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San Francisco Ethics Commission
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BEFORE THE SAN FRANCISCO
ETHICS COMMISSION

In the Matter of)	SFEC Complaint No. 2223-484
)	
Neighbors for a Better San Francisco Advocacy)	
and Jay Cheng,)	
)	STIPULATION, DECISION, AND ORDER
Respondents.)	
)	
_____)	

THE PARTIES STIPULATE AS FOLLOWS:

1. This Stipulation, Decision, and Order (Stipulation) is made and entered into by and between Neighbors for a Better San Francisco Advocacy (“Neighbors Advocacy”), Jay Cheng (“Cheng”), and the San Francisco Ethics Commission (“the Commission”). Neighbors Advocacy and Cheng will be collectively referred to as the Respondents.

2. Respondents and the Commission agree to settle and resolve all factual and legal issues in this matter, and to reach a final disposition without an administrative hearing.

Respondents represent that Respondents have accurately furnished to the Commission all information and documents that are relevant to the conduct described in Exhibit A. Upon approval of this Stipulation and execution of payment of the administrative penalty set forth in Exhibit A, the

Commission will take no future action against Respondents, including any officer, director, employee, or agent of Respondents, regarding the violations of law described in Exhibit A, and this Stipulation shall constitute the complete resolution of all claims by the Commission against Respondents, including any officer, director, employee, or agent of Respondents related to such violations. Respondents understand and knowingly and voluntarily waive all rights to judicial review of this Stipulation and any action taken by the Commission or its staff on this matter.

3. Respondents acknowledge responsibility for and agree to pay an administrative penalty as set forth in Exhibit A. Respondents agree that the administrative penalty set forth in Exhibit A is a reasonable administrative penalty.

4. Within ten business days of the Commission's approval of this Stipulation, Respondents shall either pay the penalty through the City's online payment portal or otherwise deliver to the following address the sum as set forth in Exhibit A in the form of a check or money order made payable to the "City and County of San Francisco":

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

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

6. Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural rights under Section C3.699-13 of the San Francisco Charter and the Commission's Enforcement Regulations with respect to this matter. These include, but are not limited to, the right to appear personally at any administrative hearing held in this matter, to be represented by an

attorney at Respondent's expense, to confront and cross-examine all witnesses testifying at the hearing and to subpoena witnesses to testify at the hearing.

7. Respondents understand and acknowledge that this Stipulation is not binding on any other government agency with the authority to enforce the San Francisco Campaign & Governmental Conduct Code section 1.100 *et seq.*, and does not preclude the Commission nor its staff from cooperating with or assisting any other government agency in its prosecution of Respondents for any allegations set forth in Exhibit A, or any other matters related to those violations of law set forth in Exhibit A.

8. This Stipulation is subject to the Commission's approval. In the event the Commission declines to approve this Stipulation, the Stipulation shall become null and void, except Paragraph 9, which shall survive.

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

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

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

12. The parties hereto may sign different copies of this Stipulation, which will be deemed to have the same effect as though all parties had signed the same document. Verified electronic signatures shall have the same effect as wet signatures.

07-23-2024 | 10:27:19 PDT 
Dated: _____

PATRICK FORD, EXECUTIVE DIRECTOR
SAN FRANCISCO ETHICS COMMISSION

07-22-2024 | 16:51:24 PDT 
Dated: _____

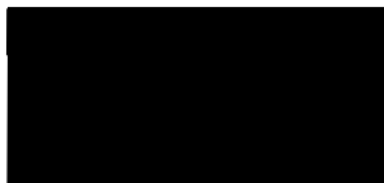
Jay Cheng, on behalf of Neighbors for a Better San Francisco
Advocacy, and himself

DECISION AND ORDER

The foregoing Stipulation of the parties in the matter of "Neighbors for a Better San Francisco Advocacy and Jay Cheng, SFEC Complaint No. 2223-484," including the attached Exhibit A, is hereby accepted as the final Decision and Order of the San Francisco Ethics Commission, effective upon execution below by the Chairperson.

IT IS SO ORDERED.

