



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: July 2, 2020

To: Members of the Ethics Commission

From: Jeff Pierce, Director of Enforcement & Legal Affairs

Subject: **AGENDA ITEM 7: Proposed Stipulation, Decision and Order**

- ***In the Matter of Aaron Peskin for Supervisor 2016, Aaron Peskin, and Stacy Owens (SFEC Complaint No. 1516-37A).***

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 and others on the Consent Calendar by majority vote, or it may sever this item from the Consent Calendar and discuss and act on it separately, 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.*

This item appears on the Consent Calendar. The Commission may approve the stipulation and others appearing on the Consent Calendar by majority vote, or it may sever this item from the Consent Calendar and discuss and act on it separately, 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 Zumwalt
Senior Investigative Analyst

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
(415) 252-3100 Telephone
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BEFORE THE SAN FRANCISCO
ETHICS COMMISSION

In the Matter of)	SFEC Complaint No. 1516-37A
)	
AARON PESKIN FOR SUPERVISOR 2016, AARON)	
PESKIN, and STACY OWENS,)	
)	
)	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 Aaron Peskin for Supervisor 2016, Aaron Peskin, and Stacy Owens (collectively, "Respondents"), 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 Five Hundred dollars (\$500) for one count in violation of San Francisco Campaign and
5 Governmental Conduct Code ("SF C&GCC") section 1.106 and Government Code section 84301 and
6 84302 and one count in violation of SF C&GCC section 1.161(b)(2), as set forth in Exhibit A. Respondents
7 agree that \$500 is a reasonable administrative penalty.

8 4. Within ten business days of the Commission's approval of this Stipulation, Respondents
9 shall either pay the penalty through the City's online payment portal or otherwise deliver to the
10 following address the sum of \$500 in the form of a check or money order made payable to the "City and
11 County of San Francisco":
12

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

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

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

26 7. Respondents understand and acknowledge that this Stipulation is not binding on any
27 other government agency with the authority to enforce the San Francisco Campaign & Governmental
28

1 Conduct Code section 1.100 *et seq.*, and does not preclude the Commission or its staff from cooperating
2 with or assisting any other government agency in its prosecution of Respondents for any allegations set
3 forth in Exhibit A, or any other matters related to those violations of law set forth in Exhibit A.

4 8. This Stipulation is subject to the Commission's approval. In the event the Commission
5 declines to approve this Stipulation, the Stipulation shall become null and void, except Paragraph 10,
6 which shall survive.

7 9. In the event the Commission rejects this Stipulation, and further administrative
8 proceedings before the Commission are necessary, Respondents agree that the Stipulation and all
9 references to it are inadmissible. Respondents moreover agree not to challenge, dispute, or object to
10 the participation of any member of the Commission or its staff in any necessary administrative
11 proceeding for reasons stemming from his or her prior consideration of this Stipulation.
12

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

18 11. This Stipulation shall be construed under, and interpreted in accordance with, the laws
19 of the State of California. If any provision of the Stipulation is found to be unenforceable, the remaining
20 provisions shall remain valid and enforceable.
21

22 12. The parties hereto may sign different copies of this Stipulation, which will be deemed to
23 have the same effect as though all parties had signed the same document.
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1 Dated: 07-01-2020 | 14:23:17 PDT

DocuSigned by:

LeeAnn Pelham

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LeeAnn Pelham, Executive Director
San Francisco Ethics Commission

2
3 Dated: 07-01-2020 | 14:25:51 PDT

DocuSigned by:

Aaron Peskin

BDEF3A7E3D4B4C9...

Aaron Peskin for Supervisor 2016

6 Aaron Peskin

7 Printed Name of Signatory

8
9 Dated: 07-01-2020 | 14:25:51 PDT

DocuSigned by:

Aaron Peskin

BDEF3A7E3D4B4C9...

