



# San Francisco Ethics Commission

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December 4, 2023

To: Members of the Ethics Commission

From: Patrick Ford, Director of Enforcement  
Zach D'Amico, Senior Investigator

Subject: Agenda Item 3: Discussion and Possible Action regarding Hearing on the Merits In the Matter of Paul Allen Taylor, Case No. 20-243 (1920-031)

## Summary

This memorandum provides information regarding the Hearing on the Merits *In the Matters of Paul Allen Taylor*, Case No. 20-243 (1920-031).

## Background

On December 26, 2022, the Executive Director issued a Probable Cause Determination against Paul Allen Taylor ("Respondent") on eight counts. The Executive Director found probable cause to believe that Respondent coordinated a \$10,000 PAC expenditure as an agent of Ellen Lee Zhou for Mayor 2019 ("the Committee"). By coordinating that expenditure, Respondent caused the PAC to make a contribution far in excess of the \$500 limit; caused the Committee to accept a contribution far in excess of the \$500 limit; and caused both parties to violate City law related to contribution disclosures. The Executive Director also found probable cause to believe that Respondent failed to register as a campaign consultant. Finally, the Executive Director found probable cause to believe that Respondent inappropriately withheld information sought by the Ethics Commission in the course of a duly authorized investigation.

On December 31, 2022, the Commission ratified the Executive Director's Probable Cause Determination against Respondent on eight counts.

On May 5, 2023, the Commission appointed Commissioner Theis Finlev to hear preliminary matters. On August 2, 2023, Commissioner Finlev delivered an order ruling on preliminary matters to all parties. On October 6, 2023, the Acting Executive Director formally noticed a hearing for December 8, 2023. On November 8, 2023, the Enforcement Division submitted a hearing brief and accompanying materials to all Commissioners. Respondent did not submit a Response Brief or any list of evidence or witnesses.

## Action

This is being held under the rules set forth in the Charter of the City and County of San Francisco, the Campaign and Governmental Conduct Code, the Ethics Commission Enforcement Regulations, and the California Administrative Procedure Act. These rules are summarized in the Commission's Enforcement Hearing Guidebook, [found here](#). According to these rules, the Commission may conduct a hearing as an



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entire body. Further, the Commission may then vote on whether or not to find any violations. If it finds any violations, the Commission may vote to issue orders and penalties against the Respondent.

The Commission may continue the hearing due to time constraints on December 8. If necessary, staff recommend a full Commission vote to continue the hearing to the next regular Commission meeting.

**Zachary D’Amico**

Senior Investigator and Legal Analyst

**Patrick Ford**

Director of Enforcement

**Before the San Francisco Ethics Commission**

<p><b>In the Matter of Paul Allen Taylor,</b></p> <p><b>Respondent</b></p>	<p>)</p> <p>) <b>Case No. 1920-031 (1920-243)</b></p> <p>)</p> <p>) <b>Complainant’s Administrative Hearing Brief</b></p> <p>) <b>Hearing Date:</b> December 8, 2023, 10 AM</p> <p>      <b>Hearing Place:</b> SF City Hall, Room 400, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA</p>
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**I. INTRODUCTION**

According to Enforcement Regulation 8(E), the undersigned submits this Hearing Brief on the basis that Paul Allen Taylor (“Respondent”), as an agent of Ellen Lee Zhou for Mayor 2019 (“Zhou Committee”), violated the campaign finance provisions within Article I of the San Francisco Campaign and Governmental Conduct Code (“SF C&GCC”) when, on behalf of the Zhou Committee, he coordinated expenditures with the Asian American Freedom Political Action Committee (“the PAC”).

In doing so, Respondent (1) caused the Zhou Committee and the PAC to exceed contribution limits, and (2) caused the Zhou Committee and the PAC to improperly omit required contribution disclosures. In the course of this work, Respondent also violated the law when he failed to register with the Commission as a campaign consultant. Finally, over the course of this investigation, Respondent inappropriately withheld information from the San Francisco Ethics Commission (“the Commission”).