Dated: 9.27.24



THEIS FINLEV, CHAIRPERSON
SAN FRANCISCO ETHICS COMMISSION

Exhibit A

I. Introduction

Neighbors for a Better San Francisco Advocacy (“Neighbors Advocacy”) is a 501(c)(4) non-profit organization. At all times relevant, Jay Cheng served as Executive Director of Neighbors Advocacy. Since 2020, Neighbors Advocacy has filed with the Commission as a general purpose committee. San Franciscans for Public Safety Supporting the Recall of Chesa Boudin (“Recall Committee”) is a primarily formed committee to support the recall of former District Attorney Chesa Boudin.

Respondents violated City law when they failed to properly report certain expenditures and nonmonetary contributions to the San Francisco Ethics Commission as required by law. Neighbors Advocacy paid its independent contractor, Riff City Strategies (“Riff City”), to provide services to the Recall Committee. During months when Riff City’s political activity constituted over 10% of its work under contract, Neighbors Advocacy was required to report payments to Riff City as either contributions or expenditures to the Recall Committee. Neighbors Advocacy failed to disclose and report these payments, which deprived San Francisco voters of access to important information before the election.

II. Applicable Law

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

Under state and local law, contributions include nonmonetary (or in-kind) contributions, defined as the provision of property, services, or anything else of value, “whether tangible or intangible,” if full and adequate consideration is not received and if the payment is made for political purposes. See Cal. Gov’t Code § 82015(a); § 82025(a); § 82044.

Campaign Statements

Committees are required to file campaign statements that disclose their financial activity via a Form 460. Gov’t Code § 84200(a). Campaign statements covering activity from July 1 through December 31 are due by the following January 31, while statements covering activity from January 1 through June 30 are due by July 31. (*Id.*). City recipient committees are also required to file pre-election statements at certain intervals in the final 45 days before an election. (*Id.*)

Once an organization qualifies as a committee and must file campaign statements, the committee must report all payments, including political expenditures and contributions made. This includes all payments made, reported on Schedule E; nonmonetary contributions and expenditures for personal services made for political purposes, reported on Schedules D and E; and all nonmonetary contributions received, reported on Schedule C.

Late Contribution Reporting – Form 497

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).

A late contribution is any contribution that totals \$1,000 or more and is made to a candidate, a candidate-controlled committee, or a primarily formed committee to support or oppose a candidate or measure during the 90-day period preceding the date of the election. Gov’t Code § 82036. Any City committee in San Francisco that makes or receives a late contribution is required to report the late contribution within 24 hours to the Ethics Commission via a Form 497. *Id.* § 84203(a), 84215(d).

Any committee that makes a late in-kind contribution must notify the recipient in writing of the value. *Id.* § 84203.3(a).

Payment for Personal Services as Contributions and Expenditures

Under state law, payments for personal services can constitute political expenditures when the services are political in nature. Once payments for personal services are established as political expenditures, the law then looks to see if those services were coordinated with the candidate or committee that benefited from the expenditures. SF C&GCC § 1.115. If the payor coordinated with the beneficiary committee, the payments should be reported as a nonmonetary contribution. If the payor did not coordinate with the beneficiary, the payments should be reported as independent expenditures.

The FPPC has stated that if an organization “retains a consultant to work on a political campaign, all of the consultant’s time must be considered an expenditure and, depending on the circumstances, a nonmonetary contribution.” *Cassady Advice Letter*, FPPC Advice Letter 94-287 (1994). In that situation, in which all of the services performed by the consultant for the organization are political in nature, all payments from the organization to the consultant should be treated as political expenditures. *Id.* If those services were coordinated with the candidate or committee that benefited from the expenditure, the payment would be considered an in-kind contribution. *See id.*; see SF C&GCC § 1.115.

When an organization pays an employee or independent contractor to do a range of work, only some of which is political in nature, the law may still treat some of the organization’s payments for those services as political expenditures or in-kind contributions. This would include the “payment of salary, reimbursement for personal expenses, or other compensation by an employer to an employee” or independent contractor. 2 CCR § 18423(a)(1).¹ In instances where an employee or independent contractor performs a range of personal services, some of which are not political in nature, multiple elements must be met in order for any of the employer’s payments to the employee or contractor to constitute political expenditures or contributions.