10 Aaron Peskin

11
12 Dated: 07-02-2020 | 08:15:59 PDT

DocuSigned by:

Stacy Owens

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13 Stacy Owens
14 Treasurer

DECISION AND ORDER

The foregoing Stipulation of the parties in the matter of "Aaron Peskin for Supervisor 2016, Aaron Peskin, and Stacy Owens; SFEC Complaint No. 1516-37A," 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: _____

Noreen Ambrose, Chairperson
San Francisco Ethics Commission

Exhibit A

I. Introduction

On February 23, 2016, Aaron Peskin (“Peskin”) formed the committee “Aaron Peskin for Supervisor 2016” (“Committee”) as his candidate-controlled committee seeking re-election as the District 3 member of the Board of Supervisors in the November 2016 election. Pursuant to its audit authority, the Ethics Commission performed a campaign audit of the Committee for the period covering calendar year 2016. Throughout that period, Stacy Owens (“Owens,” then with The Henry Levy Group, A CPA Firm) served as the treasurer and the Committee received \$99,608 in contributions and made \$81,701 in campaign expenditures. The Committee did not seek and did not receive public funds. Based on the material findings noted in the final audit report, Staff have identified violations by Peskin, the Committee, and Owens (“Respondents”) of applicable provisions of the Political Reform Act (“PRA”) and the Campaign Finance Reform Ordinance (“CFRO”).

II. Applicable Law

San Francisco Charter section C3.699-11 authorizes the Ethics 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 law.

San Francisco Campaign and Governmental Conduct Code (“SF C&GCC”) section 1.106 incorporates all provisions of the California Government Code, commencing at section 81000, related to local elections, including any amendments.

California Government Code section 81002(a) states that among the purposes of the Political Reform Act is that “receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.”

Candidates are required to verify the accuracy of their campaign statements. Gov’t Code § 84213. Every committee is required to have a treasurer who is responsible for ensuring the committee complies with all campaign finance reporting provisions. *Id.* §§ 84100, 84213; 2 C.C.R. § 18427(a). Candidates and treasurers are responsible for complying with all campaign finance reporting requirements and may be held personally liable for violations by their committees. SF C&GCC § 1.170(g). If two or more persons are found responsible for any violation of CFRO, they may be held jointly and severally liable, along with the committee, for violations committed by the committee. *Id.* § 1.170(h).

Government Code section 84301 states that no contribution may be made, directly or indirectly, by any person in a name other than the name by which such person is identified for legal purposes. Person is defined as, “an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.” Gov’t Code § 84027.

Government Code section 84302 provides that no person may make a contribution on behalf of another, or while acting as the intermediary or agent of another, without disclosing to the recipient

of the contribution both his own full name and street address, occupation, and the name of his employer, if any, or his principal place of business if he is self-employed, and the full name and street address, occupation, and the name of employer, if any, or principal place of business if self-employed, of the other person. The recipient of the contribution must include in his campaign statement the full name and street address, occupation, and the name of the employer, if any, or the principal place of business if self-employed, of both the intermediary and the contributor. Gov't Code § 84302.

SF C&GCC section 1.161(b)(2) requires a candidate committee that pays for a mass mailing to file a Form SFEC-161 (Itemized Disclosure Statement) with the Ethics Commission either (A) within five business days of the date of the mailing or (B) within 48 hours of the date of the mailing if it occurred during the 16 days immediately preceding the election.

III. Summary of Material Facts

1. To determine the degree to which the Committee complied with requirements of applicable campaign law, Ethics Commission auditors conducted an audit of the Committee, which resulted in the issuance of a final audit report in January 2018.

2. The audit found that in six instances, Respondents failed to accurately report contributor names as required. The six contributions totaled \$3,200 and represented three percent of funds raised by the Committee. Table 1 identifies the six contributions as reported and as publicly disclosed on campaign statements and as identified in supporting documentation in Respondent's possession.

Table 1: Contributions inaccurately disclosed by the Committee

Contribution Date	Contribution Amount	Contributor Name as Publicly Disclosed on Committee Form 460 Filing	Contributor Name According Committee Records	Documentation in Committee Records
10/03/16	\$500	Lyons, Redmond	RMTX 22, LLC	Contributor check identifying "RMTEX 22, LLC" as accountholder
10/03/16	\$500	McElroy, Stephen	STEPHEN MCELROY CONSTRUCTION	Contributor check identifying "STEPHEN MCELROY CONSTRUCTION" as accountholder
10/20/16	\$200	Beckett, Lana	ENVIRONMENTAL CLEARINGHOUSE, LLC	Contributor check identifying "ENVIRONMENTAL CLEARINGHOUSE, LLC" as accountholder