**II. SUMMARY OF CASE**

**A. Procedural History**

Investigators first reached Respondent by telephone on September 16, 2020, notified him of an upcoming document request as part of the investigation, and confirmed his email address. (Exhibit FF). 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 mailed a subpoena for documents 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.*

Investigators served a Probable Cause Report on Respondent via in-person service and follow-up email on October 25, 2022. Respondent did not file a response and neither party requested a Probable Cause Conference. Former Executive Director LeeAnn Pelham delivered a Finding of Probable Cause on the eight counts contained herein on December 26, 2022, based on evidence and arguments as detailed in the Probable Cause Report.

Between November and May, Respondent sent several letters to Commission staff. (Exhibit GG). These letters disputed the Commission's jurisdiction over respondent; refused to respond to the duly authorized investigation and subpoena; demanded money if the Commission did not abandon its investigation; and threatened further demands for money if the Commission "attempts to activate and apply" any judgment against Respondent. (*Id.*).

On May 5, 2023, the Commission appointed Commissioner Theis Finlev to hear preliminary matters. On August 2, 2023, Commissioner Finlev delivered an order ruling on preliminary matters to all parties. On October 6, 2023, Acting Executive Director Gayathri Thaikkendiyil formally noticed a hearing for December 8, 2023.

## **B. Statement of Facts**

### Respondent's Relationship with Ellen Lee Zhou and the Zhou Committee

Ellen Lee Zhou ("Zhou") established the Zhou Committee as a candidate-controlled committee supporting her candidacy for Mayor of San Francisco in January 2019. (Exhibit A). Zhou served as treasurer for the Zhou 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. (Exhibit B).

Beginning in at least July 2019, Respondent posted regularly in support of the Zhou Committee and Zhou's candidacy for Mayor on his Facebook page, "Paul Taylor for 2018 California US Senate." (Exhibit C). 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 Zhou Committee's Twitter account on August 15<sup>th</sup>. (Exhibit D).

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." (Exhibit E). On September 15, Respondent shared this article on Facebook with a plea to "[h]elp us raise \$50k[.]" (Exhibit F). 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." (Exhibit G). On or around September 30, the Zhou Committee then entered into a contract with OutFront Media to post four billboard ads. (Exhibit H). Later, on November 10<sup>th</sup>, Zhou for Mayor paid \$4,520 to What Engineering, Inc. for "Literature" and an additional \$275 for "Meeting." (Exhibit I).

### The Zhou Committee's Advertisements

Over a period of several months, the Zhou 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 Zhou Committee's Twitter account on August 15. (Exhibit J). The ad appeared in a video of both Respondent and Zhou at a campaign event, posted to Respondent's Facebook page on August 23. (Exhibit K). On August 26, Respondent emailed a copy of this ad to the Ethics Commission. (Exhibit D). The ad included a disclaimer that the ad was paid for by the Zhou Committee.

The Werewolves ad first appeared on the Zhou Committee's Twitter account on September 14. (Exhibit L). The ad appeared in videos and photos posted to the Zhou Committee's Facebook and Twitter accounts throughout September and October. (*Id.*). The ad included a disclaimer that the ad was paid for by the Zhou Committee.

The Police ad first appeared on both the Zhou Committee's Twitter account and Respondent's Facebook page on August 14. (Exhibit M). Both the Respondent and the Zhou Committee's Twitter account posted photos of the ad in September and October. (*Id.*). The ad included a disclaimer that the ad was paid for by the Zhou Committee.

On September 10, the Zhou Committee's Twitter account posted the Needles ad. (Exhibit N). The ad appeared in videos and photos posted by the Zhou Committee's Facebook and Twitter accounts throughout September and October. (*Id.*). The ad included a disclaimer that the ad was paid for by the Zhou Committee.

