

**BEFORE THE SAN FRANCISCO ETHICS COMMISSION**

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<b>In the Matter of Paul Allen Taylor,</b>	)	<b>Case No. 1920-031</b>
	)	
<b>Respondent</b>	)	<b>Finding of Probable Cause</b>
	)	

The San Francisco Ethics Commission (“Commission”) has authority to investigate and administratively enforce violations of City law relating to campaign finance, lobbying, conflicts of interest, governmental ethics, and whistleblower protection. SF Charter § C3.699-13; SF C&GCC Art. IV.

In accordance with Ethics Commission Enforcement Regulation 7(B), on October 25, 2022, the Commission’s Enforcement Director submitted a Probable Cause Report in the above-captioned matter. The Probable Cause Report alleges that Paul Allen Taylor (“Respondent”), as an agent of Ellen Lee Zhou for Mayor 2019 (“Committee”), engaged in conduct in violation of the campaign finance provisions within Article I of the San Francisco Campaign and Governmental Conduct Code (“SF C&GCC”) when, on behalf of the Committee, he coordinated expenditures with the Asian American Freedom Political Action Committee (“the PAC”). The Probable Cause Report provides evidence and arguments that in doing so, Respondent caused the Committee and the PAC to exceed the City’s \$500 contribution limit and caused the Committee and the PAC to improperly omit several required contribution disclosures. The Probable Cause Report further alleges that Respondent also failed to register with the Commission as a campaign consultant and withheld information from the Commission in violation of SF C&GCC.

According to the enforcement regulations of the San Francisco Ethics Commission (“Commission”), the Executive Director may recommend a finding probable cause that a violation occurred “if the evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a respondent committed or caused a violation.” San Francisco Enforcement Reg. § 7(D)(1). The Executive Director’s determination that probable cause exists or does not exist to believe a violation of law has occurred must be in writing and “must be based solely on the evidence and argument presented in the Probable Cause Report, Response, and Rebuttal, as well as any evidence or argument presented by the parties at the Probable Cause Conference.” § 7(D)(2).

Based on these standards and requirements, this written determination provides my assessment of the evidence and arguments presented and my findings regarding the allegations contained in the Probable Cause Report filed in this matter.

## SUMMARY OF FINDINGS

Based on a review of the applicable law, information, and exhibits presented in the Probable Cause Report filed by the Ethics Commission Enforcement Director on October 25, 2022, and according to the standard and requirements established under Enf. Regs. § 7(D)(1) and 7(D)(2), for the reasons enumerated in this Determination I find the evidence is sufficient to find that probable cause exists to believe that Respondent caused or committed the violations of law as detailed below:

Count One: Through his coordination of a \$10,000 PAC expenditure on behalf of a city candidate, Respondent violated SF C&GCC § 1.114 by causing the candidate committee and its controlling candidate to accept a contribution over the legal limit.

Count Two: Through his coordination of a \$10,000 PAC expenditure on behalf of a city candidate, Respondent violated SF C&GCC § 1.114 by causing the PAC to make a contribution to the candidate committee over the legal limit.

Counts Three and Four: Respondent violated Gov't Code § 84211 and SF C&GCC § 1.106 by causing a candidate Committee and its controlling candidate to fail to disclose required information on the proper preelection campaign statement (Form 460).

Count Five: Respondent violated Gov't Code § 84203 and SF C&GCC § 1.106 by causing a candidate Committee and its controlling candidate to fail to report a late contribution within 48 hours (Form 497).

Count Six: Respondent violated Gov't Code § 84203 and SF C&GCC § 1.106 by causing a PAC to fail to report a late contribution (Form 497) and give notice to the candidate Committee of a late in-kind contribution.

Count Seven: Respondent violated SF C&GCC § 1.510 by failing to register as a campaign consultant with the Ethics Commission.

Count Eight: Respondent violated SF C&GCC § 1.170(f) by withholding information sought by the Ethics Commission.

## BACKGROUND

In January 2019, Ellen Lee Zhou (“Zhou”) established the Ellen Lee Zhou for Mayor 2019 committee (“Committee”) as a candidate-controlled committee supporting her candidacy for Mayor of San Francisco. Zhou served as treasurer for the Committee. Respondent served as President, Chief Executive Officer, and Chief Financial Officer of What Engineering, Inc., a company previously registered with the California Secretary of State.

The Probable Cause Report alleges that Respondent, as an agent of the Committee, engaged in conduct in violation of the campaign finance provisions within Article I of the SF C&GCC when, on behalf of the Committee, he coordinated expenditures with the Asian American Freedom Political Action Committee (“the PAC”). In doing so, the Probable Cause Report alleges, Respondent caused the Committee and the PAC to exceed the \$500 contribution limit and caused the Committee and the PAC to improperly omit several required contribution disclosures. The Probable Cause Report also alleges that Respondent failed to register with the Commission as a campaign consultant, and unlawfully withheld information from Commission investigators.

