



San Francisco Ethics Commission

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August 9, 2021

To: Members of the Ethics Commission

From: Jeff Pierce, Director of Enforcement

Subject: **AGENDA ITEM 9: Proposed Stipulation, Decision and Order**

- ***In the Matter of London Breed (SFEC Complaint No. 1920-072).***

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.

Regulatory Background

Pursuant to the Commission's Enforcement Regulations, 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.*

Here, Commissioner Bush requested that the attached Proposed Stipulation be reviewed in public session by the full panel of the Commission during its next meeting. The Commission may therefore discuss this item, and it may either approve the Proposed Stipulation by majority vote or 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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BEFORE THE SAN FRANCISCO
ETHICS COMMISSION

In the Matter of) SFEC Complaint No. 1920-072
)
LONDON BREED,)
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)
Respondent.) **STIPULATION, DECISION**
) **AND ORDER**
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THE PARTIES STIPULATE AS FOLLOWS:

1. This Stipulation, Decision, and Order (Stipulation) is made and entered into by and between London Breed (Respondent) and the San Francisco Ethics Commission (the Commission).
2. Respondent 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 Respondent, and this Stipulation shall constitute the complete resolution of all claims by the Commission against Respondent related to the violations of law described in Exhibit A. Respondent understands and knowingly and voluntarily waives all rights to judicial review of this Stipulation and any action taken by the Commission or its staff on this matter.

1 3. Respondent acknowledges responsibility for and agrees to pay an administrative penalty
2 in the amount of \$22,792 for four counts in violation of San Francisco Campaign & Governmental
3 Conduct Code (SF C&GCC) as set forth in Exhibit A. Respondent agrees that \$22,792 is a reasonable
4 administrative penalty.

5 4. Within ten business days of the Commission’s approval of this Stipulation, Respondent
6 shall either pay the penalty through the City’s online payment portal or otherwise deliver to the
7 following address the sum of \$22,792 in the form of a check or money order made payable to the “City
8 and County of San Francisco”:

9
10 San Francisco Ethics Commission
11 Attn: Enforcement & Legal Affairs Division
12 25 Van Ness Avenue, Suite 220
13 San Francisco, CA 94102

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

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

23 7. Respondent understands and acknowledges that this Stipulation is not binding on any
24 other government agency with the authority to enforce the San Francisco Campaign & Governmental
25 Conduct Code section 1.100 *et seq.*, and does not preclude the Commission or its staff from cooperating
26 with or assisting any other government agency in its prosecution of Respondent for any allegations set
27 forth in Exhibit A, or any other matters related to those violations of law set forth in Exhibit A.

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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.

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

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

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

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: 08-02-2021 | 10:22:44 PDT

DocuSigned by:
LeeAnn Pelham
2ACC7A331EE7459

LEEANN PELHAM, EXECUTIVE DIRECTOR
SAN FRANCISCO ETHICS COMMISSION

Dated: 08-02-2021 | 10:02:09 PDT

DocuSigned by:
London Breed
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LONDON BREED, RESPONDENT

DECISION AND ORDER

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The foregoing Stipulation of the parties in the matter of "London Breed, SFEC Complaint No. 1920-072," 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: _____

YVONNE LEE, ACTING CHAIRPERSON
SAN FRANCISCO ETHICS COMMISSION

Exhibit A

I. Introduction

In 2015, Respondent London Breed (“Breed” or “respondent”) was serving as a member of the Board of Supervisors representing District 5 and sought to have a float created for her to ride on in the annual San Francisco Pride Parade. As allowed under the law, the political committee she controlled and operated at that time as her officeholder account to raise and spend funds for purposes related to holding office was the campaign committee she had used to seek election to office in 2012, the “London Breed for San Francisco Supervisor 2012” committee (the “Committee”). In seeking to create the float in June 2015, Breed requested \$1,250 in payments from “Nick Bovis/Lefty O’Douls” (“Bovis”) and \$1,250 from “John Konstin/John’s Grill” (“Konstin”), to be paid directly to the float manufacturer. As a result, Bovis and Konstin each made contributions required to be publicly disclosed on campaign finance disclosure statements of Breed’s officeholder committee, the Committee, and each contribution exceeded the \$500 per person contribution limit established for City candidates. By soliciting and accepting excess contributions, and by failing to disclose the contributions received on her committee’s campaign disclosure statements, Breed violated candidate contribution limit and campaign disclosure requirements of city law.

