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7

8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

9 **STATE OF CALIFORNIA**

10
11 In the Matter of:

12 SAFE & AFFORDABLE SAN
FRANCISCO; VOTERS FOR A REAL
13 CHANGE, OPPOSING MARK LENO
FOR MAYOR 2018; TONY
14 WINNICKER; KIM LUTZ; DEREK
15 JANSEN; SONIA HIDALGO; and ROBB
BIRKHEAD,

16 Respondents.
17

FPPC Case No. 2018-00341

STIPULATION, DECISION AND ORDER

18 **INTRODUCTION**

19 In December 2017, the Mayor of San Francisco, Ed Lee, passed away. On June 5, 2018, a special
20 mayoral election was held to fill the remainder of his term.

21 London Breed won the election with approximately 36.64% of the vote—defeating Mark Leno,
22 who finished in second place with approximately 24.43% of the vote—and Jane Kim, who finished in
23 third place with approximately 24.17%. (Although several other candidates were on the ballot, the next
24 highest vote-getter received less than 7% of the vote.)

25 Leading up to the election, respondent Safe & Affordable San Francisco (the SASF PAC)
26 qualified as a recipient committee on May 7, 2018, when it received a contribution in the amount of
27 \$50,000 from the San Francisco Apartment Association PAC. Respondent Kim Lutz was the SASF PAC
28 treasurer, and respondent Derek Jansen was a principal officer of the SASF PAC.

1 Respondent Voters for a Real Change, Opposing Mark Leno for Mayor 2018 (the VFRC PAC),
2 qualified as a recipient committee on May 14, 2018, when it received \$100,000 from the SASF PAC.
3 Respondent Sonia Hidalgo was the VFRC PAC treasurer, and respondent Robb Birkhead was a principal
4 officer of the VFRC PAC.

5 Respondent Tony Winnicker was an advisor/fundraiser for the SASF PAC and also an advisor to
6 VFRC PAC.

7 This case involves multiple violations of the Political Reform Act (the Act),¹ including campaign
8 filing violations and avoidance of required top contributor disclosures for anti-Leno advertisements (with
9 respect to contributors of \$50,000 or more).

10 SUMMARY OF THE LAW

11 The Act and its regulations are amended from time to time. Unless otherwise noted, all legal
12 references and discussions of law pertain to the Act's provisions as they existed at the time of the
13 violations in this case (2018).

14 Need for Liberal Construction and 15 Vigorous Enforcement of the Political Reform Act

16 When enacting the Political Reform Act, the people of California found and declared that:
17 “[p]revious laws regulating political practices have suffered from inadequate enforcement by state and
18 local authorities.”² Thus, it was decreed that the Act “should be liberally construed to accomplish its
19 purposes.”³

20 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in
21 election campaigns are “fully and truthfully disclosed in order that the voters may be fully informed and
22 improper practices may be inhibited.”⁴ Along these lines, the Act includes a comprehensive campaign
23 reporting system.⁵

24
25 ¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references
are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of
Title 2 of the California Code of Regulations. All regulatory references are to this source.

26 ² Section 81001, subdivision (h).

27 ³ Section 81003.

28 ⁴ Section 81002, subdivision (a).

⁵ Sections 84200, *et seq.*

1 Another purpose of the Act is to promote transparency by requiring political advertisements to
2 include truthful information about top contributors (of \$50,000 or more).⁶

3 Yet another purpose of the Act is to provide adequate enforcement mechanisms so that the Act
4 will be “vigorously enforced.”⁷

5 **Definition of “Person”**

6 “Person” means an individual, proprietorship, firm, partnership, joint venture, syndicate, business
7 trust, company, corporation, limited liability company, association, committee—and any other
8 organization or group of persons acting in concert.⁸

9 **Definition of “Recipient Committee”**

10 A “committee” includes any person—or combination of persons—who directly or indirectly
11 receive contributions totaling \$2,000 or more in a calendar year.⁹ This type of committee commonly is
12 referred to as a “recipient committee.”

