



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM  
EXECUTIVE DIRECTOR

Date: August 12, 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 Aaron Peskin and Aaron Peskin for Supervisor 2015***  
***(SFEC Complaint No. 1516-11)***

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**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 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, 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 Proposed Stipulation.

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. 1516-11  
)  
AARON PESKIN, and )  
AARON PESKIN FOR SUPERVISOR 2015 )  
)  
Respondents. ) **STIPULATION, DECISION**  
AND ORDER

THE PARTIES STIPULATE AS FOLLOWS:

1. This Stipulation, Decision, and Order ("Stipulation") is made and entered into by and between Aaron Peskin, Aaron Peskin for Supervisor 2015, and the San Francisco Ethics Commission ("the Commission").
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 \$8,000 for six violations of San Francisco Campaign & Governmental Conduct Code ("SF  
5 C&GCC") section 1.161(a) as set forth in Exhibit A. Respondents agree that \$8,000 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 \$8,000 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 Enforcement Regulations with respect to this matter. These include, but are not limited to, the right to  
22 appear personally at any administrative hearing held in this matter, to be represented by an attorney at  
23 Respondents' expense, to confront and cross-examine all witnesses testifying at the hearing and to  
24 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 10. This Stipulation, along with the attached Exhibit A, reflects the entire agreement  
12 between the parties hereto and supersedes any and all prior negotiations, understandings, and  
13 agreements with respect to the transactions contemplated herein. This Stipulation may not be amended  
14 orally. Any amendment or modification to this Stipulation must be in writing duly executed by all parties  
15 and approved by the Commission at a regular or special meeting.

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

7/18/2019

LEEANN PELHAM, EXECUTIVE DIRECTOR  
SAN FRANCISCO ETHICS COMMISSION

Dated:

7-18-19

AARON PESKIN

**DECISION AND ORDER**

The foregoing Stipulation of the parties in the matter of "Aaron Peskin, Aaron Peskin for Supervisor 2015; SFEC Complaint No. 1516-11," 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

The San Francisco Campaign & Governmental Conduct Code (SF C&GCC) mandates that all advertisements by candidate committees must include two disclaimers:

1. "Paid for by [name of the candidate committee]."; and
2. "Financial disclosures available at sfethics.org."

SF C&GCC § 1.161(a)(4). It likewise requires that, in the case of disclaimers on "smaller written advertisements," including "print advertisements," the disclaimer must appear in at least 12-point font. *Id.* § 1.161(a)(3).<sup>1</sup> The disclaimer requirements apply to any advertisement paid for by the candidate's committee and make no exceptions based on the language used to communicate the candidate's advertisement. According to the Fair Political Practices Commission (FPPC), which enforces the PRA, disclaimers must be written in the same language used in the advertisement.<sup>2</sup>

## II. Summary of Material Facts

### Background

Voters first elected Respondent Peskin to represent District 3 when he ran in 2000, for a term running from 2001 to 2005. He secured reelection and served a second term, from 2005 to 2009. Supervisor Peskin was likewise elected chair of the San Francisco Democratic Party Central Committee, a position he held from 2008 to 2012. In 2015 Supervisor Peskin ran a third time to represent District 3, the campaign which is the subject of this stipulation. As such, he has run no fewer than three supervisorial campaigns in San Francisco. Respondent Peskin therefore has veteran experience in San Francisco's politics, campaigns, and elections.

### The Advertisements

The candidate committee for Aaron Peskin's 2015 supervisorial race, Aaron Peskin for Supervisor 2015, ran a series of advertisements in two Chinese-language newspapers that print in San Francisco, *World Journal* and *Sing Tao*.

*World Journal* has approximately 45,000 subscribers on weekdays and approximately 46,000 to 47,000 subscribers on weekends. *Sing Tao* has 30,000 to 35,000 San Francisco subscribers on weekdays and 35,000 to 40,000 San Francisco subscribers on weekends.

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<sup>1</sup> California Elections Code section 20008 also mandates that a paid political advertisement referring to an election or to any candidate for state or local elective office and which is contained in or distributed in a newspaper must include the words "Paid Political Advertisement" in lettering that is at least half as large as the type or lettering of the ad itself or in 10-point roman type, whichever is larger. The Commission lacks jurisdiction over the Elections Code.

<sup>2</sup> FPPC Campaign Disclosure Manual 2, p. 7.3, subsection (B).

The committee ran eleven distinct advertisements. Each advertisement ran for between one and eighteen days, for a total of sixty days of advertisements. The earliest appeared in *Sing Tao* on July 31, 2015, and the advertisements began to appear daily in both newspapers on September 19, 2015. The last appeared in *World Journal* on November 5, 2015, two days after the election. Based on the contracts that Respondents produced, Respondents spent at least \$21,000 on the advertisements.