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

On September 22, the Super Mayor, Werewolves, and Needles ads appeared on a second Facebook page under the Respondent's name. (Exhibit P). 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 is 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. (Exhibit Q).

On July 27, Margaret Liu ("Liu") donated \$500 to the Zhou Committee. (Exhibit R). Subsequently, Respondent contacted Tsuneishi and suggested he had a candidate that Tsuneishi and the PAC would be interested in supporting. On or about September 12, Respondent arranged a meeting between Tsuneishi and Zhou, followed by a meeting with Liu and Tsuneishi later that day to discuss Liu making a contribution to the PAC for the purposes of supporting Zhou's candidacy for Mayor. (Exhibit FF). On its subsequent Form 460, the PAC reported a contribution of \$10,000 from Liu on September 16. (Exhibit S). 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 Wrostok ("Wrostok"), an employee of Clear Channel, "...so they may purchase billboard for Ellen Zhou's campaign." (Exhibit T).

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 Wrostok saying that he would "look at the sights [sic] this morning and prepare to get started." (Exhibit U). 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 Wrostok and Clear Channel. (Exhibit FF). On September 18, Respondent then emailed Wrostok, copying Zhou and Tsuneishi, including a list of four-digit numbers that correspond to Clear Channel billboard locations in San Francisco. (Exhibit U). Investigators have since 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. (Exhibit FF). On September 19, Tsuneishi

emailed Ivery again stating that the PAC would be “forwarding the \$10,000 donation for billboards throughout San Francisco.” (Exhibit V).

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.” (Exhibit W). 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].” (Exhibit X). Also on September 20, Wyrstok emailed Tsuneishi, copying Respondent, and stating that she was “waiting on artwork from Paul [Respondent].” (Exhibit Y). She also emailed Respondent and Tsuneishi saying “Paul [Respondent] – I need 4 more locations to add to what’s on hold.” (Exhibit Z). Tsuneishi informed investigators that Respondent provided the artwork for the PAC’s ads. (Exhibit FF).

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. (Exhibit AA). 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 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. (Exhibit BB). 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.*; Exhibit FF).

Also on September 25, Wyrstok responded to Taylor via email with an attachment that included 16 post locations, panel ID numbers, and information on size and duration. (Exhibit CC). 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. (Exhibit DD). 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. (Exhibit EE; Exhibit FF). 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 the designs of these ads were 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 Zhou Committee's Twitter account and Respondent's Facebook page. (Exhibit FF). These previous versions included a disclaimer that they were paid for by the Zhou Committee. (Exhibit J, L, M, N, O).

Of these designs, the PAC paid for 16 billboards placed by Clear Channel, and the Zhou Committee paid for four billboards placed by OutFront Media. (Exhibit FF). Taylor 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 Zhou Committee and Zhou's candidacy for Mayor. (Exhibit S). 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 Zhou Committee (*Id.*; Exhibit FF).

On its Form 460, the Zhou Committee reported a \$500 contribution made by Liu on July 27. (Exhibit R). The Zhou Committee reported no other contributions from Liu or from the PAC on either a Late Contribution Form 497 or on their next required campaign statement. (*Id.*).

Respondent has never registered as a campaign consultant (Exhibit FF.).

**C. Issues Presented**

The parties bring this matter before the Commission to decide the following issues:

1. Did Respondent Paul Taylor coordinate the PAC's \$10,000 expenditure on behalf of the Zhou Committee as defined by SF C&GCC section 1.115, thereby turning that expenditure into a non-monetary contribution to the Committee and causing the violations described in Counts 1 through 6?
2. Did Respondent Paul Taylor provide campaign consulting services to the Zhou Committee as defined in SF C&GCC section 1.505 without registering with the Ethics Commission as a campaign consultant, thereby violating requirements in sections 1.510 and 1.515?
3. Did Respondent Paul Taylor fail to furnish records, documents, and other documents required by law to be provided to the Commission in violation of SF C&GCC section 1.170?