Respondent did not submit a Response to the Probable Cause Report, and therefore no Rebuttal was filed. No Probable Cause Conference was requested in this matter per Enf. Reg. Sec. 7(C)(2), and therefore no Conference was held. This determination, therefore, is based on the evidence and arguments as detailed in the Probable Cause Report. § 7(D)(2).

### **APPLICABLE LAW**

Article I, Chapter 1 of the SF C&GCC and its implementing regulations govern campaign finance in the City and County of San Francisco. The SF C&GCC incorporates into local law provisions of the California Political Reform Act (the “PRA”), California Government Code section 81000 *et seq.* and any subsequent amendments, as they apply to local elections. SF C&GCC § 1.106.

#### **Definition of Contributions and Expenditures**

City law incorporates the PRA’s definition of *contribution*. SF C&GCC § 1.104. The PRA defines *contribution* 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[.]” Gov’t Code § 82015(a). City law also incorporates the PRA’s definition of *independent expenditure*, which is an expenditure made by any person “in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate...but which is not made to or at the behest of the affected candidate or committee.” SF C&GCC § 1.104; Gov’t Code § 82031. *Person* includes any individual or committee. SF C&GCC § 1.104.

#### **Coordinated Campaign Expenditures Treated as Contributions**

City and state law require that an expenditure shall be treated as a contribution to a candidate if there is coordination between the person making the expenditure and the candidate on whose behalf or for whose benefit the expenditure is made. SF C&GCC § 1.115; Cal. Gov. Code § 85500(b). When determining if coordination has taken place, the term *candidate* includes “an agent of the candidate” acting within the course and scope of the agency. SF C&GCC § 1.115(d).

In general, an expenditure is treated as a contribution to a candidate if it “funds a communication that expressly advocate[s] the nomination, election or defeat of a clearly identified candidate” and is made under either of the following circumstances:

- the expenditure comes at “the request, suggestion, or direction of, or in cooperation, consultation, concert or coordination with” the candidate; or
- the communication funded by the expenditure is created, produced, or disseminated “after the candidate has made or participated in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication[.]” SF C&GCC § 1.115(a).

City law creates a rebuttable presumption of coordination as described in section 1.115(a) in certain circumstances, including when:

- the expenditure is made “by or through any agent of the candidate”; or
- the expenditure funds a communication that “replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication designed, produced, paid for, or distributed by the candidate[.]” SF C&GCC § 1.115(b).

#### Limits on Contributions

Under city law, no person, including a committee, may contribute more than \$500 to a candidate committee in the same election. SF C&GCC § 1.114(a). No candidate committee may solicit or accept any contribution which would bring the contributor’s total contributions to over \$500 for a single election. *Id.* Any committee that receives a contribution that exceeds this limit must “promptly” pay the amount in excess of \$500 to the “Ethics Commission for deposit in the General Fund of the City and County[.]” SF C&GCC § 1.114(f).

#### Reporting and Disclosure Requirements

Committees are subject to a series of reporting and disclosure requirements under City and state law.

#### *Campaign Statements*

Committees are required to file campaign statements that disclose their financial activity. Gov’t Code § 84200(a). These statements must include the total amount of contributions received and the name of any contributor who has given over \$100 in the aggregate to the committee. Gov’t Code § 84211(a), (c), (f).

#### *Late Contributions*

A *late contribution* is a contribution that totals \$1,000 or more made to a candidate, a controlled committee, or a primarily formed committee within 90 days of an election. Gov’t Code § 82036. Each committee that makes or receives a late contribution must report that late contribution within 24 hours.

Gov't Code § 84203(a), 84203(b). If that late contribution is an in-kind contribution, the committee must "notify the recipient in writing of the value" within 24 hours and the recipient committee has 48 hours to disclose. Gov't Code § 84203.3.

### Liability

Under the San Francisco Charter, the Ethics Commissions may impose monetary penalties on anyone who violates the SF C&GCC. Additionally, the Charter states that "any person who violates any provision of...a City ordinance relating to campaign finance...*or who causes any other person to violate any such provision, or who aids and abets any other person in such violation, shall be liable*" for monetary penalties as well. SF Charter § C3.699-13(d) (emphasis added).

### Campaign Consultant Disclosure

City law prohibits campaign consultants from providing campaign consulting services, or accepting any economic consideration thereof, without first registering with the Ethics Commission and complying with certain reporting requirements. SF C&GCC § 1.510. A "campaign consultant" is any person or entity that receives or is promised economic consideration of \$1,000 or more in a calendar year for campaign consulting services, where "campaign consulting services" means participating in campaign management or participating in the development of campaign strategy. SF C&GCC § 1.505(a)-(b).

Campaign management includes "spending or authorizing the expenditure of campaign funds, directing, supervising or conducting the solicitation of contributions to the campaign, and selecting or recommending vendors or subvendors of goods or services for the campaign." SF C&GCC § 1.505(c). Campaign strategy includes "producing or authorizing the production of campaign literature and print and broadcast advertising, seeking endorsements of organizations or individuals, [or] seeking financing[.]" SF C&GCC § 1.505(d).

