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10  
11 BEFORE THE SAN FRANCISCO  
12 ETHICS COMMISSION

13 In the Matter of ) SFEC Complaint No. 13-150618  
14 )  
15 JOHN AVALOS, )  
16 )  
17 Respondent. ) **STIPULATION, DECISION**  
18 ) **AND ORDER**  
19 )  
20 )  
21 )

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22 THE PARTIES STIPULATE AS FOLLOWS:

23 1. This Stipulation, Decision, and Order (“Stipulation”) is made and entered  
24 into by and between John Avalos (“Respondent”) and the San Francisco Ethics  
25 Commission (“the Commission”).

26 2. Respondent and the Commission agree to settle and resolve all factual and  
27 legal issues in this matter and to reach a final disposition without an administrative

1 hearing. Upon approval of this Stipulation and full performance of the terms outlined in  
2 this Stipulation, the Commission will take no future action against Respondent, and this  
3 Stipulation shall constitute the complete resolution of all claims by the Commission  
4 against Respondent related to the violations of law described in Exhibit A. Respondent  
5 understands and knowingly and voluntarily waives all rights to judicial review of this  
6 Stipulation and any action taken by the Commission or its staff on this matter.  
7

8  
9 3. Respondent acknowledges responsibility for and agrees to pay an  
10 administrative penalty in the amount of Twelve Thousand, One Hundred Forty-Six  
11 Dollars (\$12,146) for ten violations of the San Francisco Campaign and Governmental  
12 Conduct Code (the "SF C&GCC") sections 1.106 and 1.109, as set forth in Exhibit A.  
13 Respondent agrees that \$12,146 is a reasonable administrative penalty.  
14

15 4. Within ten (10) business days of the Commission's approval of this  
16 Stipulation, Respondent shall deliver to the following address the sum of \$12,146 in the  
17 form of a check or money order made payable to the "City and County of San  
18 Francisco:"  
19

20 San Francisco Ethics Commission  
21 Attn: Enforcement & Legal Affairs Division  
22 25 Van Ness Avenue, Suite 220  
23 San Francisco, CA 94102

24 5. If Respondent fails to comply with the terms of this Stipulation, then the  
25 Commission may reopen this matter and prosecute Respondent under Section C3.699-  
26 13 of the San Francisco Charter for any available relief.  
27

1           6.       Respondent understands, and hereby knowingly and voluntarily waives,  
2 any and all procedural rights under Section C3.699-13 of the San Francisco Charter and  
3 the Commission’s Enforcement Regulations with respect to this matter. These include,  
4 but are not limited to, the right to appear personally at any administrative hearing held  
5 in this matter, to be represented by an attorney at Respondent’s expense, to confront  
6 and cross-examine all witnesses testifying at the hearing and to subpoena witnesses to  
7 testify at the hearing.  
8

9  
10           7.       Respondent understands and acknowledges that this Stipulation is not  
11 binding on any other government agency with the authority to enforce the San  
12 Francisco Campaign & Governmental Conduct Code section 1.100 *et seq.*, and does not  
13 preclude the Commission or its staff from cooperating with or assisting any other  
14 government agency in its prosecution of Respondent for any allegations set forth in  
15 Exhibit A, or any other matters related to those violations of law set forth in Exhibit A.  
16

17  
18           8.       This Stipulation is subject to the Commission’s approval. In the event the  
19 Commission declines to approve this Stipulation, the Stipulation shall become null and  
20 void, except Paragraph 9, which shall survive.  
21


22           9.       In the event the Commission rejects this Stipulation, and further  
23 administrative proceedings before the Commission are necessary, Respondent agrees  
24 that the Stipulation and all references to it are inadmissible. Respondent moreover  
25 agrees not to challenge, dispute, or object to the participation of any member of the  
26

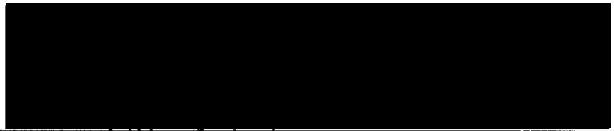
1 Commission or its staff in any necessary administrative proceeding for reasons  
2 stemming from his or her prior consideration of this Stipulation.