First, the personal services must be “rendered for political purposes.” This is met if the personal services are carried on “for the purpose of influencing or attempting to influence the action of the

¹ The Fair Political Practices Commission has clarified that when interpreting this regulation, “the term ‘employee’ must be interpreted to include ‘independent contractors.’” *Terry Advice Letter*, FPPC Advice Letter A-84-164 (1984).

voters for or against the nomination or election of one or more candidates, or the qualification or passage of any measure[.]” 2 CCR § 18423(b). This includes, but is not limited to, personal services made “at the behest of a candidate or committee” and any “hours spent developing or distributing communications that expressly advocate the election or defeat of a clearly identified candidate or the passage or defeat of a clearly identified measure.” 2 CCR § 18423(b)(1); (b)(2).

Second, the personal services must be rendered “at the request or direction of the employer.” 2 CCR § 18423(a).

Third, in any given month, the services must account for “more than 10% of compensated time.” *Id.* In other words, for any of the compensated services to be reportable as political expenditures or contributions, the services that are political in nature must represent more than 10% of the total time for which the employee or contractor was compensated by the employer in that month. The FPPC has acknowledged that the law does not specify only one method for calculating compensated time. *Abegg Advice Letter*, FPPC Advice Letter 11-218 (2011).

Once payments for personal services are established as political expenditures, the law then looks to see if those services were coordinated with the candidate or committee that benefited from the expenditures. SF C&GCC § 1.115. If the payor coordinated with the beneficiary committee, the payments should be reported as an in-kind contribution. If there is no coordination, the payments should be reported as independent expenditures.

If compensated personal services meet the test for being a political expenditure or contribution, the value of the services must be reported on campaign statements. The law clarifies that, when determining the monetary value to report as a contribution or expenditure, an organization should use “the pro-rata portion of the gross salary, reimbursement for personal expenses or compensation attributable to the time spent on political activity.” 2 CCR § 18423(c). The contribution or expenditure is considered to be made on the “payroll date” of the relevant payment. *Id.*

Coordination

City and state law require that an expenditure shall be treated as a contribution if there is coordination between the person making the expenditure and the candidate or committee on whose behalf or for whose benefit the expenditure is made. SF C&GCC § 1.115; Cal. Gov. Code § 85500(b).

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 any of several circumstances, including if:

- 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), 1.115(a)(1), 1.115(a)(2).

III. Material Facts and Analysis

Background

This case concerns activity by 501(c)(4) Neighbors Advocacy, which also operates as a general purpose committee. At all times relevant, Jay Cheng (“Cheng”) served as Executive Director of both Neighbors Advocacy and a linked 501(c)(3) Neighbors for Better San Francisco (“Neighbors”).

The Recall Committee formed in April 2021; the recall election for District Attorney Chesa Boudin took place on June 7, 2022. At all times relevant, Mary Jung and Lilly Rapson served as principal officer and campaign manager, respectively, to the Recall Committee. Richard Schlackman, Andrea Shorter, and Maggie Muir, the latter through the entity KMM Strategies, operated as registered campaign consultants to the Recall Committee.

Neighbors Advocacy was the largest donor to the Recall Committee, contributing a total of \$4.47 million to the Recall Committee from June 2021 through May 2022. Neighbors Advocacy regularly filed campaign statements disclosing its monetary and non-monetary contributions to the Recall Committee. Similarly, the Recall Committee regularly filed campaign statements disclosing its receipt of monetary and non-monetary contributions from Neighbors Advocacy. As a result of the extensive support provided by Neighbors Advocacy and as a function of disclaimer requirements, communications sponsored by the Recall Committee were required to prominently feature the fact that major funding was provided by Neighbors Advocacy.

From September 2021 through June 2022, Neighbors Advocacy paid Riff City Strategies a total of \$187,084 for “Strategic Communications & Media Relations.” During all times relevant, Jess Montejano was President of Riff City Strategies. From September 2021 through June 2022, Riff City provided services to the Recall Committee that appear to be substantially similar to the services provided to Neighbors Advocacy during the same period, and these services were facilitated in part through Neighbors Advocacy Executive Director Jay Cheng. The facts underlying this stipulated settlement agreement do not support a finding of any violations of law by either Riff City Strategies or Jess Montejano.