Campaign consultants must report information to the Commission for the consultant and for each client upon registration. SF C&GCC § 1.515(a). Campaign consultants must also submit a written client authorization statement from each client. *Id.* Finally, campaign consultants must file quarterly reports with the Commission. *Id.*

### Withholding of Information

City law states that any person who "fails to furnish...any records, documents, or other information required to be provided" to the Ethics Commission shall be subject to penalties. SF C&GCC § 1.170(f). This law also applies to any person who "conceals any evidence, documents, or information" from the Commission. *Id.*

## **SUMMARY OF FACTS AND EVIDENCE**

Beginning in at least July 2019, Respondent posted regularly in support of the Committee and Zhou's candidacy for Mayor on his Facebook page, "Paul Taylor for 2018 California US Senate."

(Probable Cause Report Exhibit C). Beginning on August 14, 2019, Respondent posted to Facebook a series of cartoon advertisements (“ads”) supporting Zhou’s candidacy for Mayor that were identical to ads posted to the Committee’s Twitter account (@Ellen4SFMayor). (PC Report Exhibit D). On August 23, 2019, Respondent introduced Zhou at a Solano County Republican Party campaign event, and subsequently posted a video of the event on Facebook. (PC Report Exhibit E). On August 26, Respondent emailed Ethics Commission staff two image files of a cartoon ad for purposes of vetting the required disclaimer statement (“Super Mayor”) that was substantially similar to an ad posted to the Committee’s Twitter account on August 15<sup>th</sup>. (PC Report Exhibit F). On August 26, a physical copy of the “Super Mayor” ad was dropped off at the Ethics Commission’s office for purposes of vetting the required disclaimer. (PC Report Exhibit JJ).

On September 14, the *Epoch Times* published an article that included the “Super Mayor” ad and quoted the Respondent, referring to him as being “in charge of Zhou’s mayoral campaign.” (PC Report Exhibit G). On September 15, Respondent shared this article on Facebook with a plea to “[h]elp us raise \$50k[.]” (PC Report Exhibit H). On September 25 and September 26, Respondent received two emails from Philip Monares of OutFront Media, a company that operates outdoor billboards, regarding the “SF Poster Proposal.” (PC Report Exhibit I). On or around September 30, the Committee then entered into a contract with OutFront Media to post four billboard ads. (PC Report Exhibit J). Later, on November 10<sup>th</sup>, the Committee paid \$4,520 to What Engineering, Inc. for “Literature” and an additional \$275 for “Meeting.” (PC Report Exhibit K).

### The Committee’s Advertisements

Over a period of several months, the Committee’s Twitter account and Facebook page and Respondent’s Facebook page posted copies of the Super Mayor ad and several others, hereafter referred to as “Werewolves,” “Police,” “Needles,” and “Lombard.”

The Super Mayor ad first appeared on the Committee’s Twitter account on August 15. (PC Report Exhibit L). The ad then appears in a video of both Respondent and Zhou at a Zhou for Mayor campaign event, posted to Respondent’s Facebook page on August 23. (PC Report Exhibit M). On August 26, Respondent emailed a copy of this ad to the Ethics Commission. (PC Report Exhibit F). On September 8, Respondent posted the ad to his Facebook page. (PC Report Exhibit D). On September 24<sup>th</sup> the Committee’s Twitter account posted a copy of the ad. (PC Report Exhibit L). In each instance the ad included a disclaimer that the ad was paid for by the Committee.

The Werewolves ad first appeared on the Committee’s Twitter account on September 14. (PC Report Exhibit N). It appears behind Zhou in a campaign press conference on September 22, posted via video to the Committee’s Facebook page on the same day. (*Id.*). On September 24, the Committee’s Twitter account posted a copy of the ad. (*Id.*). On October 21, the Committee’s Facebook page posted the ad. (*Id.*). In each instance the ad included a disclaimer that the ad was paid for by the Committee.

The Police ad first appeared on both the Committee’s Twitter account and Respondent’s Facebook page on August 14. (PC Report Exhibit O). On September 1, Respondent’s Facebook page posted another version of the ad. (*Id.*). On October 5, the Committee’s Twitter account posted a

photograph of the Police ad on the back of a truck. (*Id.*). In each instance the ad included a disclaimer that the ad was paid for by the Committee.

On September 10, the Committee's Twitter account posted the Needles ad. (PC Report Exhibit P). It appears behind Zhou in a campaign press conference on September 22, posted via video to the Committee's Facebook page on the same day. (*Id.*). On September 23rd, the Committee's Twitter account posted a copy of the ad. (*Id.*). On October 21, the Committee's Facebook page posted the ad. (*Id.*). In each instance the ad included a disclaimer that the ad was paid for by the Committee.

The Lombard ad first appeared on the Committee's Twitter account on September 25. (PC Report Exhibit Q). On October 21, the Committee's Facebook page posted the ad. (*Id.*). In each instance the ad included a disclaimer that the ad was paid for by the Committee.