Following her election as Mayor in June 2018, in October 2018, Breed sent a letter to then-Governor Jerry Brown that sought leniency and commutation of a state prison sentence being served by her brother. The letter was sent on personal stationary with “Mayor London N. Breed” written in block lettering across the top. By referencing her official position as Mayor in making an appeal on a matter of personal interest, Breed violated a City law prohibiting the use of City titles for non-City purposes.

In 2019, Breed accepted two gifts from then-Public Works Director Mohammed Nuru in the form of payments for automobile repairs and for use of a rental car totaling approximately \$5,500. Breed has publicly characterized her relationship with Nuru as that of a long term, close personal friendship. Because Nuru was at the time a subordinate employee to Breed, Breed’s acceptance of the gifts violated the City’s prohibition on accepting gifts from subordinate employees.

II. Applicable Law¹

Contributions limits established under the law are designed to prevent corrupting influence by ensuring that no individual may secure undue influence over candidates and officeholders by virtue of their contribution.

Candidate Committee Contribution Limits

No person other than a candidate may make, and no candidate for a candidate committee may solicit or accept, any contribution which will cause the total amount contributed by any person to the candidate committee in an election to exceed \$500. SF C&GCC § 1.114(a). In the event that a candidate accepts a contribution of more than \$500 from a single contributor, the candidate must forfeit the amount in excess of \$500 to the Ethics Commission for deposit in the City’s General Fund. *Id.* § 1.114(f).

¹ The citations here are to the law as it existed at the time of the conduct at issue.

Candidates are responsible for complying with the City's campaign finance laws and may be held personally liable for violations by their candidate committees. *Id.* § 1.170(g).

Nonmonetary Campaign Contributions

Contributions to a campaign are defined as a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes. Gov't Code § 82015(a). A payment is considered to be made for political purposes if, among other factors, it is made at the behest of a candidate or a controlled committee. 2 Cal. Code Regs. ("C.C.R.") § 18215(a)(2)(A)-(B). A "candidate" is any individual who is listed on the ballot for election to any elective office. Gov't Code § 82007. Any candidate retains his or her status as a candidate until they terminate their status and/or their controlled committee. *Id.*

A payment made to a third party at the behest of a candidate is a contribution to the candidate unless full and adequate consideration is received from the candidate or it is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office. Gov't Code § 82015(b)(2)(A)-(B). Such payments are typically referred to as nonmonetary contributions and must be reported as contributions on Schedule C ("Nonmonetary Contributions Received") of Recipient Campaign Statements (Form 460). All contributions, whether monetary or nonmonetary, are subject to applicable contribution limits.

Use of Campaign Funds for Officeholder Expenses

All contributions to a candidate committee are deemed to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office. Gov't Code § 89510(b). An expenditure is lawfully consistent with this trust if, as to candidates, it is reasonably related to a political purpose or if, as to officeholders, it is reasonably related to a legislative or governmental purpose. *Id.* § 89512(a).

Contents of Campaign Statements

On their required campaign statements, committees must provide information regarding the amounts and sources of campaign contributions. Specifically, committees must disclose the total amount of contributions received during the period covered by the campaign statement. Gov't Code § 84211(a). Committees must itemize the individual contributions received from persons who have given \$100 or more during the period covered by the statement. *Id.* § 84211(c). Also for contributors of \$100 or more, candidates and committees must disclose the following: (1) the contributor's full name; (2) the contributor's street address; (3) the contributor's occupation (if applicable); (4) the name of the contributor's employer, or if self-employed, the name of the contributor's business (if applicable); (5) the date and amount of each contribution received from the contributor during the reporting period; and (6) the cumulative amount of contributions received from the contributor. *Id.* § 84211(f).

Restrictions on Incompatible Activities

The Mayor's Office Statement of Incompatible Activities ("SIA") is adopted under the provisions of SF C&GCC section 3.218 and prohibits its officers and employees from engaging in employment,

activities, or enterprises that their department has identified as incompatible. Under the SIA, the Mayor is prohibited from using her City title or designation in any communication for any private gain or advantage. Mayor's Office SIA § IV(C). The Mayor is further prohibited from using City letterhead or her City title in any communication that may lead the recipient of the communication to think that the Mayor is acting in an official capacity when she is not. *Id.* § IV(C)(2).

Gifts from Subordinates

The Government Ethics Ordinance prohibits City officers and employees from soliciting or accepting any gift or loan, either directly or indirectly, from any subordinate or employee under his or her supervision or from any candidate or applicant for a position as a subordinate or employee under his or her supervision. SF C&GCC § 3.216(c). By regulation, a "subordinate" is an employee of any person whose official City responsibilities include directing or evaluating the performance of the employee or any of the employee's supervisors. Ethics Ord. Reg. § 3.216(c)-1(b)(7).