**III. STATEMENT OF 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. Sections 81003 and 81002 of the PRA require that it be liberally construed and "vigorously enforced."

**A. Jurisdiction**

The San Francisco Ethics Commission has authority to investigate and administratively enforce violations of City law relating to campaign finance, campaign consultants, lobbying, conflicts of interest, governmental ethics, and whistleblower protection. SF Charter § C3.699-13; SF C&GCC Art. IV. This case concerns \$10,000 spent by the PAC in support of Ellen Lee Zhou, a candidate for office in the City and County of San Francisco. Respondent worked with the PAC and the Zhou Committee, and is accused of having caused violations of the San Francisco Campaign & Governmental Conduct Code related to the PAC's spending to influence a San Francisco election and Respondent's campaign consulting activities. All behavior referenced herein and the counts included below are therefore within the jurisdiction of this Commission.

## **B. Definitions**

City law incorporates the PRA's definition of *contribution*, which is any "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); SF C&GCC § 1.104. 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.

## **C. Contribution Requirements**

### Contribution Limit

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.*

## 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), (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 it. Gov't Code § 84203.3.

### **D. Coordination**

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). (Exhibit HH). 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).

An expenditure is treated as a contribution to a candidate if it meets two requirements. First, the expenditure must "fund[] a communication that expressly advocate[s] the nomination, election or defeat of a clearly identified candidate." Second, the expenditure must have been made under one of three circumstances, including the following:

- "The expenditure is made at the request, suggestion, or direction of, or in cooperation, consultation, concert, or coordination with" the candidate or their agent; or

- The expenditure funds a communication that “is created, produced, or disseminated” after the candidate or their agent “has made or participated in making any decision regarding content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication.” SF C&GCC § 1.115(a).

Separate from the test for actual coordination just described, City law also creates a rebuttable presumption that can be used to establish coordination. If either of the following circumstances exist, there is a presumption that coordination exists:

- 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”; or
- The expenditure is made “by or through any agent of the candidate in the course of the agent’s involvement” with the candidate’s campaign. SF C&GC Code § 1.115(b)(2), (4).

Once the Enforcement Division demonstrates a presumption of coordination, the burden shifts to the Respondent to show by a preponderance of the evidence that there was no actual coordination in this case, or that the Respondent did not cause the violations alleged in this brief.

#### **E. Agency**

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).

An agent is one who “represents another, called the principal, in dealings with third person.” Cal. Civ. Code § 2295. An agency can be ostensible when a principal “fails to exercise ordinary care in clarifying that a person does not have the authority to act on the principal’s behalf,” including when a third party “believe[s] another to be” the agent represents the principal. FPPC Case No. 2015/2076; *see Civ. Code*, § 2295; *see Civ. Code*, § 2300.

#### **F. Campaign Consultant**

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 “...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....” SF C&GCC § 1.505(d).

Campaign consultants must report information to the Commission about the consultant and 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.*

#### **G. Withholding Information from the Ethics Commission**

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.*

#### **H. Liability and Standard of Proof**

The San Francisco Charter states that “any person...*who causes any other person to violate any such provision* or who aids and abets any other person in above such violation, shall be liable” for penalties. SF Charter § C3.699-13(d) (emphasis added).

The Commission may determine that the Respondent committed any or all of the violations alleged in this hearing brief “only if a person of ordinary caution and prudence would conclude, based on a preponderance of the evidence, that the respondent has committed or caused the violation.”

#### **IV. ARGUMENT**

##### **A. Respondent Coordinated the PAC’s \$10,000 Expenditure on Behalf of the Zhou Committee, Resulting in Multiple Violations of Campaign Finance Laws**

###### **1. *The PAC’s Expenditure Funded a Communication That Expressly Advocated for the Election of a Clearly Identified Candidate***

The PAC’s \$10,000 expenditure funded a communication in the form of sixteen billboard ads. These 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).