On September 22, the Super Mayor, Werewolves, and Needles ads appeared on a second Facebook page under Respondent's name. (PC Report Exhibit R). However, these versions of the ads had a disclaimer that they were paid for by the PAC.

#### Margaret Liu and the PAC's Spending During Zhou's Campaign

The PAC was registered as a California state general purpose committee and at all times relevant to this case Mark Tsuneishi ("Tsuneishi") served as a Principal Officer for the PAC. (PC Report Exhibit S). Prior to its support for Zhou's candidacy for Mayor, the PAC had never made an independent expenditure in connection with an election in San Francisco, nor had it ever supported a San Francisco candidate. (PC Report Exhibit JJ).

On July 27, Margaret Liu ("Liu") donated \$500 to the Committee. (PC Report Exhibit T). Then, on or about September 12, Respondent met with Liu and Tsuneishi to discuss Liu making a contribution to the PAC for the purposes of supporting Zhou's candidacy for Mayor. (PC Report Exhibit JJ). Tsuneishi responded to Liu and Respondent, adding two email addresses belonging to Zhou, thanking Liu for her "generous and gracious donation to Ellen's campaign" and stating that the PAC "will direct those monies to her campaign shortly." (PC Report Exhibit U). On its subsequent Form 460, the PAC reported a contribution of \$10,000 from Liu on September 16. (PC Report Exhibit V). Also on September 16, Tsuneishi emailed the PAC's treasurer Cine Ivery ("Ivery"), copying Liu and Respondent, asking Ivery to forward a \$10,000 check to Sheryl Wyrostok ("Wyrostok"), an employee of Clear Channel, "...so they may purchase billboard for Ellen Zhou's campaign." (PC Report Exhibit W).

Respondent had extensive contacts with the PAC, its Principal Officer Tsuneishi, and its billboard vendor, Clear Channel Outdoor ("Clear Channel") regarding the PAC making expenditures on ads supporting Zhou's candidacy. On September 17, Respondent emailed Wyrostok saying that he would "look at the sights this morning and prepare to get started." (PC Report Exhibit X). He also noted that the "donor did not give as much as we expected." *Id.* Tsuneishi confirmed to investigators that Respondent facilitated the relationship with Wyrostok and Clear Channel. (PC Report Exhibit JJ). On September 18, Respondent then emailed Wyrostok, copying Zhou and Tsuneishi, including a list of four-digit numbers that correspond to Clear Channel billboard locations in San Francisco. (PC Report Exhibit X). Investigators

determined that each of the numbers match billboards that later displayed ads paid for by the PAC in support of Zhou’s candidacy for Mayor. (PC Report Exhibit JJ). On September 19, Tsuneishi emailed Ivery again stating that the PAC would be “forwarding the \$10,000 donation for billboards throughout San Francisco.” (PC Report Exhibit Y).

Also on September 19, illustrator Dave Reyes (“Reyes”) emailed Wyrstok stating that he was “the artist working with Paul Taylor [Respondent] on the Zhou billboards.” (PC Report Exhibit Z). On September 20, Wyrstok emailed Tsuneishi a quote for the billboards, copying the Respondent, noting it was “a little more than the last quote I sent Paul [Respondent].” (PC Report Exhibit AA). Also on September 20, Wyrstok emailed Tsuneishi, copying Respondent, and stating that she was “waiting on artwork from Paul [Respondent].” (PC Report Exhibit BB). She also emailed Respondent and Tsuneishi saying “Paul [Respondent] – I need 4 more locations to add to what’s on hold.” (PC Report Exhibit CC). Tsuneishi informed investigators that Respondent provided the artwork for the PAC’s ads. (PC Report Exhibit JJ).

On September 20, Clear Channel and the PAC entered into a contract for “Ellen Zhou for Mayor,” in which the PAC would pay \$10,000 for a total of 16 “posters” to be placed at various billboard locations for a single four-week period. (PC Report Exhibit DD). The contract included thirteen 5-foot by 11-foot posters and three 12-foot by 24-foot posters, for a total of sixteen billboard ads. (*Id.*). On its subsequent Form 460, the PAC reported an independent expenditure of \$10,000 for “Billboards” supporting the Committee and Zhou’s candidacy for Mayor. (PC Report Exhibit V). The same Form 460 reports a payment of \$10,000 made to Clear Channel for “Billboards.” (*Id.*). That Form 460 does not report any contribution made to the Committee. (PC Report Exhibit JJ).

On September 25, Wyrstok emailed both Reyes and Respondent stating that she “need[s] artwork asap” to have the ads up by the contracted October 7 start date. (PC Report Exhibit EE). Respondent emailed back stating that he was “on my artist” and that “we want four more juniors,” listing four four-digit numbers, at least one of which investigators have confirmed corresponds to a billboard that later displayed a PAC billboard ad in support of Zhou’s candidacy for Mayor. (*Id.*; PC Report Exhibit JJ).

Also on September 25, Wyrstok responded to Respondent via email with an attachment that included 16 post locations, panel ID numbers, and information on size and duration. (PC Report Exhibit FF). On the same day, Respondent forwarded this email and the attached document to Tsuneishi. (*Id.*).

