



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 9: Proposed Stipulation, Decision and Order**
• ***In the Matter of Marjan Philhour for Supervisor 2016, Marjan Philhour, and Stacy Owens (SFEC Complaint No. 1617-082).***

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. 1617-082
)	
MARJAN PHILHOUR FOR SUPERVISOR 2016,)	
MARJAN PHILHOUR, 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 Marjan Philhour for Supervisor 2016, Marjan Philhour, 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 waives 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 \$500 for one count in violation of San Francisco Campaign and Governmental Conduct
5 Code ("SF C&GCC") section 1.152(a)(2) and one count in violation of SF C&GCC section 1.161(a)(4) as set
6 forth in Exhibit A. Respondents agree that \$500 is a reasonable 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 \$500 in the form of a check or money order made payable to the "City and
10 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

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
14 amended orally. Any amendment or modification to this Stipulation must be in writing duly executed by
15 all parties 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.

19 12. The parties hereto may sign different copies of this Stipulation, which will be deemed to
20 have the same effect as though all parties had signed the same document.
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1 Dated: 07-01-2020 | 09:21:09 PDT

DocuSigned by:

LeeAnn Pelham

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LeeAnn Pelham, Executive Director
San Francisco Ethics Commission

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Marjan Philhour for Supervisor 2016

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7 Printed Name of Signatory

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9 Dated: _____

Marjan Philhour

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12 Dated: 6/26/20

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[Redacted Signature]
Stacy Owens
Treasurer

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LeeAnn Pelham, Executive Director
San Francisco Ethics Commission

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4 Dated: 6/24/2020

Marjan Philhour for Supervisor 2016

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6 MARJAN PHILHOUR
7 Printed Name of Signatory

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9 Dated: 6/24/2020

Marjan Philhour

10
11
12 Dated: _____

Stacy Owens
Treasurer

DECISION AND ORDER

The foregoing Stipulation of the parties in the matter of “Marjan Philhour for Supervisor 2016, Marjan Philhour, and Stacy Owens; SFEC Complaint No. 1617-082,” 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 January 1, 2015, Marjan Philhour (“Philhour”) formed the committee “Marjan Philhour for Supervisor 2016” (“Committee”) as her candidate-controlled committee seeking election as the District 1 member of the Board of Supervisors in the November 2016 election. Because Philhour was a publicly financed candidate, the Committee was audited for the period covering January 1, 2015 through December 31, 2016 to determine compliance with provisions of the Campaign Finance Reform Ordinance (“CFRO”) and the Political Reform Act (“PRA”). Throughout that period, Stacy Owens (“Owens,” then with The Henry Levy Group, A CPA Firm) served as the treasurer. The Committee received \$199,368 in monetary contributions, \$475 in in-kind contributions, and \$147,129 in public funds—or a total of \$346,972—and made \$351,201 in campaign expenditures. Based on its investigative review Staff have identified violations by Philhour, the Committee, and Owens (“Respondents”) of applicable provisions of the Campaign Finance Reform Ordinance (“CFRO”).

II. Applicable Law¹

San Francisco Charter section C3.699-11 authorizes the Ethics Commission (“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 1.150(a) requires audits of all candidates who receive public financing in connection with their campaigns to City elective office. The SF C&GCC incorporates into local law provisions of the PRA, California Government Code section 81000 *et seq.* and any subsequent amendments, as they apply to local elections. SF C&GCC § 1.106. Candidates and treasurers are responsible for complying with all campaign finance reporting requirements. *Id.* § 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).

Supplemental Reporting Requirements

Section 1.152(a)(1) of the SF C&GCC requires that in addition to other campaign disclosure requirements, each candidate committee supporting a candidate for the Board of Supervisors must file a statement with the Ethics Commission indicating when the committee has received contributions to be deposited into its Campaign Contribution Trust Account or made expenditures that equal or exceed \$5,000 within 24 hours of reaching or exceeding that amount. The candidate committee fulfills this reporting requirement by timely submitting Form SFEC-152(a)-1. CFRO Reg. § 1.152(a)-1(a). In practice, the Ethics Commission requires a candidate committee to file its initial Form SFEC-152(a)-1 within 24 hours of when it has received contributions or made expenditures which in the aggregate equal or exceed \$10,000 (rather than the \$5,000 threshold which SF C&GCC section 1.152(a)(1) enumerates), to conform with the \$10,000 eligibility threshold enumerated in section 1.140(b)(2). Candidate committees are notified of this higher initial reporting threshold in the

¹ The violations in this case occurred during the 2016 election cycle. Accordingly, all legal references and discussions of law pertain to the relevant provisions as they existed at the time of the conduct at issue herein.

language on Form SFEC-152(a)-1 and in the Commission's Supplemental Guide for Board of Supervisor Candidates Seeking Public Funding, and during the required training for candidates and treasurers pursuant to SF C&GCC 1.107(a).

