

Zachary D’Amico
Senior Investigator and Legal Analyst
Olabisi Matthews
Senior Investigator and Legal Analyst

Jeffrey Zumwalt
Acting Director of Enforcement

Before the San Francisco Ethics Commission

In the Matter of Paul Allen Taylor,)
) **Case No. 20-243 (1920-031)**
)
Respondent) **Proposed Finding of Fact and Legal Conclusions**
)

I. INTRODUCTION

This matter came before the Ethics Commission on February 9, 2024 for a Hearing on the Merits pursuant to Enforcement Regulation 9 on the basis that Paul Allen Taylor (“Respondent”) violated the campaign finance provisions within Article I of the San Francisco Campaign and Governmental Conduct Code (“SF C&GCC”) when, on behalf of Ellen Lee Zhou for Mayor 2019 (“the Zhou Committee”) he coordinated expenditures with the Asian American Freedom Political Action Committee (“the PAC”).

The following persons were present at the hearing: (1) all five members of the Ethics Commission; (2) Senior Investigator Zachary D’Amico for the Enforcement Division; (3) Senior Investigator Jeffrey Zumwalt (witness for the Enforcement Division); (4) Mark Tsuneishi (witness for the Enforcement Division); (5) Director Patrick Ford for the Enforcement Division; (6) Deputy City Attorney Jana Clark; and (5) Respondent Paul Allen Taylor¹.

¹ Respondent appeared unrepresented at the beginning of the hearing where he stated that he was making a special appearance challenging the sufficiency of service and the jurisdiction of the Commission over the matter. He claimed that the Commission was in default of \$110million for failure to respond to his demands.

The Commission heard arguments from Senior Investigator D'Amico and heard testimony from Mr. Tsuneishi and Senior Investigator Zumwalt. Thirty-four exhibits were also admitted into evidence.

After assessing the credibility of the witnesses, evaluating all of the evidence, and considering the arguments of the Enforcement Division, the Commission makes the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

1. Ellen Lee Zhou (“Zhou”) established the Zhou Committee as a candidate-controlled committee supporting her candidacy for Mayor of San Francisco in January 2019 and served as treasurer of the Zhou Committee.
2. Paul Allen Taylor (“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.
3. The Asian American Freedom Political Action Committee (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.
4. In the Fall of 2019, Respondent, Zhou, and the Zhou Committee posted to the internet photographs of cartoon campaign advertisements supporting Zhou’s candidacy and containing disclaimer statements indicating that the advertisements were paid for by the Zhou Committee. Respondent submitted to the Ethics Commission copies of a

He exited the hearing room before the case was presented before the Commission and did not return at any point through the conclusion of the hearing. Respondent did not provide any testimony or other form of evidence at the hearing.

cartoon advertisement paid for by the Zhou Committee for purposes of disclaimer requirement verification. Respondent, through his company What Engineering, Inc. was paid a total of \$4,795 by the Zhou Committee.

5. Respondent publicly supported the Zhou Committee and Zhou's candidacy for Mayor, facilitated a meeting between the PAC, through Tsuneishi, and a campaign donor Margaret Liu ("Liu"). On September 16, 2019, Liu made a \$10,000 contribution to the PAC for the purposes of purchasing billboard advertisements supporting Zhou's candidacy for Mayor and subsequently the Zhou Committee.
6. Respondent further facilitated a \$10,000 contract between the PAC and Clear Channel Outdoor, a company that provides outdoor billboards, for 16 billboards supporting Zhou's candidacy for Mayor. This involved Respondent providing the artwork to be used for the PAC's advertisements and making decisions about the timing and location of the billboards for the PAC's advertisements.
7. Tsuneishi testified that Respondent informed him that the PAC's expenditure for billboards supporting Zhou's candidacy had not been coordinated with the Zhou Committee. Tsuneishi also testified that Respondent provided the artwork utilized for the billboard advertisements, which are substantially similar to artwork previously utilized on Zhou Committee campaign advertisements.
8. The PAC reported the \$10,000 payment for the billboard advertisements as an independent expenditure.