###### **2. *Respondent’s Actions Meet At Least Two Separate Conditions to Create a Rebuttable Presumption of Coordination***

Under City law, the Commission need only find that one of five conditions have been met to establish a rebuttable presumption that the Respondent coordinated the PAC’s spending with the Zhou Committee. In this case, Respondent’s actions satisfy at least two of these conditions.

###### **a. *The PAC’s Expenditure Is Presumed Coordinated Because It Replicated a Communication Designed and Distributed by the Candidate***

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 Zhou 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 Zhou Committee. Later, they appeared on the PAC's billboards stating they were paid for by the PAC. The PAC also 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).

***b. The PAC's Expenditure Is Presumed Coordinated Because It Was Made by an Agent of the Candidate***

As an agent of Zhou and the Zhou Committee, Respondent's actions meet an additional condition for a rebuttable presumption because the PAC's expenditure was made "by or through any agent of the candidate in the course of the agent's involvement" with the candidate's campaign. Respondent was as an agent the Zhou Committee during all times relevant to this case. When considering *In the Matter of Common Sense Voters*, the San Francisco Ethics Commission deemed Respondent's work as a campaign consultant sufficient to establish agency for the purpose of finding that Respondent coordinated on behalf of the campaign committee. As demonstrated below, Respondent qualified as a campaign consultant to the Zhou Committee by explicitly participating in both campaign management and campaign strategy. As a campaign consultant, he should therefore be considered an agent.

Further, in *Lloyd Johnson for West Covina City Council 2015, Lloyd Johnson, and John Shewmaker*, in which the agency alleged that Respondent John Shewmaker acted as an agent of the



Lloyd A. Johnson for West Covina City Council 2016 Committee, an Administrative Law Judge (“ALJ”) found that even though Shewmaker was not an employee of the campaign, he continued to be an agent. FPPC Case No. 2015/2076. In that case, the ALJ cited evidence that Shewmaker communicated with and arranged a transaction between the campaign and a vendor for mailers, along with evidence of payments from the Committee to Shewmaker as late as November, after Shewmaker’s activities relevant to that case. *Id.* In this case, Respondent played a similar role to the Committee as Shewmaker. Respondent communicated with OutFront Media, a vendor of the Zhou Committee, on behalf of the Zhou Committee. Respondent received a total of \$4,795 from the Zhou Committee for this work through his company, What Engineering, Inc., including payments in November, after the billboards in question were placed by the PAC.

Finally, Respondent’s status as an agent of the Zhou Committee was made clear in communications between Respondent, the PAC, and the vendor used for the billboards placed by the PAC. While emailing the PAC’s vendor to provide details regarding billboard content and location, Respondent added the PAC’s Principal Officer and the candidate’s email addresses to the CC line, effectively looping both the PAC and the Zhou Committee into his efforts to arrange essential details of the spending.

As an agent of the Zhou Committee, Respondent facilitated the expenditure with the PAC. 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. The PAC also confirmed that Respondent provided the artwork for the communications. Respondent arranged the expenditure at issue, which was thus made “by or through [an] agent of the candidate,” meeting a second condition to create a rebuttable presumption of coordination. 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). Since both of the above tests are met, there is a presumption of coordination. Unless Respondent presents evidence to rebut this presumption, these facts alone are sufficient for the Commission to find coordination.

**3. *There is Substantial Evidence of Actual Coordination***

The law only requires the Enforcement Division to meet any of the five tests to create a rebuttable presumption of coordination, at which point the burden shifts to the Respondent to show a lack of coordination. The Enforcement Division believes these conditions have been met.

However, the Enforcement Division also believes that beyond establishing a presumption of coordination, there is ample evidence of actual coordination between the candidate, Respondent, and the PAC under the City law's definition of coordination. Even in the absence of a rebuttable presumption, the facts of this case show actual coordination under at least two provisions of the law.

Section 1.115(a) considers several types of evidence that can be used to prove actual coordination.