On October 1, 2019, Reyes emailed Respondent with 13 designs for ads, including variations of Super Mayor, Werewolves, Police, Needles, and Lombard. (PC Report Exhibit GG). Respondent forwarded this email to Tsuneishi. (*Id.*). Beginning on or around October 7, the PAC placed versions of five different cartoon ads supporting Zhou’s candidacy for Mayor on 16 different billboards around San Francisco: Super Mayor, Werewolves, Police, Needles, and Lombard. (PC Report Exhibits HH and JJ). These ads carried disclaimer statements that they were paid for by the PAC, and that they were not coordinated with a City candidate or committee. (*Id.*). Investigators confirmed these ads contained versions consistent with those in Reyes’ email that Respondent had forwarded to Tsuneishi. (*Id.*).



Investigators confirmed that all five ads included on the PAC's billboards appeared almost identical to versions previously shared by the Committee's Twitter account and Respondent's Facebook page. (PC Report Exhibit JJ). These previous versions included a disclaimer that they were paid for by the Committee. (PC Report Exhibit L, N, O, P, Q).

On November 4, the *Epoch Times* quoted Respondent as saying that "Zhou's campaign had put out a total of 20 billboards[.]" (PC Report Exhibit II). Investigators determined that the PAC paid for 16 billboards placed by Clear Channel and the Committee paid for four billboards placed by OutFront Media. (PC Report Exhibit JJ). Respondent communicated with both Clear Channel and OutFront Media regarding all of the billboard ads.

#### Campaign Finance Disclosures

On its post-election Form 460, the PAC reported an independent expenditure of \$10,000 for "Billboards" supporting the Committee and Zhou's candidacy for Mayor. (PC Report Exhibit V). The same Form 460 reports a payment of \$10,000 made to Clear Channel for "Billboards." (*Id.*). The same Form 460 reports a contribution of \$10,000 from Liu to the PAC on September 16<sup>th</sup>. (*Id.*). The PAC never reported a contribution to the Committee (*Id.*; PC Report Exhibit JJ).

The Committee reported a \$500 contribution from Liu on July 27. (PC Report Exhibit T). The Committee reported no other contributions from Liu on either a Late Contribution Form 497 or on their campaign statements. (PC Report Exhibit JJ). The Committee did not report any contributions from the PAC on either a Late Contribution Form 497 or on their next required campaign statement. (*Id.*). The Committee did not return any contributions from Liu or the PAC to the Ethics Commission to be placed in the General Fund. (*Id.*).

Respondent has never registered as a campaign consultant (PC Report Exhibit JJ.).

#### Respondent's Withholding of Information

Investigators reached Respondent by telephone on September 16, 2020, notified him of an upcoming document request, and confirmed his email address. (PC Report Exhibit JJ). Investigators sent a document request on September 16, 2020, to [Taylor4Senate@outlook.com](mailto:Taylor4Senate@outlook.com). *Id.* After receiving no response, investigators sent follow-up emails on October 7 and October 28, 2020 to that address and two other email addresses on file ([ibtbl@hotmail.com](mailto:ibtbl@hotmail.com) and [ibtbl@icloud.com](mailto:ibtbl@icloud.com)). *Id.* Investigators called Respondent on December 15 and 16, 2020 and left a voicemail asking for him to contact the Ethics Commission. *Id.* On December 21, 2020, investigators served a subpoena for documents by US Mail to the mailing address for What Engineering, Inc. *Id.* Investigators did not receive any communication in response to any of the above emails, phone calls, or mail. *Id.*

On August 11, 2022, investigators again emailed Respondent at all three known email addresses asking for a response. *Id.* Investigators called Respondent on September 29, 2022, and Respondent answered the phone before immediately hanging up without saying anything. *Id.* Investigators called back and left a voicemail. *Id.*

## ASSESSMENT OF EVIDENCE AND FINDINGS

### Campaign Finance and Disclosure

The City's campaign finance laws are designed to help voters make informed decisions and to prevent undue influence of elected officials. Acceptance of contributions over the legal limit and the failure to disclose such contributions deprives the public of essential information about candidates before they vote.

In this matter, the Probable Cause Report alleges that, as an agent of the Zhou candidate Committee, Respondent facilitated coordination between the PAC and the Committee, allowing both entities to circumvent applicable contribution and disclosure requirements. The Report provides evidence sufficient to conclude that because of Respondent's actions, the PAC \$10,000 expenditure funded a communication in the form of 16 billboard ads and constituted a contribution to the Committee under SF C&GCC § 1.115.

The communications referred directly to Zhou, supporting her policies and in some cases urging the public to "Vote Nov. 5<sup>th</sup> for Super Mayor Ellen Lee Zhou." Thus, the PAC's expenditure "fund[ed] a communication that expressly advocate[d] the...election...of a clearly identified candidate," which meets the first element of coordination under SF C&GCC § 1.115(a).