The City's general gift limit and the City's prohibition on gifts from restricted sources both adopt the state law definition of gift, along with the accompanying state law exceptions. One of those exceptions permits an official to accept a gift of any amount without reporting it from a person with whom the official has a long term, close personal friendship unrelated to the official's position. 2 C.C.R. § 18942(a)(18)(c).

For purposes of the prohibition on gifts from subordinates, the City provides its own definition of "gift" – and a separate, narrower set of exceptions – in a regulation the Ethics Commission adopted in 2004. The Ethics Ordinance Regulations define gift to mean any payment that confers a personal benefit on the recipient to the extent that consideration of equal or greater value is not received. Ethics Ord. Reg. § 3.216(c)-1(b)(2)(A). The exceptions include, among others, (1) non-cash gifts with an aggregate value of \$25 or less per occasion, given on occasions on which gifts are traditionally given, and (2) a gift of any value given in recognition of "an occasion of special personal significance." *Id.* § 3.216(c)-1(b)(2)(B)(i), (v). No exception exists under these provisions for a payment provided to an official by an individual with whom the official has a long term, close personal friendship unrelated to the official's position. *See* 2 C.C.R. § 18942(a)(18)(C).

III. Summary of Material Facts

Breed's 2015 Pride Parade Float

In June 2015, Breed requested that "Nick Bovis/Lefty O'Douls" and "John Konstin/John's Grill" each pay \$1,250 to East West (aka The Parade Guys) for the construction of her 2015 Pride Parade Float. The payments were made to support Breed's appearance in the 2015 Pride Parade in relation to her holding office as District 5 Supervisor. The 2012 Committee, which was Breed's only committee at the time and which remained active until March 2016, did not report these payments as contributions on its semiannual Campaign Statement (Form 460) covering the period from January 1 to June 30, 2015.

Breed's Letter to Governor Brown

Breed's October 23, 2018 letter to then-Governor Brown advocated for commutation of her brother's prison sentence. The letter was written on personal stationery with the text "Mayor London N.

Breed” in block lettering across the top and addressed to the Office of the Governor at the State Capitol. The body of the letter also referred to her elected position.

Gifts from Nuru

On February 14, 2020, Breed acknowledged in a public statement posted online that she had accepted gifts from Mohammed Nuru and described Nuru as a close personal friend of more than 20 years. Breed stated Nuru paid for the repairs to her personal vehicle and later for her use of a rental car when her vehicle still was not working. Breed stated that it had been her intention to sell the vehicle and to reimburse Nuru for his payments but was unable to sell her vehicle and so chose to publicly acknowledge the gifts from Nuru.

Breed timely filed a 2019 Annual Statement of Economic Interests, also known as a Form 700, for the period January 1 through December 31, 2019 in May 2020. The filing disclosed two gifts from Nuru: \$4,809 for car repairs on January 10, 2019, and \$719 for a car rental on December 24, 2019. Breed annotated her Form 700 to state her belief that the gifts from Nuru were “non-reportable per FPPC Reg 18942(a)(18)(C).”

As an elected City official, Breed was required to certify completion of regular Ethics and Sunshine Trainings. For the 2019 annual training requirement, respondent filed her certification of completion on April 1, 2019.

IV. Conclusions of Law

Count 1: Failure to disclose campaign contributions.

By requesting that “Nick Bovis/Lefty O’Douls” and “John Konstin/John’s Grill” each pay \$1,250 toward the construction costs of her 2015 Pride Parade Float, Breed was required to report these payments as non-monetary contributions to the Committee on a campaign statement filed by July 31, 2015 because Breed’s appearance in the parade had a political or governmental purpose related to her position as an elected City officer and the payments therefore qualified as contributions to the Committee used as her officeholder account. Gov’t Code § 89512(a). Therefore, by failing to report the two contributions totaling \$2,500, Breed violated Government Code section 84211(c).

Count 2: Acceptance of candidate committee contributions over the limit and failure to forfeit the amount in excess.

By accepting non-monetary contributions of \$1,250 each from “Nick Bovis/Lefty O’Douls” and “John Konstin/John’s Grill,” Breed accepted two contributions which in total exceeded by \$1,500 the City’s \$500 candidate committee contribution limit in violation of SF C&GCC § 1.114(a) and failed to forfeit the amount in excess in violation of Government Code section 1.114(f).