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

9  
10  
11 11. This Stipulation shall be construed under, and interpreted in accordance  
12 with, the laws of the State of California. If any provision of the Stipulation is found to be  
13 unenforceable, the remaining provisions shall remain valid and enforceable.

14  
15 12. The parties hereto may sign different copies of this Stipulation, which will  
16 be deemed to have the same effect as though all parties had signed the same  
17 document.  
18

19  
20 Dated: 1-8-2019   
21 LeeAnn Pelham, Executive Director  
22 San Francisco Ethics Commission


23  
24 Dated: 1-8-19   
25 John Avalos  
26

**DECISION AND ORDER**

1  
2 The foregoing Stipulation of the parties in the matter of "John Avalos, SFEC  
3 Complaint No. 13-150618," including the attached Exhibit A, is hereby accepted as the  
4 final Decision and Order of the San Francisco Ethics Commission, effective upon  
5  
6 execution below by the Chairperson.

7 IT IS SO ORDERED.

8  
9  
10 Dated: 18 January 2019

  
\_\_\_\_\_  
Daina Chiu, Chairperson  
San Francisco Ethics Commission

# Exhibit A

## I. Applicable Law

The San Francisco Campaign & Governmental Conduct Code ("SF C&GCC") Section 1.150(a) requires the Ethics Commission to audit all candidates who receive public financing in connection with their campaigns to City elective office.

SF C&GCC Section 1.106 incorporates into local law the provisions of the Political Reform Act, California Government Code Section 81000 *et seq.*, as they apply to local elections.

California Government Code section 84200(a) provides that elected officers, candidates, and committees pursuant to California Government Code section 82013(a) shall file semi-annual statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31. These public disclosure statements report itemized campaign contributions, expenditures, outstanding debts and cash on hand. *See* Cal. Govt. Code § 84211. These campaign statements, known as Forms 460, are made immediately available to the public for review upon their filing.

A committee must continue filing semi-annual statements until it has terminated by filing a Termination Statement Form 410. Cal. Govt. Code § 84214; FPPC Regulation 18404(b). SF C&GCC section 1.109 and California Government Code section 84104 provide that each candidate, treasurer, and elected officer must maintain detailed accounts, records, bills, and receipts that are necessary to prepare campaign statements, and must retain the documents for a period of four years following the date, the appropriate campaign statement is filed.

According to the findings set forth in SF C&GCC section 1.100, the Campaign Finance Reform Ordinance ("CFRO") was necessary to:

- "[p]lace realistic and enforceable limits on the amount individuals may contribute to political campaigns . . . ;"
- "[e]nsure that all individuals and interest groups in our city have a fair opportunity to participate in elective and governmental processes;"
- "[m]ake it easier for the public, the media and election officials to efficiently review and compare campaign statements by requiring committees that meet certain financial thresholds to file copies of their campaign statements on designated electronic media;" and
- "[h]elp restore public trust in governmental and electoral institutions."

## II. Summary of Material Facts

On April 18, 2011, then-Supervisor John Avalos ("Respondent") formed the committee "John Avalos for Mayor 2011" ("the Committee") as a candidate-controlled committee to advance his candidacy for Mayor in the November 2011 election. Respondent qualified for the City's public financing program and received \$461,479 in public funds in support of his candidacy.

During his campaign, Respondent engaged only volunteer treasurers. Respondent returned approximately \$48,000 in unexpended funds to the City's General Fund.