13 **Definition of “Primarily Formed Committee”**

14 A “primarily formed committee” includes any recipient committee that is formed or exists
15 primarily to support or oppose, among other things, a single candidate or group of candidates in the same
16 election.¹⁰

17 **Definition of “General Purpose Committee”**

18 A “general purpose committee” includes any recipient committee—other than a primarily formed
19 committee—that is formed or exists primarily to support or oppose more than one candidate or ballot
20 measure.¹¹

21 **Jurisdiction of General Purpose Committees**

22 General purpose committees are divided into three different types, based on jurisdiction.

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25 ⁶ Sections 84501, *et seq.*

26 ⁷ Section 81002, subdivision (f).

27 ⁸ Section 82047.

28 ⁹ Section 82013, subdivision (a).

¹⁰ Section 82047.5, subdivision (a).

¹¹ Section 82027.5, subdivision (a).

1 *City General Purpose Committees*

2 A “city general purpose committee” is a committee to support or oppose candidates or measures
3 voted on in only one city.¹²

4 *County General Purpose Committees*

5 A “county general purpose committee” is a committee to support or oppose candidates or
6 measures voted on in only one county, or in more than one jurisdiction within one county.¹³

7 *State General Purpose Committees*

8 A “state general purpose committee” is a committee to support or oppose candidates or measures
9 voted on in a state election, or in more than one county.¹⁴

10 **Definition of “Principal Officer”**

11 “Principal officer” means the individual primarily responsible for approving the political activities
12 of a committee, including, but not limited to, the following activities: authorizing the contents of
13 communications made by the committee; authorizing expenditures, including contributions, on behalf of
14 the committee; and determining the committee’s campaign strategy. If two or more individuals share
15 primary responsibility for approving the political activities of a committee, each individual is a principal
16 officer.¹⁵

17 **Definition of “Late Contribution”**

18 “Late contribution” includes one or more contributions (from the same source) aggregating
19 \$1,000 or more—made during the last 90 days leading up to an election (or on the date of the election) to
20 a committee formed or existing primarily to support or oppose a candidate or ballot measure on the ballot
21 for the election.¹⁶

22 **Required Top Contributor Disclosures for Advertisements**

23 When a PAC pays for an advertisement that supports or opposes a candidate (such as a mass
24 mailing or an online video), the advertisement must include certain “paid for by” disclosures, including:

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26 ¹² Section 82027.5, subdivision (d).

27 ¹³ Section 82027.5, subdivision (c).

28 ¹⁴ Section 82027.5, subdivision (b).

¹⁵ See Section 82047.6 and Regulation 18402.1.

¹⁶ Section 82036, subdivision (a).

1 the phrase “Committee major funding from,” followed by the names of the three top contributors to the
2 PAC of \$50,000 or more (during the year leading up to the advertisement).¹⁷

3 **Prohibited Avoidance of Top Contributor Disclosure**

4 The PAC placing an advertisement, and persons acting in concert with the PAC, are prohibited
5 from creating or using another PAC to avoid—or in a manner that results in the avoidance of—disclosure
6 of any top contributor of \$50,000 or more.¹⁸

7 **Required Filing of Campaign Statements and Reports by Specific Deadlines**

8 At the core of the Act’s campaign reporting system is the requirement that committees must file
9 campaign statements and reports for certain reporting periods and by certain deadlines.¹⁹

10 *Statement of Organization (Form 410)*

11 For example, when a would-be committee first qualifies as a recipient committee under the Act, it
12 must file a statement of organization within 10 days.²⁰

13 *Pre-election Campaign Statements (Form 460 filings)*

14 Prior to the election of June 5, 2018, there were two pre-election reporting periods. The first
15 period covered January 1 through April 21, 2018—and the second period covered April 22 through May
16 19, 2018. During either one of these periods, if a general purpose recipient committee made contributions
17 or independent expenditures of \$500 or more in connection with the upcoming election, then the
18 committee was required to file a pre-election campaign statement within five days after the end of the
19 reporting period.²¹

20 *24-hour Contribution Reports (Form 497 filings)*

21 Also, a committee that makes or receives a “late contribution” (as defined above) must file a
22 Form 497 24-hour contribution report—within 24 hours of making or receiving the contribution. In

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26 ¹⁷ Sections 84501, *et seq.*

27 ¹⁸ Sections 84505, subdivision (a).