9. The PAC did not report its contribution to the Zhou Committee on its post-election campaign statement (Form 460) filed in January 2020.
10. Respondent never registered with the Ethics Commission as a campaign consultant.
11. Investigators properly served Respondent with a subpoena duces tecum for documents related to this investigation, and Respondent failed to properly respond to the subpoena or produce documents. Respondent also engaged in conduct attempting to thwart the investigation by threatening monetary fines and criminal and civil liability against Commissioners, Investigators, and other Ethics Commission staff for attempting to enforce provisions of the City's campaign finance laws.

III. CONCLUSIONS LAW

A. Violations Resulting from Coordination (Counts 1 – 6)

1. Laws regarding Coordination

Under City and State law, coordination of campaign expenditures between a candidate, either directly or through an agent, and another committee requires such expenditures to be treated as contributions to the candidate on whose behalf the expenditure is made. SF C&GCC § 1.115; Cal. Gov. Code § 85500(b). Coordination exists when (a) “[t]he expenditure is made at the request, suggestion, or direction of, or in cooperation, consultation, concert or coordination with, the candidate”; or (b) “[t]he communication funded by the expenditure is created, produced or disseminated ... [a]fter 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). Under

these rules, “the term[] ‘candidate’ includes an agent of the candidate when the agent is acting within the course and scope of the agency.” *Id.* at § 1.115(d).

Additionally, there are several rebuttal presumptions that exist that can also establish the coordination of an expenditure between two committees. This includes instances where a “communication replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication designed, produced, paid for or distributed by the candidate.” *Id.* at § 1.115(b)(4).

In the event that an expenditure is coordinated, as defined by the law, the expenditure constitutes an in-kind contribution to the candidate on whose behalf the expenditure was made. Such expenditures must be reported as contributions to the candidate and not as independent expenditures. Applicable limits on candidate contributions apply in such instances.

2. Findings of Law regarding Coordination

Respondent’s conduct beginning July 2019 and throughout the course of the Zhou campaign demonstrates that Respondent acted as an agent of Zhou and the Zhou Committee. Respondent participated in communications with both the Ethics Commission and OutFront Media on behalf of the Zhou Committee regarding Zhou Committee campaign advertisements. Respondent arranged the development of the artwork for the Zhou Committee’s advertisements. Respondent was paid \$4,795 by the Zhou Committee, which appears to be in compensation for his services to the Zhou Committee. These facts establish that Respondent was acting as an agent of the Zhou Committee.

Respondent then made arrangements for a \$10,000 contribution to the PAC to fund additional advertisements supporting Zhou’s candidacy for Mayor. Respondent connected the

donor Margaret Liu with Tsuneishi; without this introduction, the contribution by Liu to the PAC in support of Zhou would not have occurred. Additionally, Respondent facilitated the cartoon advertisements for the PAC's billboards which were substantially similar to cartoon advertisements previously displayed by Zhou and the Zhou Committee. Respondent made decisions about when and where the PAC's advertisements would be displayed on various billboards.

Respondent also informed Tsuneishi that the expenditure for the billboard advertisements had not been coordinated in any way with the Zhou Committee. However, in reality the advertisements were obvious reproductions of material created for and previously published by the Zhou Committee. Additionally, Respondent was clearly operating as an agent of the Zhou Committee, as evidenced by his prior work on behalf of the Zhou Committee and his compensation received from the Zhou Committee.

The involvement of the Zhou Committee, through its agent Respondent, in making decisions about the timing, content, and location of the PAC's advertisements is sufficient to establish that the expenditure by the PAC was coordinated with the Zhou Committee. Additionally, both the republication of Zhou Committee materials and the involvement of the Zhou Committee's agent independently give rise to a presumption of coordination. In all instances, this coordination is the direct result of Respondent's actions. Because Respondent coordinated the PAC's expenditure with the Zhou Committee, under the law the Zhou Committee accepted a \$10,000 in-kind contribution from the PAC. As a direct result of this \$10,000 in-kind contribution, both the Zhou Committee and the PAC violated the \$500 candidate committee contribution limit and multiple campaign finance reporting laws.

