



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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COMMISSIONER

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 8: Proposed Stipulation, Decision and Order**

- ***In the Matter of Keep San Francisco Affordable, Support by Tenant and Housing Advocates, and Jennifer Fieber (SFEC Complaint No. 1516-43, 1718-24).***

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.

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10
11 BEFORE THE SAN FRANCISCO
12 ETHICS COMMISSION

13 In the Matter of) SFEC Complaint No. 1516-43 & 1718-24
14)
15 KEEP SAN FRANCISCO AFFORDABLE,)
16 SUPPORTED BY TENANT AND HOUSING)
17 ADVOCATES, YES ON PROPS A, F, I, J, K)
18 AND NO ON C, E and JENNIFER FIEBER) **STIPULATION, DECISION**
19) **AND ORDER**
20 Respondents.)
21)
22)

23 THE PARTIES STIPULATE AS FOLLOWS:

24 1. This Stipulation, Decision, and Order (Stipulation) is made and entered into
25 by and between Keep San Francisco Affordable, Supported by Tenant and Housing
26 Advocates, Yes on Props A, F, I, J, K and No on C, E and Jennifer Fieber (together
27 Respondents) and the San Francisco Ethics Commission (the Commission) (collectively
28 the parties).

25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

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

6. Respondents understand, and hereby knowingly and voluntarily waive, 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 Respondents’ expense, to confront and cross-examine all witnesses testifying at the hearing and to subpoena witnesses to testify at the hearing.

7. Respondents understand and acknowledge 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 Respondents 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.

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

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

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

DocuSigned by:

LeeAnn Pelham

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LeeAnn Pelham, Executive Director
San Francisco Ethics Commission



Dated: 6/19/20

Keep San Francisco Affordable, Supported by
Tenant and Housing Advocates, Yes on Props A,
F, I, J, K and No on C, E

Jennifer Fieber, Treasurer

Printed Name of Signatory



Dated: 6/19/20

Jennifer Fieber

DECISION AND ORDER

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The foregoing Stipulation of the parties in the matter of “Keep San Francisco Affordable, Supported by Tenant and Housing Advocates, Yes on Props A, F, I, J, K and No on C, E; SFEC Complaint No. 1516-43 & 1718-24,” 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

The committee Keep San Francisco Affordable, Supported by Tenant and Housing Advocates, Yes on Props A, F, I, J, K and No on C, E (the Committee) was a primarily formed committee and Jennifer Fieber (Fieber) served as its Treasurer. The Committee qualified on October 23, 2015, received \$1,681 in total contributions, made \$1,681 in total expenditures, and terminated on December 30, 2015. The Committee and Fieber (together, Respondents) failed to accurately report the date on which the Committee qualified as a committee, failed to file a late independent expenditure report, and failed to include proper disclaimer language on a campaign advertisement.

II. Applicable Law

San Francisco Campaign and Governmental Conduct Code (SF C&GCC) section 1.106 incorporates the California Government Code (Cal. Gov't Code) commencing at Section 81000.

Government Code section 84200(a) requires a committee to file semi-annual campaign statements "each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31." Furthermore, SF C&GCC section 1.135(a) requires "a San Francisco general purpose committee that makes contributions or expenditures totaling \$500 or more during the period covered by the pre-election statement, other than expenditures for the establishment and administration of that committee, shall file a pre-election statement before any election held in the City and County of San Francisco at which a candidate for City elective office or City measure is on the ballot." SF C&GCC section 1.135(b) defines the timing of the supplemental pre-election statements as follows:

- (a) For the period ending 45 days before the election, the statement shall be filed no later than 40 days before the election.
- (b) For the period ending 17 days before the election, the statement shall be filed no later than 12 days before the election.