From October 2021 through July 2022, Neighbors paid Brooke Jenkins (“Jenkins”), who had recently resigned as a San Francisco Assistant District Attorney, a total of \$175,770 as an independent contractor for “consulting re: public safety issues” and “any other tasks which the Parties may agree on.” In carrying out her work for Neighbors, Jenkins worked directly with Cheng. From October 2021 through June 2022, Jenkins also campaigned in support of the Recall Committee, facilitated in part by Neighbors Executive Director Jay Cheng and Riff City Strategies.

Neighbors Advocacy’s Payments to Riff City

Beginning May 1, 2021, Riff City began work on a monthly contract with Neighbors Advocacy for “Strategic Communications & Media Relations.” This provided for a monthly payment of \$7,000 for Riff City to, among other things, “manage media engagement and interviews,” “work with [Neighbors Advocacy] and affiliated organizations to...identify media opportunities,” and “[p]repare client and select spokespersons for media interviews.” From September 2021 through June 2022,

Riff City earned \$187,084 under this contract. Riff City did not receive any payment from the Recall Committee.

On September 3, 2021, Cheng emailed Andrea Shorter, a consultant to the Recall Committee, and several members of the Riff City team asking Riff City if they could work on press stories for the Recall Committee. At that point, Riff City was connected with the Recall Committee, its leadership, and its consultants in a series of meetings and emails. In late September, Cheng, Montejano, and Recall Committee staffers and consultants attended a virtual meeting titled “Riff + DA Recall Comms Sync,” organized by Cheng. At the end of the month, Cheng emailed Montejano and Jenkins about coordinating the announcement that Jenkins would be supporting the recall. Cheng and Montejano went on to coordinate interviews, draft and edit press releases for the Recall Committee’s launch, and prep both Jenkins and Recall Committee leadership for interviews throughout October. In late October, Jenkins was interviewed by the San Francisco Chronicle and several local television news stations regarding her support for the recall. Riff City and Cheng in part arranged these interviews. In addition to being the Executive Director of both Neighbors and Neighbors Advocacy, Cheng had a substantive but informal role with the recall campaign.

In October 2021, Riff City emailed Cheng with an updated invoice. This invoice reflected an increase for October 2021 from \$7,000 to \$15,000 per month. The monthly payment from Neighbors Advocacy to Riff City soon went up to \$20,000, retroactively applied to October 2021, for the duration of the campaign. Riff City’s Jess Montejano noted in an interview with investigators that “most of our work for neighbors was focused on the campaign,” and that the increase in pay reflected an increase in work related to the campaign. Montejano also saw his work as “monitoring and protecting [Neighbor Advocacy’s] investment” in the Recall Committee. Both Montejano and Cheng noted that they had no formal processes in place to differentiate Riff City’s work for Neighbors Advocacy from Riff City’s involvement with the Recall Committee.

As part of Riff City’s work for Neighbors Advocacy, Montejano received media inquiries sent to the Recall Committee; advised on how to handle these inquiries; drafted press releases for both Neighbors and the Recall Committee; drafted talking points for Jenkins, Rapson, Jung, and others; conducted interview prep sessions with Jenkins; and coordinated media strategy and engagement. On occasions during the campaign, a press outlet emailed the Recall Committee asking for an interview with Jenkins, the campaign forwarded the request to Cheng, Cheng asked Riff City to coordinate an interview, and Riff City arranged for Jenkins to be interviewed by the press outlet.

Neighbors Advocacy’s Payments to Riff City Were Political Expenditures

By paying Riff City to perform personal services of a political nature, Neighbors made political expenditures as defined in state and City law. This is because Riff City Strategies spent more than 10% of its compensated time during several months rendering services for political purposes to the Recall Committee at the request or direction of Neighbors Advocacy.

Services for Political Purposes

Riff City clearly spent time rendering services for political purposes. In drafting press releases, producing talking points, and coordinating media engagement for the primarily formed committee in support of the recall, Riff City acted “for the purpose of influencing...the action of the voters for or against...the qualification or passage of [a] measure.” 2 CCR § 18423(b). Recall elections constitute measures under state law, and the communications that Riff City created and coordinated were for the purpose of supporting the recall. Cal. Gov. Code § 82043. State law is clear that any “hours spent developing or distributing communications that expressly advocate the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure” are for political purposes. *Id.* at § 18423(b)(2).

