



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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CHAIR

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VICE-CHAIR

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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 5: Proposed Stipulation, Decision, and Order**  
• ***In the Matter of Ian Kalin for School Board 2016***  
***(SFEC Complaint No. 1718-066)***

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**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.

1 LeeAnn Pelham  
2 Executive Director  
3 Eric Willett  
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5 San Francisco Ethics Commission  
6 25 Van Ness Avenue, Suite 220  
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10  
11 BEFORE THE SAN FRANCISCO  
12 ETHICS COMMISSION  
13

14 In the Matter of ) SFEC Complaint No. 1718-066  
15 )  
16 IAN KALIN FOR SCHOOL BOARD 2016, )  
17 )  
18 )  
19 Respondent. ) **STIPULATION, DECISION**  
20 ) **AND ORDER**  
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29 THE PARTIES STIPULATE AS FOLLOWS:

30 1. This Stipulation, Decision, and Order ("Stipulation") is made and entered  
31 into by and between Ian Kalin for School Board 2016 ("Respondent") and the San  
32 Francisco Ethics Commission ("the Commission").

33 2. Respondent and the Commission agree to settle and resolve all factual and  
34 legal issues in this matter and to reach a final disposition without an administrative  
35

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 violation of law described in Exhibit A. Respondent  
5 understands and knowingly and voluntarily waives all rights to judicial review of this  
6 Stipulation and any action taken by the Commission or its staff on this matter.  
7

8  
9 3. Respondent acknowledges responsibility for and agrees to pay an  
10 administrative penalty in the amount of One Thousand Dollars (\$1,000) for one violation  
11 of the San Francisco Campaign and Governmental Conduct Code (the "SF C&GCC")  
12 section 1.116, as set forth in Exhibit A. Respondent agrees that \$1,000 is a reasonable  
13 administrative penalty.  
14

15 4. Within ten business days of the Commission's approval of this Stipulation,  
16 Respondent shall either pay the penalty through the City's online payment portal or  
17 otherwise deliver to the following address the sum of \$1,000 in the form of a check or  
18 money order made payable to the "City and County of San 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

6. 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 Enforcement Regulations with respect to this matter. These include, but are not limited to, the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at Respondent's expense, to confront and cross-examine all witnesses testifying at the hearing and to subpoena witnesses to testify at the hearing.

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

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

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

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: 6/18/2019

LeeAnn Pelham, Executive Director  
San Francisco Ethics Commission

Dated: June 18, 2019

Ian Kalin

**DECISION AND ORDER**

The foregoing Stipulation of the parties in the matter of “Ian Kalin for School Board 2016; SFEC Complaint No. 1718-066,” including the attached Exhibit A, 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

## I. Applicable Law

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 materially complied with applicable requirements of State and local laws. Section 1.150(a) of the San Francisco Campaign and Governmental Conduct Code (SF C&GCC) authorizes the Executive Director to initiate targeted or randomly selected audits of any committee irrespective of whether the committee received any public funds.

Section 1.116 of the SF C&GCC provides that a candidate's loan of personal funds to the candidate's campaign may not exceed \$15,000 at any time. SF C&GCC section 1.116(a)(1). Furthermore, SF C&GCC section 1.116(c) states, "In addition to any other penalty, loans made by a candidate to the candidate's campaign in excess of the amounts in Subsection (a) shall be deemed a contribution to the campaign and may not be repaid to the candidate."

## II. Summary of Material Facts

On November 23, 2015, Ian Kalin formed the committee "Ian Kalin for School Board 2016" (the Committee) as a candidate-controlled committee for the purpose of advancing his candidacy for the San Francisco School Board in the November 2016 election. In the course of the campaign, Respondent received \$80,696 in contributions and incurred \$80,696 in qualified campaign expenditures.

The Committee was audited by Ethics Commission staff following the 2016 City election as part of the Commission's 2016 audit cycle to determine whether the Committee materially complied with applicable requirements of the Political Reform Act (the Act) (California Government Code section 81000, et seq.) and San Francisco's Campaign Finance Reform Ordinance (CFRO) (SF C&GCC section 1.100, et seq).

On January 26, 2018, the Ethics Commission issued its final audit for Respondent's Committee. The Final Audit Report included the material finding that in two instances the candidate's loan of personal funds to the Committee exceeded the \$15,000 loan limit established by SF C&GCC section 1.116. Specifically, Respondent exceeded the loan limit by \$5,000 during the reporting period of July 1 through September 24, 2016 and exceeded the loan limit by \$10,000 during the reporting period of October 23 through December 8, 2016 for a total outstanding loan of \$25,000, which represented approximately 31 percent of Respondent's Committee's \$80,696 in total supportive funds.

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### III. Conclusions of Law

#### Count 1

#### The candidate's loan of personal funds to the candidate's campaign exceeded the \$15,000 loan limit in two instances.

On September 23, 2016 the total outstanding loan of the candidate's personal funds to his campaign was \$20,000; and on November 21, 2016, the total outstanding loan of the candidate's personal funds to his campaign was \$25,000.

**Count 1.** By exceeding the \$15,000 loan limit during the reporting period of July 1 through September 24, 2016, and during the reporting period of October 23 through December 8, 2016, Respondent committed one violation of SF C&GCC section 1.116.

### IV. Penalty Assessment

This matter consists of one violation of SF C&GCC section 1.116. The San Francisco Charter authorizes the Commission to assess 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. 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: (a) the severity of the violation; (b) the presence or absence of any intention to conceal, deceive, or mislead; (c) whether the violation was willful; (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. See Enforcement Reg. § 9(D).

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 1.116. Staff is bound by the adopted policies regarding these violations until the Commission changes them. The Commission retains the authority to approve or reject the stipulation and settlement amounts.

According to the fixed penalty policy, if respondents present no exonerating evidence, 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.

Like the penalty factors set forth in the Enforcement Regulations, the Fixed Penalty Policy provides that mitigating or aggravating factors may reduce or increase the penalties the schedule sets



forth, and states that the Commission will determine how much weight to give 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)

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

One purpose of the loan limits in SF C&GCC section 1.116 is to reduce the possibility of quid pro quo corruption or the appearance of corruption among candidates for elective office. Such limits mitigate against the scenario in which a candidate continues to fundraise in order to repay themselves the loans they made in the course of the campaign. Additionally, the requirement that a candidate who has loaned himself money report and substantiate that he has forgiven such a loan ensures that the committee's actions are properly transparent. Absent such documentation, contributors and the public may be misled about how their contributions might be spent. Here, Respondent did not comply with personal loan forgiveness reporting and documentation requirements and the public and other candidates were precluded from accurate information about the total debt incurred by Respondent's committee.

In mitigation, Respondent cooperated with the audit and has no history of prior enforcement with the Commission. In addition, enforcement staff found no indication of any intention to conceal, deceive, or mislead, and the violation appears inadvertent. Respondent stated regarding this violation that as a first-time candidate he made a mistake regarding documentation.

Therefore, after considering the mitigating factors and application of the fixed penalty policy, Staff proposes a \$1,000 penalty for the violation of City law. The parties agree that the \$1,000

administrative penalty is warranted because the amount of penalty reflects the fixed penalty policy and is high enough to promote a deterrent effect. This penalty is in addition to the statutory requirement that the amount in excess of the loan limit be treated as a contribution which cannot be repaid to the Respondent. SF C&GCC § 1.116(c).