In addition to filing the \$10,000 Threshold Form, each candidate committee supporting a candidate for the Board of Supervisors must file a subsequent Threshold Form with the Ethics Commission disclosing when the committee has received contributions to be deposited into its Campaign Contribution Trust Account or made expenditures that in the aggregate equal or exceed \$100,000. SF C&GCC § 1.152(a)(2). The candidate committee must file this report within 24 hours of reaching or exceeding the threshold. *Id.* Thereafter, the candidate committee must file additional Threshold Forms within 24 hours of every time the candidate committee receives additional contributions to be deposited into its Campaign Contribution Trust Account or makes additional expenditures that in the aggregate equal or exceed \$10,000. *Id.*

Candidate Advertisement Disclaimer Requirements

SF C&GCC section 1.161(a)(4) requires all candidate committee advertisements to include the disclaimer statements, "Paid for by _____ (insert the name of the candidate committee)" and "Financial disclosures are available at sfethics.org."

III. Summary of Material Facts

1. The Committee timely filed its \$10,000 Threshold Report on April 25, 2015, and timely filed its \$100,000 Threshold Report on February 29, 2016.

2. According to the Committee's Form 460 data, Philhour and the Committee raised \$130,000 as of May 4, 2016. Philhour, the Committee, and Owens failed to file its \$130,000 Threshold Report. Subsequent Threshold Reports required to be filed by the Committee were timely filed.

3. On June 9, 2016, the Committee paid \$9,581 for a mass mailing of 24,676 mailers that included all other required disclaimer language but failed to include the disclaimer statement, "Financial disclosures are available at sfethics.org." Funds spent on this mass mailing represented roughly three percent of the Committee's overall expenditures.

4. Following the initiation of mandatory campaign audits from the 2016 election cycle in the Spring of 2017, reports from external auditors engaged by the Commission to conduct that work on the Commission's behalf were returned to Commission auditors in the Fall of 2018. After being provided with documentation by the Philhour Committee and after reviewing the material findings contained in Philhour Committee report, Commission investigators were able to determine that the Committee had substantially complied with applicable recordkeeping and reporting requirements, superseding the findings identified in the audit report.

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IV. Conclusions of Law

Count 1:

Failure to file \$130,000 Threshold Report as required by SF C&GCC section 1.152(a)(2).

By reaching \$130,000 in contributions on May 4, 2016, the Respondents were required but failed to file under SF C&GCC section 1.152(a)(2) a \$10,000 Threshold Report “within 24 hours of reaching or exceeding the threshold.”

Count 2:

Failure to include required campaign advertisement disclaimer statement on a mass mailing as required by SF C&GCC section 1.161(a)(4).

Philhour and the Committee distributed a mass mailing that failed to include the disclaimer statements, “Financial disclosures are available at sfethics.org” in violation of SF C&GCC section 1.161(a)(4).

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 two counts in violation of the Campaign and Governmental Conduct Code. The San Francisco Charter authorizes the Commission to assess a maximum administrative penalty of \$5,000 per 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 \$10,000.

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 § 9(D).

Compliance with requirements of the law by campaign committees provides voters with information to make informed electoral decisions and helps support the public’s trust in electoral and governmental institutions. The failure to file Threshold Reports as required deprives the public and other candidates of accurate and timely information regarding a Committee’s fundraising and expenditure activity and can place at risk the proper operation of the City’s public financing system, which relies on candidates’ accurate reporting to ensure timely adjustment of spending limits as provided for in the law. Failure to ensure that campaign communications contain disclaimer statements as required can blunt the ability of the public to make informed electoral decisions.

In mitigation, Respondents cooperated with Commission investigators and provided requested documents in a timely manner. Staff found no evidence by Respondents of any intent to conceal,

deceive, or mislead. Further, the Committee had no history of violations with the Commission. Further in mitigation, the Threshold Report violation occurred in May 2016, before the deadline for one to declare his or her candidacy for Supervisor and before the Philhour Committee or any other candidate committee in that race reached the applicable spending limit. Moreover, all further Threshold Reports were timely filed by the Philhour Committee.

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 purpose of threshold reporting and the relative severity of the disclaimer statement violation. In this instance, Staff also acknowledge the significant passage of time since the conclusion of Commission's audit work for the 2016 election cycle, as well as the Philhour Committee's pro-active attempts to address the audit report following its publication, and must consider those facts as significant mitigating factors for the Committee. In further mitigation, at the time the resolution of this matter was undergoing final enforcement review in early spring 2020, additional delay resulted as Commission Staff were required to 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.