Services Provided on Compensated Time at the Request or Direction of Neighbors Advocacy

Riff City’s services occurred on compensated time at the request or direction of Neighbors Advocacy. Riff City’s scope of work agreement with Neighbors Advocacy included the responsibility to “work with [Neighbors Advocacy] and affiliated organizations,” “manage media engagement and interviews,” and “prepare...select spokespersons for media interviews.” Neighbors Advocacy was the largest donor to the Recall Committee, and Cheng stated in an interview that a large part of his role with the Recall Committee was to monitor and protect that investment. Montejano stated the same. In doing so, Riff City worked with the Recall Committee by coordinating and managing its media engagement and interviews, and “prepar[ing]” spokespersons.

Further, when the Recall Committee launched its petition signature submission and announced Jenkins as a supporter of the recall, Riff City’s contract with Neighbors Advocacy increased from \$7,000 to \$20,000 per month. Finally, investigators found numerous emails in which Cheng requested or directed Riff City to take action related to the Recall Committee, and Riff City staffers responded by taking that action.

Riff City’s services rendered to the Recall Committee for political purposes therefore occurred on compensated time and were done at the request or direction of Neighbors Advocacy through Jay Cheng.

Services for Political Purposes Constituted over 10% of Riff City’s Compensated Time

Finally, evidence demonstrates that Riff City spent at least 10% of its compensated time on services rendered for political purposes.

Riff City’s monthly retainer nearly tripled when the Recall Committee got the recall measure qualified for the June 2022 ballot, and Montejano confirmed that this change was a result of the increase in activity related to the campaign. The FPPC has confirmed that one method of calculating compensated time is to look at the expected hours worked. *Abegg Advice Letter*, FPPC

Advice Letter 11-218 (2011). Beginning in October, at least 65% of Riff City’s \$20,000 monthly compensation from Neighbors Advocacy reflected their expected work for the recall committee.

Investigators also collected communications and work product produced by Neighbors Advocacy related to Riff City’s work under their contract and Riff City’s services provided to the Recall Committee. By cataloguing this evidence, investigators calculated the percentage of services in each month that were in connection with the Recall Committee. The following data are based on emails, press releases, talking points, and other work product, catalogued depending on whether it was for the Recall Committee or other purposes:

Month	Percentage of Total Paid Services Rendered for Political Purposes
October 2021	100%
November 2021	86%
December 2021	43%
January 2022	56%
February 2022	82%
March 2022	83%
April 2022	78%
May 2022	70%
June 2022	83%

The parties can therefore rely on the percentages calculated from the table above or the fixed 65% that reflects the increase in pay that came with Riff City’s political activity. Because these methods are imprecise measures, the parties agree to use the lower of the two percentages for each given month, as reflected in the table below.

Month	Percentage of monthly time spent on political activities	Total Monthly Payment	Total Unreported Expenditures
October 2021	65%	\$20,000	\$13,000
November 2021	65%	\$20,000	\$13,000
December 2021	43%	\$20,000	\$8,600
January 2021	56%	\$20,000	\$11,200
February 2021	65%	\$20,000	\$13,000
March 2021	65%	\$20,000	\$13,000
April 2021	65%	\$20,000	\$13,000
May 2021	65%	\$20,000	\$13,000
June 2021	65%	\$4,666 (pro-rated)	\$3,033
Total		\$164,666	\$100,833

Under either calculation, Neighbors Advocacy's payments to Riff City for services rendered for political purposes on compensated time exceeded 10% of its total paid services for Neighbors Advocacy. Neighbors Advocacy therefore should have reported the payments to Riff City as either political expenditures or contributions under state law. Neighbors Advocacy did not report any such payments. For clarity, the reporting obligation rested with Neighbors Advocacy, not with Riff City, which is not accused of any violations.

Coordination with the Recall Committee – In-Kind Contributions

Throughout the recall campaign, Cheng and Riff City staffers worked directly with Recall Committee staffers and consultants – including the principal officer, Jung, and the campaign manager, Rapson. In separate interviews, both Rapson and Jung referred to Riff City as handling the campaign's media strategy and needs.