28 ¹⁹ Sections 84200, *et seq.*

²⁰ Section 84101, subdivision (a).

²¹ See Section 84200.5.

1 connection with the election of June 5, 2018, the 90-day 24-hour reporting period commenced on March
2 7, 2018.²²

3 **Place of Filing**

4 Different types of committees are required to file campaign statements and reports in different
5 places.

6 For example, a committee that is primarily formed to support or oppose a candidate for office in a
7 particular city must file committee campaign statements and reports with the city. Along these lines, the
8 City and County of San Francisco Ethics Commission (SF Ethics) is the local filing officer for San
9 Francisco. Any statement of organization for such a committee also must be filed with the California
10 Secretary of State in addition to filing with the local filing officer.²³

11 The same is true for all city general purpose committees.²⁴

12 A county general purpose committee must file with the county—and any statement of
13 organization must be filed with the Secretary of State, in addition to filing with the local filing officer.²⁵

14 A state general purpose committee is required to file with the Secretary of State, only.²⁶

15 **Initial Filing Jurisdiction for New Committees**

16 It is common practice for a would-be committee to file a statement of organization even though it
17 actually has not qualified as a recipient committee yet. For this reason, there is a space on the first page of
18 the official Form 410 to indicate that the would-be committee is not yet qualified. Such filings are not
19 required by the Act. (Until the would-be committee qualifies, it is not truly a committee.)²⁷

20 Once the would-be committee *does* qualify as a recipient committee, however (by receiving
21 contributions totaling at least \$2,000 in a calendar year), then the statement of organization *must* be filed
22 within 10 days. This is the first statement of organization that is required to be filed by the Act, and the
23 filing must specify whether the committee is primarily formed or a general purpose committee. If the

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25 ²² See Section 84203, subdivisions (a) and (b).

26 ²³ See Sections 84101, subdivision (a); and 84215, subdivision (d).

27 ²⁴ Sections 84101, subdivision (a); and 84215, subdivision (d).

28 ²⁵ Sections 84101, subdivision (a); and 84215, subdivision (c).

²⁶ Section 84215, subdivision (a).

²⁷ See Section 82013.

1 committee is a general purpose committee, then the statement of organization also must indicate whether
2 the committee is a city, county, or state committee. This initial determination regarding the jurisdiction of
3 the committee must be made in good faith, based upon the anticipated spending of the committee.
4 (Generally, it is not feasible to make this initial determination based upon the past spending of the
5 committee because the committee is newly formed and would have little-to-no spending.)²⁸

6 Although a newly qualified committee has 10 days to file its initial statement of organization,
7 filing jurisdiction may need to be determined before the 10th day—if other statements/reports are required
8 to be filed sooner. For example, if a newly formed committee is required to file a 24-hour report before
9 the initial statement of organization is due, then the committee will need to determine its proper filing
10 jurisdiction right away—so that the 24-hour report can be filed with the proper filing officer.²⁹

11 **When and How a Committee**

12 **Must Change its Filing Jurisdiction**

13 Upon committee qualification, if the deadline for filing the statement of organization falls within
14 six months of an upcoming election—and if the committee makes contributions or expenditures in
15 connection with the election—then the committee must verify its jurisdiction (as a city, county, or state
16 committee) at the end of each month prior to the election (unless the committee has not made
17 contributions and/or expenditures of at least \$1,000 to support or oppose candidates or measures during
18 that month).³⁰

19 This verification of the committee’s filing jurisdiction at the end of each month leading up to the
20 election is based upon the percentage of the committee’s spending during whichever of the following
21 time periods most accurately reflects the current and upcoming activities of the committee: the
22 immediately preceding 24 months—or the current two-year period, beginning with January 1 of an odd-
23 numbered year and ending with December 31 of the following even-numbered year.³¹

24 Essentially, this is a look-back period, during which, if the committee made more than 70% of its
25 contributions or expenditures to support or oppose candidates or measures voted on in only one city (or in

26 ²⁸ See Sections 84101, subdivision (a); 82027.5; Regulations 18410, subdivision (a); and 18227.5.

27 ²⁹ See Sections 82027.5 and 84203.

28 ³⁰ See Sections 84101, *et seq.* Also, see Regulation 18227.5, subdivision (d)(2).