Counts 1 & 2: Violations of \$500 Contribution Limit by Zhou Committee and PAC caused by Respondent's coordination.

San Francisco candidates are prohibited from receiving contributions in excess of \$500 from a single person or committee. SF C&GCC § 1.114(a). Likewise, no person may make a contribution to a San Francisco candidate in excess of \$500. *Id.* As a direct result of his coordination between the Zhou Committee and the PAC, Respondent caused the PAC to make a contribution of \$10,000 to the Zhou Committee which is \$9,500 above the \$500 limit (20 times the legal limit). City law holds that persons who caused another person to commit violations of campaign finance laws are themselves liable for such violations. SF Charter § C3.699-13(d). Respondent is thus liable for both violations by the Zhou Committee and the PAC.

Counts 3 & 4: Violations of campaign statement reporting requirements caused by Respondent's coordination.

Campaign committees are required to report certain information on campaign statements including contributions received and made to support candidates for City elective office. Gov't Code § 84211(a), 84211(c), 84211(f), 84211(k)(5) and SF C&GCC § 1.106. City law holds that persons who caused another person to commit violations of campaign finance laws are themselves liable for such violations. SF Charter § C3.699-13(d).

Respondent's coordination between the Zhou Committee and the PAC created the legal obligations for both the Zhou Committee and the PAC to report the contributions.

Regarding the Zhou Committee, because of his coordination between the Zhou Committee and the PAC, Respondent caused the Zhou Committee's failure to report an in-kind contribution of the \$10,000 payment for billboard advertisements on a semi-annual campaign statement (Form 460) prior to the 2019 election. Although the Zhou Committee was ultimately

responsible for reporting the contribution, there is no evidence that Respondent informed Zhou or the Zhou Committee about his activities with the PAC, the republication of the cartoon advertisements in the PAC's billboards, nor that the Zhou Committee needed to report the expenditure as a campaign contribution. Respondent not only created the legal obligation but was also directly responsible for the failure of the Committee to meet this reporting obligation. It was reasonably foreseeable that by coordinating the billboard advertisements and not informing the Zhou Committee of the coordination of expenditures, the Zhou Committee would fail to report the contribution. It is thus appropriate to penalize Respondent for causing the Zhou Committee's reporting violations.

Likewise, Respondent's coordination of expenditures caused what the PAC believed to be an independent expenditure to become an in-kind contribution, thereby creating a legal obligation on the part of the PAC to report the contribution. The PAC's representative Tsuneishi testified during the hearing that Respondent informed him that Respondent was not acting on behalf of the Zhou Committee. Thus, the PAC's failure to report the contribution to the Zhou Committee was a direct result of Respondent's misrepresentation to the PAC and Respondent's failure to disclose his true connection to and relationship with the Zhou Committee. Although there was an intervening duty by the PAC to report the contribution, it was reasonably foreseeable that by coordinating the contribution and not informing the PAC of the coordination, the PAC would fail in its obligation to properly report the contribution. It is thus appropriate to penalize Respondent for causing the PAC's reporting violations.

Counts 5 & 6: Violations of late contribution reporting requirements caused by Respondent's coordination.

Committees are also required to report contributions of \$1,000 or more given or received within 90 days of an election on late contribution reports within 48 hours of when the contribution is made. Gov't Code § 84203 and SF C&GCC § 1.106. City law holds that persons who caused another person to commit violations of campaign finance laws are themselves liable for such violations. SF Charter § C3.699-13(d). Similar to counts 3 and 4, Respondent's coordination created the legal obligation that required both the Zhou Committee and the PAC to report the \$10,000 contribution as a late contribution. As discussed above, because Respondent did not inform Zhou about the billboard advertisements and misrepresented that he was not working on behalf of the Zhou Committee, Respondent caused both the Zhou Committee and the PAC to fail to report the PAC's \$10,000 billboard advertisement as a late contribution on the Form 497. Because Respondent caused both the Zhou Committee and the PAC to fail to report the late contribution, Respondent is thus liable for causing violations by the Zhou Committee and the PAC.

