



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 8: Proposed Stipulation, Decision and Order**

- ***In the Matter of Thea Selby and Re-Elect Thea Selby for the San Francisco Community College Board 2018 (SFEC Complaint No. 1819-050)***

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.

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7 BEFORE THE SAN FRANCISCO
ETHICS COMMISSION

9 In the Matter of) SFEC Complaint No. 1819-050
10 THEA SELBY and RE-ELECT THEA SELBY FOR THE)
SAN FRANCISCO COMMUNITY COLLEGE BOARD)
11 2018,) **FIXED PENALTY STIPULATION, DECISION,**
12 Respondents.) **AND ORDER**
13 _____)

14 This Stipulation, Decision, and Order (“Stipulation”) is made and entered into by and between
15 Thea Selby and Re-Elect Thea Selby for the San Francisco Community College Board 2018
16 (“Respondents”) and the San Francisco Ethics Commission (“the Commission”) pursuant to the Ethics
17 Commission’s Fixed Penalty Policy.

18 THE PARTIES STIPULATE AS FOLLOWS:

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

24 2. This Stipulation shall constitute the complete resolution of all claims by the Commission
25 against Respondents related to this violation of law. Respondents understand and knowingly and
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1 voluntarily waive all rights to judicial review of this Stipulation and any action taken by the Commission
2 or its staff on this matter.

3 **Fixed Penalty Stipulation**

4 3. Respondents acknowledge responsibility for and agree to pay a fixed penalty in the total
5 amount of One Thousand Dollars (\$1,000) for one violation of San Francisco Campaign & Governmental
6 Conduct Code ("SF C&GCC") section 1.161(a), as described in detail below. The parties' agreed penalty
7 assessment is explained more fully in the attached Exhibit A.


8 4. SF C&GCC section 1.161(a) incorporates the requirements of state law and prohibits a
9 candidate committee from distributing a sign without identifying who paid for the advertisement in no
10 less than five percent of the total height of the advertisement and in a color that has a reasonable
11 degree of contrast with the background of the advertisement. See Gov't Code § 84504.5(c)(2). The
12 ordinance also requires that a sign's disclaimer contain a reference to financial disclosures available at
13 sfethics.org. Respondents distributed the following sign in violation of the City's Campaign Finance
14 Reform Ordinance:
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Count	Type of Advertisement	Nature of the violation	Penalty
1	Sign	Failure to include in the disclaimer statement: - "Financial disclosures are available as sfethics.org" in violation of SF C&GCC section 1.161(a)(4) - Printed in no less than five percent of the total height of the advertisement in violation of Gov't Code section 84504.5(c)(2)	\$1,000
Total penalty:			\$1,000


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2 14. The parties may sign different copies of this Stipulation, which will have the same effect
3 as though all parties had signed the same document.

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6 Dated 7/23/19 
7 Thea Selby

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9 Dated 7/24/15 
10 Re-Elect Thea Selby for the San Francisco Community College Board
2018

11 Printed Name Timothy C. Durning

12
13 Dated 8/2/2019 
14 LeeAnn Pelham, Executive Director of the Ethics Commission

1 **Decision and Order of the Commission**

2 The foregoing Stipulation of the parties in the matter of "Thea Selby, Re-Elect Thea Selby for the
3 San Francisco Community College Board 2018; SFEC Complaint No. 1819-050," including the attached
4 Exhibit A, is hereby accepted as the final Decision and Order of the San Francisco Ethics Commission,
5 effective upon execution below by the Chairperson.
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8 IT IS SO ORDERED.
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11 Dated _____
12 Daina Chiu, Ethics Commission Chairperson
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Exhibit A: Penalty Calculation

This matter consists of one violation of the SF C&GCC carrying a maximum total administrative penalty of \$5,000. *See* SF Charter § C3.699-13(c), SF C&GCC § 1.170(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 1.161. According to the policy, 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 prior to the 14-day deadline, Staff will propose penalties to the Commission for its consideration according to the following schedule:

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

The policy provides further that mitigating or aggravating factors may reduce or increase the penalties the schedule sets forth.

The policy states that the Commission will consider each mitigating or aggravating factor to determine how much weight to give to each. The following lists of mitigation and aggravation factors are not exhaustive:

Mitigation Factors:

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

- Respondent filed all required disclosure statements and/or amendments within 14 days of initial contact by Enforcement staff
- A disclosure containing the required information appeared on a mass mailing, electioneering communication, or campaign advertisement, but the disclosure was in an incorrect font size.

Aggravation Factors:

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

The Respondents agreed the advertisement violated the City's disclaimer requirements and stated that the violation was due to the Committee's reliance on an older disclaimer statement. In this matter, the proposed Stipulation was signed prior to the issuance of the Probable Cause Report. Therefore, the proposed penalty according to the policy is \$1,000 per violation.

After considering all the facts of this case, the fixed penalty policy, and prior analogous cases, Ethics Commission Staff and the Respondents have agreed upon a penalty of \$1,000 for one violation of SF C&GCC section 1.161(a).