³¹ See Regulation 18227.5, subdivisions (c) and (d)(3).

1 one consolidated city and county), including contributions to city general purpose committees in the same
2 city (or the same consolidated city and county)—then the committee is a “city general purpose
3 committee.”³²

4 Similarly, during the look-back period, if the committee made more than 70% of its contributions
5 or expenditures to support or oppose candidates or measures voted on in only one county (or in more than
6 one jurisdiction within one county), including contributions to county general purpose committees in the
7 same county—then the committee is a “county general purpose committee.”³³

8 Otherwise, if committee spending during the look-back period does not meet either of the two
9 thresholds noted above for city/county committees, then the committee is a “state general purpose
10 committee.”³⁴

11 If a general purpose committee changes from one jurisdiction to another at the end of a month (as
12 described above), the committee must: begin filing with the new filing officer immediately; amend its
13 statement of organization to reflect the change of jurisdiction within 10 days; and continue filing with the
14 old filing officer for the rest of the calendar year.³⁵

15 **Filing in the Wrong Jurisdiction**

16 The foregoing rules are designed to guard against a committee filing as the wrong type of
17 committee in the wrong jurisdiction. When a committee violates these rules, the result is that campaign
18 statements and reports are not filed in the locations where the public expects to find them. This deprives
19 the public of important information about the committee’s political activity.

20 A committee may not knowingly file in an incorrect jurisdiction—or as an incorrect type of
21 committee—with the intention of avoiding the appropriate legal disclosure of campaign contributions and
22 expenditures to the public. Along these lines, if a would-be committee first qualifies as a recipient
23 committee toward the beginning of a month, and the committee knows it will meet the criteria for being a
24 “city general purpose committee” on the last day of the month—due to concentrated, pre-planned

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26 ³² Regulation 18227.5, subdivisions (c)(1) and (d)(3).

27 ³³ Regulation 18227.5, subdivision (c)(2) and (d)(3).

28 ³⁴ Regulation 18227.5, subdivision (c) and (d)(3).

³⁵ Regulation 18227.5, subdivision (e)(1).

1 spending at the local level—then the committee must file and hold itself out as a “city general purpose
2 committee” from the outset.³⁶

3 **Multiple Respondents with Joint and Several Liability**

4 It is the duty of a committee treasurer to ensure that the committee complies with the Act.³⁷ Also,
5 the principal officers of a committee generally bear responsibility for approval of the political activity of
6 the committee.³⁸ The treasurer and the principal officers may be held jointly and severally liable, along
7 with the committee, for violations of the Act.³⁹

8 Also, when a PAC places an advertisement, if it creates or uses another PAC to avoid—or in a
9 manner that results in the avoidance of—disclosing any top contributor (of \$50,000 or more), then both
10 PACs and all persons acting in concert with the PAC that placed the advertisement may be held jointly
11 and severally liable for violating the Act.⁴⁰

12 **SUMMARY OF THE FACTS**

13 On December 1, 2017, the SASF PAC filed a Form 410 statement of organization with the
14 Secretary of State. The filing stated that the PAC was a state general purpose committee, but that the
15 PAC was “not yet qualified” as a recipient committee. This was about 11 days before the Mayor of San
16 Francisco, Ed Lee, passed away.

17 On May 7, 2018, the SASF PAC received its first contribution—in the amount of \$50,000—from
18 the San Francisco Apartment Association PAC.⁴¹ Within 10 days of receiving this initial contribution, the
19 SASF PAC was required to file a Form 410 statement of organization with SF Ethics, reflecting that the
20 PAC qualified as a recipient committee on May 7, 2018—and reflecting that the committee was a San
21 Francisco city general purpose committee—but the SASF PAC did not do so. (This is discussed in more
22 detail below.)

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24 ³⁶ See Sections 81003, 82027.5; Regulation 18227.5, subdivisions (c), (d), and (f).

25 ³⁷ Sections 81004, 84100, and Regulation 18427.

26 ³⁸ Section 82047.6 and Regulation 18402.1.

27 ³⁹ Sections 83116.5, 91006, and Regulation 18316.6.

28 ⁴⁰ Sections 84505, subdivision (a), and 91006.