Government Code section 82036.5 defines a "Late Independent Expenditure" as "an independent expenditure that totals in the aggregate one thousand dollars (\$1,000) or more and is made for or against a specific candidate or measure involved in an election during the 90-day period preceding the date of the election or on the date of the election." Furthermore, Government Code section 84204 requires a committee that makes a late independent expenditure, to "report the late independent expenditure . . . within 24 hours of the time it is made."

SF C&GCC section 1.112(b)(1)(B) requires committees primarily formed to support or oppose local ballot measures to "file electronic copies of statements and reports if it receives contributions or makes expenditures that total \$1,000 or more in a calendar year."

Any doorhangers distributed by San Francisco committees, whether primarily formed or general purpose, must: 1) contain a "paid for by" disclaimer in 12-point font; 2) state "financial disclosures

available at sfethics.org”; and 3) disclose the committee’s top two contributors of \$20,000 or more. See SF C&GCC § 1.161.

Treasurers are responsible for complying with the above reporting requirements and may be held liable for violations by their committees. SF C&GCC §§ 1.106, 1.170(g); Cal. Gov’t Code § 91006.

SF C&GCC section 1.170(f) states that, “any person who knowingly or willfully furnishes false or fraudulent evidence, documents, or information to the Ethics Commission under this Chapter, or misrepresents any material fact, or conceals any evidence, documents, or information, or fails to furnish to the Ethics Commission any records, documents, or other information required to be provided under this Chapter shall be subject to the penalties provided in this Section.”

III. Summary of Material Facts

On October 23, 2015, the Committee received two contributions totaling \$1,181.

On October 30, 2015, the Committee received a contribution totaling \$500.

On November 1, 2015, the Committee made an independent expenditure totaling \$1,681 for 30,000 doorhangers expressly advocating for San Francisco ballot Propositions A, F, I, J, K, and opposing Propositions C and E. In the disclaimer, the Committee did not identify itself as having paid for the communication, did not use the minimum 12-point font, and did not state, “financial disclosures available at sfethics.org.”

On November 24, 2015, Respondents filed a Statement of Organization (Form 410) with the California Secretary of State. On that filing, Respondents listed October 21, 2015 as the date the Committee qualified as a committee and listed Fieber as Treasurer.

On December 11, 2015, Respondents filed a Statement of Organization (Form 410) with the Commission, for the first time, reporting it was an “amended” Form 410. On that filing, Respondents listed December 9, 2015 as the date the Committee qualified as a committee and again listed Fieber as Treasurer. That same day, Respondents filed an additional Form 410 with the Commission reporting a committee termination date of December 30, 2015.

On December 21, 2015, having already filed an “amended” Form 410 Statement of Organization and a Form 410 Termination Statement, Respondents filed a Form 410 reporting that it was an “initial” Form 410 and identifying the Committee as a San Francisco primarily formed ballot measure committee.

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IV. Conclusions of Law

Count 1: Knowingly or willfully furnishing false or misleading information to the Ethics Commission regarding the date Respondent Committee qualified as a committee in violation of SF C&GCC Section 1.170(f).

On November 24, 2015, Respondents filed a Statement of Organization (Form 410) with the California Secretary of State reporting October 21, 2015 as the date the Committee qualified as a committee.

On December 11, 2015, Respondents filed a Statement of Organization (Form 410) with the Ethics Commission reporting December 9, 2015 as the date the Committee qualified as a committee.

The Committee's financial records, however, demonstrate it qualified as a committee in October as initially reported to the Secretary of State. The Committee's financial records further demonstrate that the entirety of its activity occurred in October and November 2015. Respondents' disclosure to the Ethics Commission on December 11, 2015 that it qualified only on December 9, 2015, therefore, demonstrates that Respondents knowingly or willfully provided false or misleading information to the Ethics Commission in violation of SF C&GCC section 1.170(f).

Count 2: Failure to file a Late Independent Expenditure Report totaling \$1,681 during the 90-day period preceding the date of the November 3, 2015 election in violation of SF C&GCC Section 1.106.