**a. *Respondent Actually Coordinated by Making Decisions Regarding the Content and Location of the Billboard Ads***

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 as agent, made decisions regarding the content and location, the PAC’s expenditures must be treated as a contribution to the Zhou Committee. SF C&GCC § 1.115(a)(2)(A).

***b. Respondent Actually Coordinated by Suggesting the Expenditure and Cooperating with the PAC on its Execution***

The expenditure also came at the “request, suggestion, or direction of, or in cooperation, consultation, concert or coordination with” the candidate, in this case, with the Respondent as agent. 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 as agent, the PAC’s expenditure was coordinated with the candidate. SF C&GCC § 1.115(a)(1).

The law requires only one of the above types of evidence to be substantiated in order to establish actual coordination. In this case, the facts substantiate actual coordination even beyond the establishment of a rebuttable presumption.

***4. The PAC’s \$10,000 Expenditure Should Be Treated as a Contribution***

Because the PAC coordinated its \$10,000 expenditure through the Zhou Committee and its agent, the Respondent, the law treats this expenditure as a contribution. SF C&GCC § 1.115(a).

**5. Respondent Caused Six Violations of Campaign Finance Law by Coordinating the PAC's Expenditure on behalf of the Zhou Committee**

By coordinating the PAC's expenditure on behalf of the Zhou Committee, Respondent turned this expenditure into a contribution to the Zhou Committee under City law. This caused multiple violations of City and state campaign finance laws.

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

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. SF C&GCC § 1.114(a). Respondent created this obligation by turning the PAC's expenditure into a \$10,000 contribution to the Zhou Committee, thereby causing the Zhou Committee to violate this law. 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 Zhou Committee over the legal limit.**

City law prohibits any person, including a PAC, from making a contribution which would cause the total amount contributed from one person to exceed \$500 in one election. SF C&GCC § 1.114(a). Respondent created this obligation by turning the PAC's expenditure into a \$10,000 contribution to the Zhou Committee, thereby causing the PAC to violate this law. See SF Charter § C3.699-13(d).

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

City law requires disclosure of in-kind contributions on the recipient committee's campaign statement (Form 460) and specific disclosure for contributions over \$100. Gov't Code § 84211(a), (c), (f). The Zhou Committee did not comply with these disclosure requirements, which only applied because of Respondent's actions. By turning the PAC's expenditure into a \$10,000 in-kind contribution to the Zhou Committee which was later not reported, Respondent caused the Zhou Committee to violate these laws. *See* SF Charter § C3.699-13(d).

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

City law requires disclosure of in-kind contributions on the PAC's campaign statement (Form 460). Gov't Code § 84211(k)(5). The PAC did not comply with these disclosure requirements, which only applied because of Respondent's actions. By turning the PAC's expenditure into a \$10,000 in-kind contribution to the Zhou Committee which was later not reported, Respondent caused the PAC to violate these laws. *See* SF Charter § C3.699-13(d).

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

City law requires a recipient committee to disclose late contributions over \$1,000. Gov't Code § 84203. Because the PAC's \$10,000 in-kind contribution came within 90 days of the election, the Zhou Committee was required to disclose it. The Zhou Committee did not comply with this disclosure requirement, which only applied because of Respondent's actions. By turning the PAC's expenditure into a \$10,000 in-kind contribution, Respondent caused the Zhou Committee to violate these laws. *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 Zhou Committee of a late in-kind contribution.**

City law requires a PAC to disclose late contributions over \$1,000 and to notify the Zhou Committee of a late in-kind contribution. Gov't Code § 84203, 84203.3. Because the PAC's \$10,000 in-kind contribution came within 90 days of the election, the PAC was subject to these requirements because of the Respondent's actions. The PAC failed to report this late contribution or notify the Zhou Committee. By turning the PAC's expenditure into a \$10,000 in-kind contribution to the Zhou Committee, Respondent caused the PAC to violate these laws. See SF Charter § C3.699-13(d).