⁴¹ Although the SASF PAC reported that the contribution was received on 5/10/18, an agent of the PAC, respondent Tony Winnicker, actually received possession of the contribution check on 5/7/18, and it is this earlier date that controls for purposes of determining when the contribution was “received” by the PAC. See Regulation 18421.1.

1 The next day, on May 8, 2018, the SASF PAC received its second contribution—also in the
2 amount of \$50,000—from Aneel Bhusri.

3 On or about May 14, 2018, the other PAC in this case, known as the VFRC PAC, filed a Form
4 410 statement of organization with SF Ethics, identifying itself as a committee primarily formed to
5 oppose Mark Leno for Mayor of San Francisco. On this filing, the PAC stated that it was “not yet
6 qualified” as a recipient committee.

7 That same day (5/14/18), the VFRC PAC received its first contribution—in the amount of
8 \$100,000—from the SASF PAC. These funds were raised by the SASF PAC and contributed to the
9 VFRC PAC for the purpose of paying for an advertising campaign against London Breed’s opponent,
10 Mark Leno.

11 Within 10 days of receiving this initial contribution, the VFRC PAC was required to file another
12 Form 410 statement of organization with SF Ethics, reflecting that the PAC qualified as a recipient
13 committee on May 14, 2018, but the VFRC PAC did not do so. (In all other respects, however, the VFRC
14 PAC timely filed its campaign statements and reports with SF Ethics.)

15 On or about May 17, 2018, the VFRC PAC sent an anti-Leno mass mailing to more than 35,000
16 recipients. (The cost of this mailing was at least \$26,800.) The mailing disclosed that it was “Paid for by
17 Voters for a Real Change, Opposing Mark Leno for Mayor 2018.” Also, the mailing disclosed
18 “Committee major funding from: Safe and Affordable San Francisco.” Aneel Bhusri and the San
19 Francisco Apartment Association PAC were not identified as major funders/top contributors (of \$50,000
20 or more). The front and back of this mailing are shown below:

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600 California Street
11th Floor
San Francisco, CA 94108
SFMI 808

Mark Leno has made plenty of empty promises.



Paid for by Voters for a Real Change, Opposing Mark Leno for Mayor 2018. Committee major funding from:

Safe and Affordable San Francisco

This advertisement was not authorized by a candidate or committee controlled by a candidate.
Financial disclosures are available at sfethics.org.

Mark Leno has a record of making empty promises.

MARK LENO PROMISED¹:

to reject PAC money. Mark Leno gladly **took over \$800,000 from PACs** while running for public office in the past, accepting cash from interest groups representing big banks and real estate.²

BUT...

to end homelessness. Since Mark Leno first took office in 1998, **homelessness has only gotten worse**, not better. What makes this time different?

BUT...

to "shake up city hall." Mark Leno has been a career politician for 20 years shaking down special interests for campaign contributions while our problems just got worse. He's just **more of the same**, NOT change.

BUT...

San Francisco
magazine

4/18/18

"Leno seems to speak for – and to – a San Francisco of years past, not of the present."

THE BAY CITY
Beacon

5/1/18

Super PAC-Man: Leno's Clean Campaign Pledge Gets Dirty

San Francisco deserves more than just empty promises.

VOTE AGAINST MARK LENO ON OR BEFORE JUNE 5TH. LEARN MORE: SAYNOTOLENO.COM

CHECK THE FACTS: 1. www.MarkLeno.com. 2. Retrieved from VoteSmart.org



From approximately May 17 through June 5, 2018, the VFRC PAC also paid for an online, anti-Leno advertising campaign (costing at least \$51,750), which featured a 30-second video. The top contributor and “paid for by” disclosures for this video were similar to what is described above for the mass mailing. A summary of the video is provided in the chart below.