On November 1, 2015, the Committee made a late independent expenditure totaling \$1,681 for 30,000 doorhangers expressly advocating for San Francisco ballot Propositions A, F, I, J, K, and opposing Propositions C and E. This late independent expenditure was required to be reported on a late independent expenditure report (Form 496) electronically filed with the Commission within 24 hours from the time it was made. Cal Gov't Code § 84204; SF C&GCC § 1.112(b)(1)(B). Respondents failed to file a Form 496 in violation of Government Code section 84204 and SF C&GCC section 1.106.

Count 3: Failure to include required disclosure and disclaimer language on a campaign advertisement in violation of SF C&GCC Section 1.161.

The Committee distributed a doorhanger with disclaimer language that failed to include its committee name in the doorhanger disclaimer, failed to use 12-point font, and failed to state "financial disclosures available at sfethics.org" and Respondents were therefore in violation of SF C&GCC section 1.161.

V. Penalty Assessment

This matter consists of one violation of San Francisco Campaign and Governmental Conduct Code section 1.170(f), one violation of section 1.106, and one violation of section 1.161. The San Francisco Charter authorizes the Commission to assess a maximum administrative penalty of \$5,000 per violation, or three times the amount which Respondent failed to report properly, such that the maximum administrative penalty in this matter is \$15,044. 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: (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 will be considered a mitigating factor if the respondent provides documentation to the Director of Enforcement of such inability, which must include three years' worth of income tax returns and six months' worth of bank records or accounting statements, at a minimum. San Francisco Ethics Commission Enforcement Regulations § 9(D).

Commission Staff find that Respondents' violations in Counts 2 and 3 are modest because the scope of the Committee's contribution and expenditure activities was minimal. However, it was the purpose and intent of the people of the City and County of San Francisco to impose reasonable registration and disclosure requirements on campaign committees to assist the public in making informed decisions and to protect public confidence in the electoral and governmental processes. Here, Respondents were required to file the Form 496 within 24 hours when contributions in the aggregate of \$1,000 are made to a committee in the 90 days prior to an election so that voters are informed about fundraising activity during election campaigns. Committees that fail to disclose late independent expenditures and fail to ensure required disclaimer language appears on their communications deprive the public of knowing fully about those activities at the time those activities are undertaken in an effort to influence voter decisions. Commission Staff find that Fieber was familiar with the San Francisco Campaign & Governmental Conduct Code and knew or should have known campaign committees are subject to these requirements.

The knowing or willful submission of false or misleading information on public disclosure filings is more troubling. Here, Respondents publicly disclosed on the Committee's Statement of Organization filing with the Ethics Commission that it qualified as a political committee seven weeks after the date it had actually qualified as a committee, contrary to what was contained in its own financial records and contrary to what Respondents had reported on a prior filing with the Secretary of State. Because reporting requirements rely upon timely and accurate self-disclosure, it is of the utmost importance that committees and their treasurers adhere to their legal reporting obligations and fully and accurately convey to the public the timing and amount of their contribution and expenditure activity. Here, Respondents' unlawful conduct deprived voters of meaningful information during the election cycle because Respondents failed to include the required disclaimer language on their campaign communication, failed to disclose their late independent expenditure, and subsequently submitted false or misleading information on their public disclosure filing.

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. The penalty amount would factor the relative size of the Committee, the scope of its activity, the nature of the conduct at issue, and the degree of public harm arising from Respondents violations. In this instance, in addition to the fact that Respondents cooperated with the investigation and have no history of prior enforcement with the Commission, Staff acknowledge the significant passage of time since Respondents engaged in the conduct at issue here and must consider that delay as a significant mitigating factor. 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 penalties for the violations of City law as follows: Count 1 - \$1,000; Count 2 - \$250; and Count 3 - \$250. The total proposed penalty for Counts 1 through 3, therefore, is \$1,500. The parties agree that the \$1,500 administrative penalty is warranted.