Most of the advertisements indicated they were paid for by Aaron Peskin for Supervisor 2015, some in English, some in Chinese, and others in both English and Chinese. Some, but not all, instructed readers that financial disclosures were available at sfethics.org.

Each of the advertisements featuring Respondent Peskin above the fold contained disclaimers printed in less than 6-point font. Each of the advertisements featuring Respondent Peskin below the fold contained disclaimers printed in either 8- or 9-point font. None met the requirement that both the “paid for by” and “financial disclosures available at” disclaimers appear in 12-point font. As produced, some of the communications may have created an appearance that they were endorsements by the papers, that they indicated reporting within that section of the paper, or that they offered editorials by prominent members of the Chinese community rather than that they were advertisements by the candidate.

### **III. Conclusions of Law**

**Count 1:** In double 2x3 advertisements, which ran twice in *World Journal*, Respondents’ disclaimers appeared in less than 12-point font and did not direct readers to sfethics.org, in violation of SF C&GCC § 1.161(a).

**Count 2:** In 8x2 advertisements, which ran twenty times in *World Journal*, Respondents’ disclaimers appeared in less than 12-point font, and in sixteen such advertisements did not direct readers to sfethics.org, in violation of SF C&GCC § 1.161(a).

**Count 3:** In 12x5 advertisements, which ran three times in *World Journal*, Respondents’ disclaimers appeared in less than 12-point font in violation of SF C&GCC § 1.161(a).

**Count 4:** In a 12x10 (half-page) advertisement, which ran once in *World Journal*, Respondents’ disclaimers appeared in less than 12-point font in violation of SF C&GCC § 1.161(a).

**Count 5:** In 3x2 advertisements, which ran twenty-nine times in *Sing Tao*, Respondents’ disclaimers appeared in less than 12-point font, and in eighteen such advertisements did not direct readers to sfethics.org, in violation of SF C&GCC § 1.161(a).

**Count 6:** In a 12x10 (half-page) advertisement, which ran once in *Sing Tao*, Respondents’ disclaimers appeared in less than 12-point font in violation of SF C&GCC § 1.161(a).

### **IV. Penalty Assessment**

This matter consists of six counts carrying a maximum administrative penalty of \$5,000 each. SF Charter § C3.699-13(c).

Pursuant to San Francisco Ethics Commission Enforcement Regulations section 9(D), 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 deliberate, negligent or inadvertent; (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 inability to pay.

Respondents' disclaimer violations for these advertisements are significant and pervasive. The absence of certain required disclaimers, the font-size used, and the placement of the ads may have conveyed incorrectly that some of the communications were endorsements from the newspapers themselves, or indicated reporting that may have appeared within that section of the paper, or offered editorials by prominent members of the Chinese community, rather than that they were ads paid for by a political committee seeking to influence the newspapers' readers to support that candidate. The newspapers at issue reached a significant readership. Staff further notes that the papers printed the ads nearly daily across six weeks. Respondents had multiple opportunities to correct the error had they detected the oversight.

Given that the majority of the advertisements ran almost daily from September 19, 2015 through November 3, 2015, and that advertisements at every size violated either the font-size requirement or the disclaimer requirement or both, the violations were not isolated incidents but part of a pattern. Accordingly, Staff concludes that the severity of the disclaimer violations was not insignificant.

In mitigation, the Committee cooperated with Staff throughout this investigation. Respondents supplied to Staff the correspondence, contracts, and ad proofs that it maintained from the relevant period. Respondents stated that the violations were inadvertent. Respondents have stated that they provided proofs to the newspapers and that newspaper producers shrunk those proofs, resulting in unintended font-size violations. Nonetheless, Respondents should have confirmed final font sizes based on the contracted-for sizes of the advertisements. Furthermore, the payments to the two newspapers for these advertisements only constitute approximately 3.5 percent of the total money spent by Respondents through the course of the campaign.

In light of the above penalty factors and in consideration of prior analogous cases, Staff recommends that the Commission approve an administrative penalty of \$8,000, aggregated, per count in the following ways:

For Count 1: Respondents agree to pay an administrative penalty of \$1000;

For Count 2: Respondents agree to pay an administrative penalty of \$2000;

For Count 3: Respondents agree to pay an administrative penalty of \$1000;

For Count 4: Respondents agree to pay an administrative penalty of \$1000;

For Count 5: Respondents agree to pay an administrative penalty of \$2000;

For Count 6: Respondents agree to pay an administrative penalty of \$1000.