B. Campaign Consultant Registration and Reporting Violation (Count 7)

A campaign consultant is any person that receives \$1,000 or more in a calendar year for campaign consulting services which includes spending or authorizing the expenditure of campaign funds, selecting vendors to provide goods or services for the campaign, and producing or authorizing the production of campaign literature and print advertising. SF C&GCC § 1.505(a)-(d). Campaign consultants are required to register as such with the Ethics Commission for each client and to file quarterly reports disclosing certain activities. *Id.* § 1.515(a).

Count 7: Violation of campaign consultant reporting requirements.

The Zhou Committee paid Respondent more than \$1,000 for providing campaign consulting services to the Zhou Committee, which required Respondent to register as a campaign consultant and file regular reports. The Zhou Committee made two payments totaling \$4,795 to What Engineering, Inc, Respondent's company, coded on the Form 460 as being for "Literature" and a "Meeting." Respondent additionally communicated with Ethics Commission staff about disclaimer compliance for a Zhou Committee poster and with OutFront Media regarding billboard advertisements for the Zhou Committee. Respondent's conduct constitutes "producing or authorizing the production of campaign literature and print advertising" for the Zhou Committee and thus qualified Respondent as a campaign consultant. As such, Respondent was required to register as a campaign consultant with the Ethics Commission but failed to do so, thereby violating the registration and reporting requirements under City law.

C. Withholding of Information from the Ethics Commission (Count 8)

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. City law authorizes the Ethics Commission, including its Executive Director, to issue subpoenas in furtherance of its duties under the charter. SF C&GCC § 1.171. Individuals are prohibited from withholding or failing to provide required information, and this prohibits withholding any documents requested pursuant to a properly served subpoena duces tecum in connection with an Ethics Commission investigation. SF C&GCC § 1.170(f).

There is no indication in the Charter or the Campaign and Governmental Conduct Code that compliance with a duly issued subpoena is only required after a judicial order has been issued by the superior court. A judicial order would be a part of a separate track of subpoena enforcement designed to compel compliance with the subpoena through the courts. In such a civil proceeding, an order of contempt issued by the superior court would be the penalty for noncompliance. In contrast, the Commission possesses a separate and independent authority to issue administrative penalties under section 1.170 for failure to comply with a subpoena. This penalty authority for withholding required information is a core component of the Commission's investigative and enforcement powers.

Count 8: Withholding of information from the Ethics Commission.

Investigators requested from Respondent information relevant to an Ethics Commission investigation and also personally served Respondent with a subpoena for documents in furtherance of the investigation of this matter. Respondent was required to provide the documents requested in the subpoena. Respondent failed to provide any responsive documents to Ethics Commission investigators, including those requested through the subpoena. In doing so, Respondent impeded the Ethics Commission's ability to fully and timely investigate all alleged violations of law. By failing to properly respond to the subpoena, Respondent withheld information that was required to be produced to allow the Ethics Commission to perform its duties under the Charter. Respondent's failure, therefore, interfered with the Ethics Commission's investigation in violation of City law.

WHEREFORE, it is this _____ day of _____, 2024

ORDERED, that the following penalties are assessed against Respondent:

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: \$1,700

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: \$1,700

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): \$1,700

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): \$1,700

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): \$1,700

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: \$1,700

COUNT SEVEN: Respondent violated SF C&GCC § 1.510 by failing to register as a campaign consultant with the Ethics Commission: \$750

COUNT EIGHT: Respondent violated SF C&GCC § 1.170(f) by withholding information sought by the Ethics Commission: \$5,000

Total: \$19,950