekim.org "Board of Supervisors"
October 22, 2014 (T Minus 13 Days Until Election Day!)	Video; Phone Banking; Visibility; Election Day Volunteer recruitment	None	Copyright © 2014, Jane Kim for Supervisor, 2014, FPPC #1361734	Jane Kim for Supervisor 2014 (\$30 payment 10/1- 10/18/14)	"Jane Kim for Supervisor 2014" info@janekim.org "Board of Supervisors"
October 28, 2014 (This Week Is Full of Pre-Election Activities!)	Two videos; Listening Booth Tour; Election Night Party; Yes on A, C, J & K; campaign fundraiser	None	Copyright © 2014, Jane Kim for Supervisor, 2014, FPPC# 1361734	Jane Kim for Supervisor 2014 (\$30 payment 10/1- 10/18/14)	"Jane Kim for Supervisor 2014" info@janekim.org "Board of Supervisors"
October 31, 2014 (Let's GOTV!!!)	Listening Booth Tour; Volunteer recruitment; Link to endorsements	None	Copyright © 2014, Jane Kim for Supervisor, 2014, FPPC #1361734	Jane Kim for Supervisor 2014 (\$30 payment 10/1- 10/18/14)	"Jane Kim for Supervisor 2014" info@janekim.org "Board of Supervisors"
November 4, 2014 ([No metadata available])	Endorsements for Candidates and Measures	None	Copyright © 2014, Jane Kim for Supervisor, 2014, FPPC# 1361734	Jane Kim for Supervisor 2014 (2x\$30 payment 10/19/14- 12/31/14)	[No metadata available] info@janekim.org "Board of Supervisors"



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