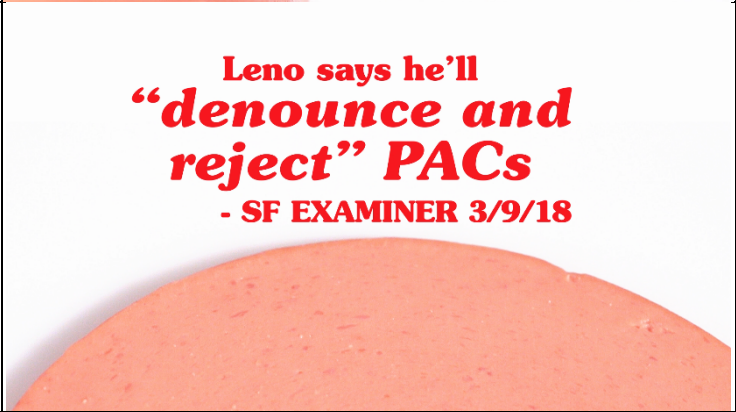

Voice Narration	Screenshot
<p>Mark Leno sure is full of Baloney.</p>	
<p>He says he's a new direction for San Francisco.</p>	
<p>But Mark Leno's been a career politician since the 90's.</p>	

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Voice Narration	Screenshot
<p>1 Leno says he's for building more housing.</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p>	 <p>Leno says he's for building more housing - SF Curbed, 2/27/18</p>
<p>8 Then he flip-flops and says he's against it.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p>	 <p>then he "flip-flops" and says he's against it. - SF Curbed, 2/27/18</p>
<p>14 Now Leno says he'll denounce and reject 15 PACs.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p>	 <p>Leno says he'll "denounce and reject" PACs - SF EXAMINER 3/9/18</p>
<p>21 But he's taken \$850,000 from PACs in his 22 last four elections.</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p>	 <p>but he's taken \$850,000 from PACs - Bay City Beacon 3/7/18</p>

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Voice Narration	Screenshot
<p>1 Say no to the same old baloney.</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p>	
<p>8 And no to Mark Leno.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p>	

15 During the month of May 2018, the SASF PAC received eight contributions totaling \$199,000.⁴²

16 That same month, the SASF PAC made eight contributions totaling \$162,950.⁴³ Of these contributions

17 that were made in May, approximately 98.5% of the funds went to San Francisco city/county general

18 purpose committees and committees that were primarily formed to oppose San Francisco mayoral

19 candidates.

20 Most of this spending was planned when the SASF PAC first qualified as a recipient committee

21 on May 7, 2018, and there was no basis for the PAC to believe that it would be anything other than a city

22 general purpose committee at the end of the month. (See Regulation 18225.7, subs. (c)(1) and (d)(2),

23 which provide that on the last day of the month, the PAC would be a city general purpose committee if it

24 spent at least \$1,000 to support or oppose candidates or measures during the month—and if at least 70

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26 ⁴² Two of these were the contributions from the San Francisco Apartment Association PAC and Aneel Bhusri in the

27 amounts of \$50,000 each, which were received on 5/7 and 5/8, respectively. The other six contributions, totaling \$99,000,

28 were received from 5/11 – 5/31/18. These were in amounts ranging from \$9,000 to \$15,000.

⁴³ One of these was the contribution in the amount of \$100,000 that the SASF PAC made to the VFRC PAC on

5/14/18. The other seven contributions, totaling \$62,950, were made from 5/16 – 5/31/18. These were in amounts ranging

from \$950 to \$30,000.

1 percent of this spending was for candidates/measures being voted on in a single consolidated city and
2 county, such as San Francisco, including contributions to other San Francisco general purpose
3 committees. As of May 7, when the PAC received its first contribution, neither the PAC nor its
4 officers/agents anticipated—or intended to direct—30% or more of the PAC’s May 2018 spending
5 toward state candidates/measures or toward candidates/measures in other cities/counties.) Thus, the
6 SASF PAC knew, or should have known, when it first qualified as a recipient committee on May 7,
7 2018, that it needed to file its campaign statements and reports with SF Ethics as a city general purpose
8 committee. However, the SASF PAC did not do so. Instead, it filed with the Secretary of State as a state
9 general purpose committee.