Cheng sat at the fulcrum of this work. Cheng was executive director of both Neighbors and Neighbors Advocacy, and he served as the primary points of contact for both Jenkins and Riff City Strategies. Cheng also advised the Recall Committee. Cheng stated in an interview with Ethics Commission investigators that he also participated to protect Neighbors' investment in the campaign, including by weighing in on how the Recall Committee spent its resources.

Because of the consistent coordination throughout the campaign, all relevant payments to Riff City Strategies for services rendered for political purposes on compensated time should have been reported as in-kind contributions to the Recall Committee. These payments constituted political expenditures by Neighbors Advocacy, and, because they were directly coordinated with the Recall Committee and made for the committee's benefit, they also constituted in-kind contributions to the Recall Committee.

Further, all relevant payments occurring within 90 days of the recall election – specifically those made in April, May, and June – should have been reported on the Form 497 as late contributions of over \$1,000. Finally, Neighbors Advocacy should have notified the Recall Committee of its late in-kind contributions so that the Recall Committee could report the contributions accordingly.

Neighbors Payments to Brooke Jenkins

From October 17, 2021 through early July 2022, Jenkins worked as an independent consultant for Neighbors for a Better San Francisco ("Neighbors"), the 501(c)(3) organization linked to Neighbors Advocacy. The contract between Jenkins and Neighbors stated that Jenkins would provide "consulting re: public safety issues" and "any other tasks which the Parties may agree on," and further noted that the "client shall reimburse contractor for any necessary, customary, and usual expenses including without limitation those incurred in performance of its duties." From October 2021 through July 2022, Jenkins earned \$175,770 under this contract.

In September and October 2021, Cheng worked with Riff City and Recall Committee staffers to prepare and announce Jenkins' role with the recall effort, including through a series of interviews conducted in late October. From November through June, Jenkins continued as a spokesperson for the Recall Committee. As part of that work, Jenkins spoke publicly with local, regional, and national media outlets for interviews, including some coordinated through Cheng and Riff City Strategies; attended fundraisers and other community events while speaking about her support for the recall; participated in advertisements produced by the Recall Committee; and distributed fliers for the

campaign. Cheng requested or directed many of these activities. Jenkins also submitted expenses for campaign-related activity to Neighbors, and Neighbors reimbursed those expenses, although two of those transactions were later reversed.

Employees and consultants are permitted to spend up to 10% of their compensated time on political activities without creating any reporting obligations. In this case, Jenkins spent some of her compensated time on activities associated with the recall campaign. The parties agree that available records do not clearly establish any violations stemming from this activity. The parties acknowledge the importance of record-keeping practices for employees and contractors engaged in political activity.

IV. Conclusions of Law

Counts 1-4

Failure to disclose nonmonetary contributions on the proper semi-annual and pre-election campaign statements (Form 460), in violation of Gov't Code § 84211.

Respondent Neighbors Advocacy, along with its Executive Director, Respondent Jay Cheng, failed to report payments made to Riff City Strategies, as both payments on Schedule E and nonmonetary contributions to the Recall Committee on Schedule D, on one semi-annual campaign statement and three pre-election statements. Gov't Code § 84211.

Count 1: Respondents Neighbors Advocacy and Jay Cheng failed to report \$34,600 in payments and nonmonetary contributions made to the Recall Committee through payments for services to Riff City Strategies from July 1, 2021 through December 31, 2021 on the Form 460 due January 31, 2022.

Count 2: Respondents Neighbors Advocacy and Jay Cheng failed to report \$50,200 in payments and nonmonetary contributions made to the Recall Committee through payments for services to Riff City Strategies from January 1 through April 23, 2022 on the Form 460 due April 28, 2022.

Count 3: Respondents Neighbors Advocacy and Jay Cheng failed to report \$13,000 in payments and nonmonetary contributions made to the Recall Committee through payments for services to Riff City Strategies from April 24 through May 21, 2022 on the Form 460 due May 26, 2022.