10/20/16	\$500	Galanos, Greg	GLT	Contributor check identifying "GLT" as accountholder
11/07/16	\$500	Talty, John	GREEN WORKS LIMITED LLC	Contributor check identifying "GREEN WORKS LIMITED LLC" as accountholder
11/07/16	\$500	Zanghi, John	ZANGHI TORRES ARSHAWSKY LLP	Contributor check identifying "ZANGHI TORRES ARSHAWSKY LLP" as accountholder
11/07/16	\$500	Kay, Steven	Kay, Steven	Contribution check was made payable to "Victor Makras"; Committee deposited contribution but failed to report Makras as an intermediary.
Total	\$3,200			

3. On October 31, 2016, the Committee expended \$7,161 for a mass mailing of 5,500 mailers for which it was required to file a Form SFEC-161. The mass mailing was one of three that the Committee paid for and distributed during the election. Funds spent on this mass mailing represented nine percent of the Committee's overall expenditures. As part of that filing the Committee was also required to submit a copy of the mass mailing to the Ethics Commission for public review.

IV. Conclusions of Law

Commission investigators found that Respondents violated applicable laws as follows:

Count 1:

Failure to accurately report contributor information as required by Government Code section 84301 and 84302.

Respondents failed to accurately report the source of seven contributions totaling \$3,200, roughly 3 percent of total contributions received, in violation of Government Code sections 84301 and 84302. Failure to fully and truthfully disclose the source of contributions prevents voters from being fully informed and improper practices from being inhibited.

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Count 2:**Failure to file an itemized disclosure statement and a copy of a mass mailing it distributed as required by SF C&GCC section 1.161(b)(2).**

Respondents failed to file a Form SFEC-161 Itemized Disclosure Statement and a copy of a mass mailing for which it expended \$7,161, roughly nine percent of the Committee's expenditure total, to produce and distribute 5,500 mailers in violation of SF C&GCC section 1.161(b)(2). Failure to file these disclosures as required inhibited the public's ability to be fully informed about campaign communications directed at influencing voter choices.

V. Penalty Assessment

Referral of audit reports for enforcement review is authorized under San Francisco Charter section 3.699.11(4) and is a standard practice to determine what further steps may be warranted based on material audit findings. This matter consists of one count in which Respondents failed to comply with campaign contribution reporting requirements in seven instances in violation of Government Code sections 84301 and 84302, and one count in which the Respondents failed to disclose a candidate committee mass mailing. 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). Consequently, the maximum potential administrative penalty in this matter is \$14,600.

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. San Francisco Ethics Commission Enforcement Regulations (Enforcement Regulations) § 9(D).

Compliance with public disclosure requirements of the law and accuracy in reporting provides voters with information to make informed electoral decisions and helps support the public's trust in electoral and governmental institutions. In the instant matter, Respondents' reporting of seven contributions totaling \$3,200 did not accurately disclose the source of those funds. Failure to file the itemized mass mailing disclosure statement and a copy of the mass mailing deprived the public of having access to campaign communications that the law requires to be filed and available for public review during the election period. In mitigation, Respondents cooperated with Commission auditors and investigators and provided requested documents in a timely manner. Staff found no evidence by Respondents of any intent to conceal, deceive, or mislead.

In applying the penalty factors enumerated above and to ensure similar substantive treatment with comparable and prior analogous cases, Commission Staff conclude that imposition of an administrative penalty would be warranted. That amount would factor the value of contributions not accurately reported and costs related to an unreported mass mailing. In this instance, Staff acknowledge the significant passage of time since the conclusion of Commission's audit work for the 2016 election cycle and must consider that delay as a significant mitigating factor for the Committee. In further

significant mitigation, at the time the resolution of this matter was undergoing final enforcement review in early spring 2020, additional delay resulted as Commission Staff prioritized emergency operations related to the emergence of the COVID-19 public health emergency. Taking these factors overall into consideration, Staff proposes and the parties agree that this Stipulation, Decision, and Order imposing a fine totaling \$500 for Counts 1 and 2 is an appropriate resolution of this matter under these unique circumstances.