Respondent acted an agent of Zhou and the Committee during all times relevant to this case. Respondent introduced Zhou at several campaign events. On behalf of the Committee, Respondent emailed the Ethics Commission two image files of an ad used by the Committee to ensure compliance with disclaimer requirements. Respondent communicated with OutFront Media, a vendor of the Committee, on behalf of the Committee. Respondent's company What Engineering, Inc. was paid a total of \$4,795 by the Committee.

The facts of this case meet the requirements of two separate tests to create a rebuttable presumption of coordination.

First, the expenditure funded a communication that "replicates, reproduces, republishes or disseminates" a communication designed and distributed by the candidate. The PAC's expenditure funded versions of five ads: Super Mayor, Werewolves, Police, Needles, and Lombard. Each ad appeared in either identical or substantially similar form on the Committee's Twitter account and Respondent's Facebook page several times in the weeks and months before the PAC made its expenditure. In each instance, the ads appeared with a disclaimer stating that they were paid for by the Committee. Later, they appeared on the PAC's billboards stating they were paid for by the PAC. And the PAC confirmed that the Respondent provided the artwork for its ads. There is therefore a rebuttable presumption of coordination because the PAC's communications replicated and reproduced communications both designed and distributed by the candidate. SF C&GCC § 1.115(b)(4).

Second, coordination is also presumed because the expenditure was made “by or through [an] agent of the candidate,” in this case, the Respondent. Respondent facilitated the expenditure in this case. The PAC confirmed that Respondent connected the donor, Liu, with the PAC. The PAC also confirmed that Respondent connected the PAC with the billboard vendor, Clear Channel. Finally, the PAC confirmed that Respondent provided the artwork for the communications. Thus, Respondent’s actions create a rebuttable presumption of coordination because the expenditure was made through him. SF C&GCC § 1.115(b)(2).

The law only requires that a single test be met to create a rebuttable presumption of coordination under SF C&GCC § 1.115(a). Here, both tests are met, therefore this presumption is created.

The Report also provides evidence of actual coordination between the candidate and the PAC in this case under the standard test for coordination. SF C&GCC § 1.115(a) considers several types of evidence that can be used to prove actual coordination. Even in the absence of a rebuttable presumption, the facts of this case show actual coordination under two provisions of the law.

First, the billboard ads were created and disseminated “after the candidate has made or participated in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement[.]” In this case, Respondent made or participated in making decisions on at least two of these aspects of the billboard expenditure. For one, Respondent provided the artwork for these ads, thus making the decision on their content. Additionally, Respondent provided all sixteen locations for the billboards to a Clear Channel employee, thus making the decision on their location. In several instances, the vendor that produced the billboards told the PAC that she was working with Respondent or “waiting” for Respondent to provide information on the content and location of the communications. Because they funded a communication that was created and disseminated after the candidate, through Respondent, made decisions regarding the content and location, the PAC’s expenditures must be treated as a contribution to Committee. SF C&GCC § 1.115(a)(2)(A).

Second, the expenditure came at the “request, suggestion, or direction of, or in cooperation, consultation, concert or coordination with” the candidate, in this case, the Respondent. Respondent met with the principal officer of the PAC on September 12 to discuss facilitating a contribution to the PAC to support the candidate. The PAC confirmed that the Respondent facilitated the relationship with the PAC’s vendor that would ultimately produce the billboard ads. From September 17 to September 25, Respondent sent a series of emails back and forth with the PAC’s principal officer and an employee of the PAC’s vendor, providing information on the artwork, the location, the disclaimer language, and fundraising for the expenditure. Because it came at the suggestion and with the cooperation of the candidate, through Respondent, the PAC’s expenditure must be treated as a contribution to the Committee. SF C&GCC § 1.115(a)(1).

To establish coordination, the law requires only one of the above types of evidence to be substantiated. The Probable Cause Report establishes through the evidence presented that coordination took place, and therefore that the PAC's \$10,000 expenditure must be treated as a contribution to the Committee. By coordinating the PAC's expenditure on behalf of the Committee, Respondent caused this expenditure to be considered a contribution, resulting in multiple violations of City and state campaign finance laws as described below in Counts One through Six.

### **COUNT ONE**

#### **Respondent violated SF C&GCC § 1.114 by causing the Committee and its controlling candidate, Ellen Lee Zhou, to accept a contribution from the PAC over the legal limit.**

The PAC's \$10,000 expenditure is an in-kind contribution to the Committee. Because City law prohibits any candidate committee from accepting a contribution which would cause the total amount contributed from one person to exceed \$500 in one election, this contribution violates the law. SF C&GCC § 1.114(a).

Respondent caused the Committee and candidate Zhou to violate the law by coordinating the expenditure on its behalf, including by coordinating the timing, content, and payment for the expenditure, in such a manner that caused it to be considered a contribution. This coordination led directly to the Committee's violation of SF C&GCC § 1.114, and Respondent is therefore liable for causing a violation of a City ordinance relating to campaign finance. See SF Charter § C3.699-13(d).