Count 4: Respondents Neighbors Advocacy and Jay Cheng failed to report \$3,033 in payments and nonmonetary contributions made to the Recall Committee through payments for services to Riff City Strategies from May 22 through June 1, 2022 on the Form 460 due June 3, 2022.

Counts 5-8

Failure to report late contributions within 48 hours (Form 497) and failure to provide written notification of late in-kind contributions in violation of Gov't Code §§ 84203, 84203.3.

Respondent Neighbors Advocacy, along with their Executive Director, Respondent Jay Cheng, failed to report payments made to Riff City Strategies as late contributions to the Recall Committee within

90 days of the June 2022 election. Gov't Code § 84203. Respondents also failed to notify the Recall Committee in writing of these late in-kind contributions, as required by law. Gov't Code § 84203.3.

Count 5: Respondents Neighbors Advocacy and Jay Cheng failed to report a \$13,000 late in-kind contribution made to the Recall Committee through a payment for political services to Riff City Strategies on April 1, 2022.

Count 6: Respondents Neighbors Advocacy and Jay Cheng failed to report a \$13,000 late in-kind contribution made to the Recall Committee through a payment for political services to Riff City Strategies on May 1, 2022.

Count 7: Respondents Neighbors Advocacy and Jay Cheng failed to report a \$3,033 late in-kind contribution made to the Recall Committee through a payment for political services to Riff City Strategies on June 1, 2022.

Count 8: Respondents Neighbors Advocacy and Jay Cheng failed to notify the Recall Committee in writing of the value of three late in-kind contributions made from April 2022 through June 2022 totaling \$29,033.

I. Penalty Assessment

This matter consists of eight counts in which Neighbors Advocacy and Jay Cheng failed to properly report contributions on semi-annual and pre-election statements; failed to report late in-kind contributions; and failed to notify the recipient in writing of late in-kind contributions.

The San Francisco Charter authorizes the Commission to assess a monetary penalty to the general fund of the City of up to \$5,000 for each violation, or three times the amount which the respondents failed to report properly or unlawfully contributed. SF Charter § C3.699-13(c); *see also* SF C&GCC § 2.145(c).

Pursuant to its Enforcement Regulations, when determining penalties the Ethics Commission considers all of the relevant circumstances surrounding the case, including but not limited to: (1) the severity of the violation; (2) the presence or absence of any intention to conceal, deceive, or mislead; (3) whether the violation was willful; (4) whether the violation was an isolated incident or part of a pattern; (5) whether the respondent has a prior record of violations of law; (6) the degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations; and (7) the respondent's ability to pay. Enf. Reg. § 9(D).

Over a period of nine months, Respondent Neighbors Advocacy and their Executive Director, Respondent Jay Cheng, failed to report a total of \$100,833 worth of in-kind contributions to the Recall Committee. In doing so, Respondents deprived the public of valuable information leading up to the June 2022 election, although both Respondents and the Recall Committee did disclose direct contributions made by Neighbors Advocacy as the largest donor to the Recall Committee.

Leaders with the Recall Committee attested to having no knowledge of Respondent Cheng's role with Neighbors Advocacy and were not aware of the relationship between Riff City Strategies and

Neighbors Advocacy. Further, by not disclosing contributions in the form of services rendered by Riff City Strategies, Respondents prevented the Recall Committee from learning of its filing obligations, which included reporting receipt of the in-kind contributions on its own Form 460s. Respondent also failed to notify the Recall Committee in writing of its late in-kind contributions. By failing to disclose the payments themselves, and by preventing the Committee from becoming aware that it had received reportable contributions, Respondents' actions had the effect that no entity reported these contributions. In doing so, Respondents deprived the public of information related to over \$100,000 worth of political spending, including over \$29,000 in late contributions.

Respondents should have been aware of their obligations. The duties undertaken by Riff City for the Recall Committee were conducted at the direction and guidance of Respondent Cheng. Further, Neighbors Advocacy's monthly payments to Riff City Strategies rose from \$7,000 to \$20,000 per month when Riff City got involved in work with the Recall Committee. These facts suggest that Respondents should have known that they were paying to provide direct financial assistance to the Recall Committee that would trigger reporting requirements.