Count 3: Misuse of City title.

By sending her October 23, 2018 personal letter on a matter of personal interest to then-Governor Brown that referenced her elective office title “Mayor” in the communication, Breed violated

the Statement of Incompatible Activities provision of City law for the Mayor's Office that prohibits use of City title for personal purposes and SF C&GCC section 3.218.

Count 4: Acceptance of gifts from a subordinate employee.

By accepting gifts in 2019 from then-Public Works Director Mohammed Nuru, Breed accepted gifts totaling \$5,528 from a subordinate employee in violation of SF C&GCC section 3.216(c).

V. Penalty Assessment

This matter consists of four counts for conduct in violation of the Campaign Finance Reform Ordinance and the Government Ethics Ordinance. The San Francisco Charter authorizes the Commission to assess a monetary penalty to the general fund of the City of up to \$5,000 dollars per violation, or three times the amount which the person failed to report properly or unlawfully received, whichever is greater. SF Charter § C3.699-13(c). In this case, therefore, the maximum administrative enforcement penalties that could apply under the law total of \$35,584: Count 1: \$7,500 (three times the amount of the \$2,500 in unreported contributions); Count 2: \$6,500 (\$5,000 plus \$1,500 forfeiture of the excess portion of the two over-the-limit contributions); Count 3: \$5,000; and Count 4: \$16,584 (three times the value of the prohibited gifts received).

Pursuant to its Enforcement Regulations, 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. SF Ethics Commission Enforcement Regulations § 9(D).

Applying the penalty factors enumerated above, Staff believes Breed's violations are significant. Public disclosure laws exist so that the public can be informed of the private interests that are financing the campaign and officeholder fundraising and expenditure activities of candidates and elected officials. In this case, Breed requested that "Nick Bovis/Lefty O'Douls" and "John Konstin/John's Grill" make payments of \$1,250 each to help fund construction of her 2015 Pride Parade Float. Under applicable law, these payments qualified as contributions to the Committee because Breed's appearance in the parade had a political or governmental purpose related to her position as an elected City officer. As such, Bovis's and Konstin's contributions were required to be reported on the Committee's Campaign Statement due on July 31, 2015 but were not.

Additionally, campaign contribution limits exist to prevent a corrupting influence by ensuring no contributor has an undue influence over candidates and officeholders. Here, Breed solicited contributions that were each \$750 over the legal limit and which were not reported on the Committee's disclosure statements. As a candidate and then officeholder who had maintained the Committee since March 2012 and who had completed mandatory campaign finance training required of candidates and treasurers in June 2012, Breed had reason to be aware that her solicitations to Bovis and Konstin were in excess of the City's \$500 candidate contribution limit and of the requirement to report these as nonmonetary contributions to the Committee. In mitigation, Breed agreed to enter into a tolling agreement to allow the Commission to complete its investigation without the statute of limitations

running. Further, Breed had no prior record of violations of the City's campaign finance laws and this violation appears to have been an isolated incident.

San Francisco City Charter section 15.03 provides that "[p]ublic office is a public trust and all officers and employees of the City and County shall exercise their public duties in a manner consistent with this trust." Administrative enforcement penalties that may be assessed to remedy a violation of the public trust under section 3.218 address a respondent's strict liability and not whether the official intended or did not intend to use their title to increase the likelihood of obtaining their desired outcome. Here, while Breed's letter to then-Governor Brown addressed a family matter of deep personal concern to her, the letter referenced her title as Mayor in violation of the SIA provision that a city officer may not use their title in any communication for any private gain or advantage.

Regarding the gift of car repairs and a rental car, Breed publicly described her longstanding and close personal friendship with former Public Works Director Nuru. Under both state law and the City's general gift limit and restricted source gift rule, an exception generally applies to gifts from close personal friends that may be generally received by an official, without being subject to the gift limit or reporting requirement. That exception, however, does not apply to the City law that bans gifts from a subordinate employee. Under City law, Nuru was Breed's subordinate and gifts from him were prohibited irrespective of any prior or continuing friendship. In mitigation, Breed voluntarily reported the gifts.

In balancing the above factors, Ethics Commission Staff propose, and Breed agrees to, the following penalties for the above listed violations of City law: Count 1: \$7,500 (\$2,500 x 3); Count 2: \$4,500 (\$1,500 x 3); Count 3: \$2,500; and Count 4: \$8,292 (\$5,528 x 1.5). The parties agree to a total administrative enforcement penalty of \$22,792.