**B. Respondent Failed to Register as a Campaign Consultant**

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

Respondent coordinated the production of campaign literature for the Zhou Committee, including by working with an illustrator he referred to as "my artist" on designs for four billboards purchased directly by the Committee. Respondent also communicated with OutFront Media on Committee expenditures for four billboards. In this way, Respondent qualifies as a campaign consultant because he 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). Respondent also solicited contributions for the Zhou Committee, a form of campaign management.

Respondent violated SF C&GCC § 1.510 by providing campaign consulting services without registering with the Commission. SF C&GCC § 1.510. Respondent 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).

**C. Respondent Inappropriately Withheld Information from the Ethics Commission**

**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 repeated outreach for over two years, Respondent failed to furnish “records, documents, and other information” as required by law. SF C&GCC § 1.170(f). Furthermore, by confirming his email address and phone number before ignoring 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.*

On October 20, 2022, the Ethics Commission served a subpoena to Respondent according to its authority under the SF Charter, Article XV, § 15.100 and the Commission’s Enforcement Regulations section 5(C). Respondent failed to provide any of the information sought in that subpoena, in violation of SF C&GCC § 1.170(f). Respondent sent seven letters to the Ethics Commission between November 2022 and May 2023 demanding payment of \$1,000,000 and threatening future demands for millions of dollars if the Commission “attempts to...apply” any judgment against him.

**V. PENALTIES**

**A. Administrative Penalties Under the Act**

Pursuant to its Enforcement Regulations, when determining penalties, the Ethics Commission shall consider all of the relevant circumstances, 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. Enf. Reg. § 9(D). The Enforcement Division also considered the importance of incentivizing settlements when comparing this case to prior settlements.

**B. Factors**

The City's campaign finance laws are designed to help voters make informed decisions and to prevent undue influence of elected officials. Campaign reporting violations deprive the public of essential information regarding political contributions. When this conceals violation of contribution limits, the harm is magnified, particularly when it gives an unfair advantage over other candidates.

In this case, Respondent caused a \$10,000 in-kind contribution to a candidate committee, 20 times the legal limit of \$500. The Zhou Committee paid for four billboards; this illegal contribution allowed the campaign to purchase 16 additional billboards using the same advertisements, all while avoiding contribution limits and disclosure requirements. Respondent's coordination allowed both the Zhou Committee and the PAC to align their goals but evade campaign finance rules.

Further, the Committee and Respondent engaged in a willful attempt to circumvent campaign contribution laws. The Committee received a maximum contribution from Margaret Liu, after which Respondent purposefully connected Liu with the PAC, arranging for her \$10,000 contribution to be used by the PAC to support the Zhou Committee, purposefully evading campaign finance laws.

Additionally, failure to register and report as a campaign consultant in this case meant the Respondent was absent from the Commission's database of consultants while providing services to the Zhou Committee. Respondent deprived voters of information pertinent to the Mayoral campaign.



Finally, Respondent impeded the staff's investigation, including by ignoring emails and phone calls; failing to provide information in response to a subpoena; and sending letters demanding millions of dollars from the Commission and individual staff members if the investigation was not suspended.

In mitigation, Zhou did not win the election. There is also no history of prior violations from Respondent. Finally, this appears to be an isolated incident.

### **C. Comparable Enforcement Actions**

#### Campaign Finance Violations

The closest comparison is *In the Matter of Patrick J. Furey*, Case No. 14/1118, a case before the FPPC in which a campaign consultant coordinated with a PAC to facilitate \$35,174 in spending on postage, literature, phone banking, billboards, and other advertisements on behalf of the Furey campaign. In that case, Respondent's coordination turned the expenditures into contributions. The FPPC settled six counts for the failure to report making late contributions; the failure to report receiving late contributions; and the failure to report making and receiving contributions on semi-annual statements. The FPPC can impose a maximum penalty of \$5,000 for each of counts one through six. In that case, the FPPC imposed a fine of \$4,500 for each count, resulting in a total of \$27,000 (\$34,900 in 2023 dollars) for the counts related to campaign coordination.