Respondents do not have a prior record of violations of law, and there is no indication of a pattern of behavior outside of Respondents' work with the Recall Committee. Further, Respondent committee Neighbors Advocacy reported its monetary and other non-monetary contributions to the Recall Committee, providing the public with information on Neighbors Advocacy's relationship with the Committee. In further mitigation, Respondents fully cooperated with the Ethics Commission's investigation. Respondents provided documents and made themselves available for interviews with Ethics Commission staff.

In a recent pair of cases, *In the Matter of San Francisco Bicycle Coalition, et al.* (SFEC Case No. 1920-075), and *In the Matter of Walk San Francisco Foundation* (SFEC Case No. 2223-504), the Commission imposed penalties on two organizations that each failed to form a committee and subsequently failed to timely file semi-annual statements. In both cases, however, the Respondents mitigated the harm by reporting their activity *before* the relevant election. Further, the cases involved committees that spent \$265 and \$6,000, respectively. The Committees paid \$1,000 and \$1,200 in penalties for those violations, respectively. In the latter case, this represented 20% of the spending by the committee.

In another Ethics Commission case, *In the Matter of Progress San Francisco* (SFEC Case No. 2021-316), the Respondent Committee repeatedly and improperly changed its filing designation between City and State, which had the effect that Respondent disclosed 24 late contributions in the wrong jurisdiction, failing to disclose them in San Francisco. That case involved total contributions of \$1,159,900, and similarly involves depriving San Francisco voters of relevant information. However, in the *Progress San Francisco* case, the Commission considered the fact that all contributions were reported somewhere, even if it was in the wrong jurisdiction. In the present case, the contributions were not reported anywhere by any party. Further, the committee in *Progress San Francisco* reported its contributions on the requisite semi-annual campaign statements, unlike in the present case. In *Progress San Francisco*, the Commission issued a penalty of \$1,200 per violation for each individual late contribution that the Committee failed to properly report, for a total of \$28,800.

Campaign Statement Violations

The bulk of the public harm rests in the violations contained in counts one through four, in which Respondents contributed over \$100,000 to the Recall Committee without reporting that activity

anywhere. The public had no knowledge of the provision of in-kind support through payments to a vendor, and because no entity reported it, the public was deprived of essential information surrounding six figures of spending to influence the election.

Respondents Neighbors Advocacy and Cheng failed to report contributions totaling \$100,833 across one semi-annual campaign statement and three pre-election campaign statements. Matching the *Walk San Francisco* precedent of 20% of the unreported contributions would bring the parties to a total penalty of \$20,177 for counts one through four. Unlike in that case, however, the Respondents in this case did not mitigate the public harm by reporting their activity either before or after the election.

Due to the large amount of spending in question and the fact that this spending was not disclosed to the public, the parties agree to a penalty equal to 50% of these contributions.

Count 1: Failure to report contributions made totaling \$34,600 on Form 460 due January 31, 2022: **\$17,300**

Count 2: Failure to report contributions made totaling \$50,200 on Form 460 due April 28, 2022: **\$25,100**

Count 3: Failure to report contributions made totaling \$13,000 on Form 460 due May 26, 2022: **\$6,500**

Count 4: Failure to report contributions made totaling \$3,033 on Form 460 due June 3, 2022: **\$1,516**

Late Contribution Reporting Violations

Counts five, six, and seven consist of late contributions of \$13,000, \$13,000, and \$3,033, respectively, while Count eight consists of Respondents' failure to notify the Recall Committee of the late in-kind contributions. While the contributions in this case were not disclosed to the public, unlike in *Progress San Francisco*, they were also smaller than in that case. For those reasons, the parties agree to penalties of \$1,000 for each late contribution report not filed, which is slightly lower than in *Progress San Francisco* (\$1,200 per late contribution report). The parties agree to a penalty of \$500 for the failure to notify the Recall Committee of each late contribution made.

Count 5: Failure to report late contribution made totaling \$13,000 on Form 497: **\$1,000**

Count 6: Failure to report late contribution made totaling \$13,000 on Form 497: **\$1,000**

Count 7: Failure to report late contribution made totaling \$3,033 on Form 497: **\$1,000**

Count 8: Failure to notify Recall Committee of three late contributions made: **\$500**

Total Penalties: \$53,916