### **COUNT TWO**

#### **Respondent violated SF C&GCC § 1.114 by causing the PAC to make a contribution to the Committee over the legal limit.**

Respondent caused the PAC to violate SF C&GCC § 1.114(a) by coordinating its expenditure on behalf of the Committee, including by coordinating the timing, content, and payment for the expenditure, in such a manner that caused it to be considered a contribution. Because this contribution exceeds the \$500 limit, Respondent caused the PAC to violate SF C&GCC § 1.114.5 and is therefore liable for causing a violation of a City ordinance relating to campaign finance. See SF Charter § C3.699-13(d).

### **COUNT THREE**

#### **Respondent violated Gov't Code § 84211 and SF C&GCC § 1.106 by causing the Committee and Zhou to fail to disclose required information on the proper pre-election campaign statement (Form 460).**

The PAC's \$10,000 expenditure is an in-kind contribution subject to disclosure on the recipient committee's campaign statement (Form 460). Gov't Code § 84211(a). The contribution is also subject

to disclosure requirements for contributions over \$100. Gov't Code § 84211(c), 84211(f). By failing to include the required information about this contribution and the contributor, the Committee and Zhou violated the law.

Respondent coordinated the expenditure on the Committee's behalf, including by coordinating the timing, content, and payment for the expenditure, in such a manner that caused it to be considered a contribution. This coordination led directly to the Committee's legal duties under Gov't Code § 84211(a), 84211(c), and 84211(f) as it pertains to this contribution. Respondent caused the Committee and Zhou to violate Gov't Code § 84211 and SF C&GCC § 1.106 and is therefore liable for causing a violation of a City ordinance relating to campaign finance. See SF Charter § C3.699-13(d).

#### **COUNT FOUR**

#### **Respondent violated Gov't Code § 84211 and SF C&GCC § 1.106 by causing the Committee and Zhou to fail to disclose required information on the proper pre-election campaign statement (Form 460).**

The PAC's \$10,000 expenditure is an in-kind contribution subject to disclosure on the PAC's campaign statement (Form 460). Gov't Code § 84211(k)(5). By failing to disclose this payment as a contribution to the Committee, the PAC violated the law. Gov't Code § 84211(k)(4).

Respondent coordinated the expenditure with the PAC on the Zhou Committee's behalf, including by coordinating the timing, content, and payment for the expenditure, in such a manner that caused it to be considered a contribution. Respondent caused the PAC to violate Gov't Code § 84211 and SF C&GCC § 1.106 and is therefore liable for causing a violation of a City ordinance relating to campaign finance. See SF Charter § C3.699-13(d).

#### **COUNT FIVE**

#### **Respondent violated Gov't Code § 84203 and SF C&GCC § 1.106 by causing the Committee and Zhou to fail to report a late contribution within 48 hours (Form 497).**

Because the PAC's \$10,000 expenditure is a contribution to the Committee of over \$1,000 that came within 90 days of an election, it is a late contribution. Gov't Code § 82036. It therefore triggered late contribution reporting requirements. Gov't Code § 84203. Because the Committee did not file the required late contribution report within 48 hours (Form 497), the Committee violated the law. Gov't Code § 84203, 84203.3.

Respondent coordinated the expenditure on the Committee's behalf, including by coordinating the timing, content, and payment for the expenditure, in such a manner that caused it to be considered a contribution. This coordination led directly to the Committee's requirement to disclose the contribution on the Form 497 within 48 hours, which was not accomplished. Respondent caused the Committee and Zhou to violate Gov't Code § 84203 and SF C&GCC § 1.106 and is therefore

liable for causing a violation of a City ordinance relating to campaign finance. See SF Charter § C3.699-13(d).

### **COUNT SIX**

#### **Respondent violated Gov't Code § 84203 and SF C&GCC § 1.106 by causing the PAC to fail to report a late contribution (Form 497) and give notice to the Committee of a late in-kind contribution.**

The \$10,000 late contribution triggered legal requirements for the PAC, namely filing the Form 497 and the requirement to notify the Committee of a late in-kind contribution. Gov't Code § 84203, 84203.3. Because the PAC neither filed the required late contribution report nor notified the Committee of the late in-kind contribution, the PAC violated the law. Gov't Code § 84203, 84203.3.

Respondent coordinated the expenditure with the PAC on the Committee's behalf, including by coordinating the timing, content, and payment for the expenditure, in such a manner that caused it to be considered a contribution. This coordination led directly to the Committee's legal duties under Gov't Code § 84203 and 84203.3 as it pertains to this contribution. Respondent caused the PAC to violate Gov't Code § 84203, 84203.3, and SF C&GCC § 1.106 and is therefore liable for causing a violation of a City ordinance relating to campaign finance. See SF Charter § C3.699-13(d).

#### **Campaign Consultant Registration and Disclosure**

The Probable Cause Report alleges in Count Seven that Respondent violated SF C&GCC 1.510 by failing to register as a campaign consultant with the Ethics Commission, and therefore, also failed to report the required information about himself and his client; failed to pay the required fees; failed to submit authorization from his client; and failed to file at least two required quarterly reports in September and December of 2019. SF C&GCC § 1.510, 1.515(a, c-d).