*In the Matter of Patrick J. Furey* involved over three times as much in contributions as this matter. In imposing nearly the maximum penalty for each count, the FPPC cited individual emails in that case where Respondents explicitly acknowledged the deceit, including an email from the campaign manager stating that it "[m]ight be somebody else paying for it, if you know what I mean." Respondent in this case similarly engaged in willful violation of contribution limits, connecting a maxed out donor with the PAC to put out the very same communications the Committee was already using. However, evidence does not suggest the same level of knowing and intentional flouting of the law as in *Furey*. Also, in that case, the FPPC included Respondent cooperation as a mitigating factor.

The Enforcement Division recommends a penalty of \$1,700 per count for counts one through six, for a total of \$10,200 in penalties related to the coordinated expenditure. This is slightly less than half of the penalty imposed in *Furey*. The Enforcement Division recommends a smaller penalty due to the significantly lower amount of money at issue, both in terms of the coordinated expenditure and the total amount of spending by the candidate. This results in a total penalty for coordination that is roughly equivalent to the amount of money at issue in these counts.

#### Campaign Consulting

This Commission approved a settlement for \$3,800 earlier this year *In the Matter of Bearstar Strategies*, Case No. 2223-486, in which Respondent failed to register and report \$77,465 in payments as a campaign consultant. In that case, Respondent self-reported violations upon becoming aware of their obligations to register and report, significantly mitigating the harm. This Commission also approved a settlement in 2018 for \$4,500 (\$5,400 in 2023 dollars) *In the Matter of Quintin Mecke*, Case No. 27-151015, in which the Respondent failed to register and report as a campaign consultant two separate times, thereby failing to report \$25,000 in payments. In that case, the Commission specifically cited that the penalty represented 18 percent of the total payments.

The Enforcement Division recommends a penalty of \$750 for count seven. This represents just over 15 percent of the \$4,795 received by the Respondent for his consulting work. This is slightly lower than *In the Matter of Quintin Mecke*, primarily because this is Respondent's first such violation and it does not appear that the Respondent willfully violated campaign consulting reporting laws.

#### Withholding Evidence

This Commission approved a penalty of \$1,000 in 2020 for Count 1 *In the Matter of Keep San Francisco Affordable*, Case Nos. 1516-43 and 1718-24, in which the Respondent committee misreported its statement of organization two months late, effectively hiding its campaign finance

activity during its first two months of existence. In that case, the Commission noted that the group's non-cooperation by filing misleading information to hide its activity was more concerning than the underlying reporting violations. The Commission also approved a penalty of \$5,000 in 2022 for Count 4 *In the Matter of Barbara Mumby*, Case No. 1920-051, in which Respondent Mumby admitted to providing altered documentation in an effort to conceal the underlying conflict of interest violations.

In this case, Respondent failed to cooperate with the Commission's emails, phone calls, document requests, and subpoenas. Respondent also sent threats to the Commission demanding either money or the end of the investigation. The Enforcement Division requests a penalty of \$5,000 for count eight, believing this to be appropriate given Respondent's long running pattern of noncooperative conduct and proper deterrence for the subjects of future investigations.

**D. Requested Penalty**

After consideration of all circumstances in this case, aggravation and mitigation factors, and penalties in prior cases, the Enforcement Division requests a total penalty of \$15,950.

**Counts One through Six:** \$10,200 (\$1,700 each)

**Count Seven:** \$750

**Count Eight:** \$5,000

**Total:** \$15,950

**VI. CONCLUSION**

For the foregoing reasons, the Enforcement Division respectfully requests a proposed decision imposing an administrative penalty of \$15,950.

Respectfully submitted this 8<sup>th</sup> day of November

DocuSigned by:  
*Patrick Ford*  
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Patrick Ford, Director of Enforcement