On June 15, 2015, Ethics Commission audit staff completed the final audit for Respondent's Committee. On June 18, 2015, audit staff referred the audit report to enforcement staff, which included the material findings that the Committee failed to maintain complete campaign records for contributions and expenditures and failed to disclose campaign expenditures. Also on June 18, 2015, and pursuant to the requirement under Charter section C3.699-13(a), enforcement staff referred the matter to the City Attorney and District Attorney, thereby satisfying the statute of limitations for administrative enforcement that CFRO provides. SF C&GCC § 1.168(c)(3). On June 30, 2015, Respondent terminated his candidate committee.

In December of 2015, Respondent provided the Commission additional documents for review, and on February 29, 2016, the Commission provided Respondent a letter summarizing its analysis of the documents Respondent had submitted and updated its audit findings accordingly. The Commission's updated audit still included findings that the Committee failed to maintain complete campaign records for contributions and expenditures and failed to disclose campaign expenditures in violation of SF C&GCC sections 1.106 and 1.109. In total, Respondent failed to provide documentation to the Ethics Commission evidencing \$2,278 in non-monetary contributions (or 1 percent of the Committee's total contributions), Respondent failed to provide documentation to the Ethics Commission evidencing \$103,164 in expenditures (or 16 percent of total expenditures), and Respondent failed to timely report approximately \$137,471 (or 21 percent of total expenditures) on its campaign statements (FPPC Form 460).

Following issuance of the updated audit and further investigation into its findings, Ethics Commission staff issued a probable cause report on January 31, 2018. On March 31, 2018, Respondent provided a written response to the Commission. The Ethics Commission held a probable cause hearing regarding this matter on May 7, 2018. Respondent attended the Probable Cause Hearing with representation. At the conclusion of the hearing and on the basis of the entire evidentiary record, the Commission determined that there was probable cause to believe that Respondent committed all ten violations as presented in the Probable Cause Report.

### **III. Conclusions of Law**

The parties stipulate to the following conclusions of law.

#### **Counts 1 and 2**

#### **Failure to maintain complete records for contributions received.**

In total, Respondent failed to provide documentation to the Ethics Commission evidencing \$2,278 in non-monetary contributions, or 1 percent of the Committee's total contributions.

**Count 1.** By failing to maintain complete contribution records covering the reporting period of September 25 through October 22, 2011, Respondent committed one violation of SF C&GCC §§ 1.106 & 1.109.

**Count 2.** By failing to maintain complete contribution records covering the reporting period of October 23 through December 2011, Respondent committed one violation of SF C&GCC §§ 1.106 & 1.109.

**Counts 3 through 6**  
**Failure to maintain complete records for expenditures made.**

In total, Respondent failed to provide documentation to the Ethics Commission evidencing \$103,164 in expenditures, or 16 percent of total expenditures.

**Count 3.** By failing to maintain complete expenditure records covering the reporting period of January through June 2011, Respondent committed one violation of SF C&GCC §§ 1.106 & 1.109.

**Count 4.** By failing to maintain complete expenditure records covering the reporting period of July through September 24, 2011, Respondent committed one violation of SF C&GCC §§ 1.106 & 1.109.

**Count 5.** By failing to maintain complete expenditure records covering the reporting period of September 25 through October 22, 2011, Respondent committed one violation of SF C&GCC §§ 1.106 & 1.109.

**Count 6.** By failing to maintain complete expenditure records covering the reporting period of October 23 through December 2011, Respondent committed one violation of SF C&GCC §§ 1.106 & 1.109.

**Counts 7 through 10**  
**Failure to disclose campaign expenditures.**

In total, Respondent failed to timely report approximately \$137,471, or 21 percent of total expenditures on its campaign statements (FPPC Form 460) over four reporting periods in 2011: 1/1-6/30; 7/1-9/24; 9/25-10/22; and 10/23-12/31.

**Count 7.** By failing to disclose expenditures covering the reporting period of January through June 2011, Respondent committed one violation of SF C&GCC §§ 1.106 & 1.109.