City law prohibits campaign consultants from providing campaign consulting services, or accepting any economic consideration thereof, without first registering with the Ethics Commission and complying with certain reporting requirements. SF C&GCC § 1.510. The city's law was established based on findings that 1) the City and County of San Francisco "has a paramount interest in protecting the integrity and credibility of its electoral and government institution;" 2) "[e]lection campaigns are highly competitive in San Francisco, and candidates frequently contract for the services of professional campaign consultants who specialize in guiding and managing campaigns;" and 3) to "impose reasonable registration and disclosure requirements on campaign consultants." SF C&GCC § 1.500(a-b).

Under City law, a "campaign consultant" is any person or entity that receives or is promised economic consideration of \$1,000 or more in a calendar year for campaign consulting services, where "campaign consulting services" means participating in campaign management or participating in the development of campaign strategy. SF C&GCC § 1.505(a)-(b). Campaign management includes "spending or authorizing the expenditure of campaign funds, directing, supervising or conducting the

solicitation of contributions to the campaign, and selecting or recommending vendors or subvendors of goods or services for the campaign.” SF C&GCC § 1.505(c). Campaign strategy includes “producing or authorizing the production of campaign literature and print and broadcast advertising, seeking endorsements of organizations or individuals, [or] seeking financing[.]” SF C&GCC § 1.505(d). For purposes of campaign consultant regulation, City law defines “economic consideration” to mean any payments, fees, commissions, reimbursements for expenses, gifts, or anything else of value. SF C&GCC § 1.505(f).

### **COUNT SEVEN**

#### **Respondent violated SF C&GCC § 1.510 by failing to register as a campaign consultant with the Ethics Commission.**

The Probable Cause Report provided evidence that Respondent coordinated the production of campaign literature, including by working with an illustrator he referred to as “my artist” on designs for four billboards purchased directly by the Committee. The Report further evidences that Respondent communicated with OutFront Media on Committee expenditures for four billboards. In this way, that activities Respondent engaged in fall squarely within the types of activities regulated under the City’s Campaign Consultant registration and disclosure law, because Respondent participated in “selecting or recommending vendors or subvendors of goods or services” (a form of campaign management) and “producing or authorizing the production of campaign literature and print and broadcast advertising” (a form of campaign strategy). SF C&GCC § 1.505(a-d). The Report also provides clear evidence that Respondent engaged in campaign strategy by seeking financing through soliciting contributions for the Committee.

The Probable Cause Report also presents documentation that the Committee reported paying Respondent’s firm, What Engineering, Inc., \$4,520 for purposes that the Committee described on its campaign statement Form 460 as for “Literature,” and an additional \$275 for purposes described as “Meeting” during the period October 31 through December 31, 2019. (PC Report Exhibit K). The Committee’s reported payment to Respondent’s Firm and evidence of Respondent’s engagement in campaign management and strategy provide evidence sufficient to believe or entertain a strong suspicion that Respondent received or was promised economic consideration of \$1,000 or more in a calendar year for purposes of campaign consulting services as a campaign consultant as those terms are defined.

Evidence presented in the Probable Cause Report is sufficient to demonstrate that probable cause exists to believe that Respondent was required to register and file disclosure statements as a campaign consultant but failed to do so in violation of the law as alleged in Count Seven.

## **Withholding of Information Sought by Ethics Commission**

The Probable Cause Report also provides evidence sufficient to conclude that Respondent violated City law by withholding information sought by Commission Investigators in the conduct of the investigation into this matter as detailed in Count Eight.

### **COUNT EIGHT**

#### **Respondent violated SF C&GCC § 1.170(f) by withholding information sought by the Ethics Commission.**

Respondent failed to respond to numerous communications from the Ethics Commission during its investigation. By ignoring document requests and several forms of outreach for over two years, Respondent failed to furnish “records, documents, and other information” as required by City law. SF C&GCC § 1.170(f). Furthermore, by confirming his email address and phone number before ignoring further communications, and by answering phone calls and proceeding to hang up without speaking a word, Respondent has “conceal[ed] evidence, documents, or information” in violation of City law. *Id.*

According to the Ethics Commission’s authority under the SF Charter, Article XV, § 15.100 and the Commission’s Enforcement Regulations section 5(C), the Executive Director has authority to issue subpoenas and *subpoenas duces tecum*, and does so as warranted, if the person or entity to be subpoenaed controls information relevant to a specific matter. The Commission reserve the right to cite any failure to comply with a duly authorized subpoena as further evidence of a violation of SF C&GCC § 1.170(f).

### **CONCLUSION**

I find the evidence presented sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that Respondent committed or caused the violations detailed above, and therefore I find probable cause that Respondent violated Counts One through Eight, as alleged in the Probable Cause Report.

*LeeAnn Pelham*

DATED: December 19, 2022

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LEEANN PELHAM  
Executive Director  
San Francisco Ethics Commission