**Count 8.** By failing to disclose expenditures covering the reporting period of July 1 through September 24, 2011, Respondent committed one violation of SF C&GCC §§ 1.106 & 1.109.

**Count 9.** By failing to disclose expenditures covering the reporting period of September 25 through October 22, 2011, Respondent committed one violation of SF C&GCC §§ 1.106 & 1.109.

**Count 10.** By failing to disclose expenditures covering the reporting period of October 23 through December 2011, Respondent committed one violation of SF C&GCC §§ 1.106 & 1.109.



#### **IV. Penalty Assessment**

This matter consists of ten violations of SF C&GCC sections 1.106 and 1.109. The San Francisco Charter authorizes the Commission to assess a monetary penalty to the general fund of the City of up to five thousand dollars for each violation or three times the amount which the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater. SF Charter § C3.699-13(c).

When determining penalties, the Ethics Commission considers all of the relevant circumstances surrounding the case, including but not limited to: (1) the severity of the violation; (2) the presence or absence of any intention to conceal, deceive, or mislead; (3) whether the violation was willful; (4) whether the violation was an isolated incident or part of a pattern; (5) whether the respondent has a prior record of violations of law; (6) the degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations; and (7) the respondent's ability to pay will be considered a mitigating factor if the respondent provides documentation to the Director of Enforcement of such inability, which must include three years' worth of income tax returns and six months' worth of bank records or accounting statements, at a minimum. San Francisco Ethics Commission Enforcement Regulations ("Enforcement Regulations") section 9(D).

Applying the penalty factors enumerated above and considering that the objectives of the Campaign Finance Reform Ordinance are impossible to meet if candidates do not comply with reporting and public disclosure requirements in the first instance, Staff believes the Respondent's violations are significant. The Campaign Finance Reform Ordinance's public reporting requirements assist voters in making informed electoral decisions and, where public funds are involved, enable the public and the Ethics Commission to confirm that candidates expend taxpayer dollars only in permissible ways. Both the public and other candidates who comply with the laws suffer an injury when insufficient documentation and a lack of disclosure preclude auditors from verifying that a candidate abided by the same rules that apply equally to other candidates.

In addition, Respondent is a former member of the Board of Supervisors and ran a successful campaign for Supervisor. Therefore, he was familiar with the San Francisco Campaign & Governmental Conduct Code and should have been familiar with campaign statement filing requirements.

In mitigation, Respondent has fully cooperated with the Ethics Commission since 2015, and he has no history of prior enforcement with the Commission. In addition, Respondent promptly returned to the City's General Fund the unexpended funds remaining in his candidate trust account following the election, an amount that equaled approximately \$48,000 and which Respondent might have spent instead on a professional treasurer had he engaged one during the course of his campaign. Furthermore, Staff acknowledges that this matter is several years old, and that significant time passed between the campaign at issue and this resolution of the matter. Respondent has assumed full responsibility for the violations made by his campaign treasury, including through his cooperation and by having provided

documentation to auditors in December of 2015. Finally, because the Committee terminated in June of 2015, the Respondent bears the penalty for these violations as personal liability. Relevantly, Respondent has demonstrated a partial inability to pay pursuant to Enforcement Regulations section 9(D)(7).

Therefore, after considering the penalty factors and prior analogous cases, Staff proposes penalties for the violations of City law as follows: Counts 1 and 2 - \$1,217 each; Counts 3 through 6 - \$1,214 each; and Counts 7 through 10 - \$1,214 each. The total proposed penalty for Counts 1 through 10 is \$12,146, which represents five percent of Respondent's total undocumented contributions and unreported and undocumented expenditures. The parties agree that the \$12,146 administrative penalty is warranted because the amount of penalty reflects the lack of documentation and disclosure by Respondent and it is high enough to promote a deterrent effect, while not being so high as to unduly burden a respondent who has demonstrated a partial inability to pay.