10 It was not until after the election, on July 3, 2018, that the SASF PAC filed a statement of
11 organization with SF Ethics. This filing, albeit late, identified the PAC as a city general purpose
12 committee.⁴⁴

13 During its life, the VFRC PAC raised \$107,000. (Approximately 93.5% of this amount was
14 received from the SASF PAC on 5/14/18. The rest was received from two other contributors in late May
15 2018.) Of this amount, the VFRC PAC spent roughly \$80,000 for the anti-Leno advertisements described
16 above. Also, the PAC spent approximately \$9,624 for professional services (provided by Deane &
17 Company—as well as Remcho, Johansen & Purcell, LLP). Additionally, in October 2018—at the
18 direction of Winnicker—the VFRC PAC terminated and returned all of its unused funds to the SASF
19 PAC, totaling approximately \$17,376. This was the sole activity of the VFRC PAC during its six-month
20 lifespan.

21 VIOLATIONS

22 All counts identified below are preserved against the statute of limitations pursuant to a tolling
23 agreement that respondents voluntarily entered into with the Enforcement Division.

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28 ⁴⁴ During the first half of 2018, the SASF PAC reported raising and spending approximately \$200,000 and \$190,603,
respectively. In August of the following year, the PAC terminated.

1 **Count 1: Failure to File Required**

2 **Form 497 24-hour Reports with SF Ethics**

3 *Respondents: SASF PAC, Lutz, Jansen*

4 The SASF PAC, Lutz, and Jansen failed to file required Form 497 24-hour reports with SF Ethics
5 for the following late contributions:

6

Date	Late Contribution Recipient	Amount
5/14/18	VFRC PAC	\$100,000
5/16/18	Yes on Proposition E San Francisco Kids vs. Big Tobacco Uphold Ordinance Banning the Sale of Flavored Tobacco Products	\$2,500
	Keep the Bay Area Moving - Yes on 3, Sponsored by Bay Area Civic Leadership Associations	\$2,500
6/1/18	San Francisco for London Breed, Sponsored by the San Francisco Firefighters Local 798	\$20,000

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12 In this way, the SASF PAC, Lutz, and Jansen violated Section 84203. For settlement purposes,
13 one count is recommended.

14 **Count 2: Failure to File Required**

15 **Form 410 Statement of Organization with SF Ethics**

16 *Respondents: SASF PAC, Lutz, Jansen*

17 On May 7, 2018, the SASF PAC qualified as a recipient committee. Within 10 days thereafter, the
18 PAC was required to file a Form 410 statement of organization with SF Ethics (reflecting that the PAC
19 qualified as a San Francisco city general purpose recipient committee on 5/7/18), but this required
20 statement was not filed with SF Ethics by the noted deadline. (The Form 410 was timely filed with the
21 Secretary of State.)

22 In this way, the SASF PAC, Lutz, and Jansen violated Section 84101, subdivision (a).

23 **Count 3: Failure to File Required Form 460 Pre-election**

24 **Campaign Statement with SF Ethics for Period Ending May 19, 2018**

25 *Respondents: SASF PAC, Lutz, Jansen*

26 The SASF PAC was required to file a Form 460 pre-election campaign statement with SF Ethics
27 for the reporting period ending May 19, 2018—by the deadline of May 24, 2018—but the PAC failed to
28 do so. (The Form 460 was timely filed with the Secretary of State.)

1 In this way, the SASF PAC, Lutz, and Jansen violated Section 84200.5, subdivision (e).

2 **Count 4: Failure to File Required**

3 **Form 410 Statement of Organization with SF Ethics**

4 *Respondents: VFRC PAC, Hidalgo, Winnicker, Birkhead*

5 On May 14, 2018, the VFRC PAC qualified as a recipient committee (when it received \$100,000
6 from the SASF PAC). Within 10 days thereafter, the VFRC PAC was required to file a Form 410
7 statement of organization with SF Ethics, but the PAC did not do so.

8 In this way, the VFRC PAC, Hidalgo, Winnicker, and Birkhead violated Section 84101,
9 subdivision (a).

10 **Counts 5-6: Avoidance of Required**

11 **Top Contributor Advertising Disclosures**

12 *Respondents: Winnicker, VFRC*

13 *PAC, SASF PAC, Birkhead, Lutz, Jansen*

14 As described above, the VFRC PAC relied on SASF PAC as a source of financing and as a
15 fundraiser—to pay for campaign ads against Leno (in the form of a mass mailing and an online video).
16 This resulted in avoidance of ad disclosures regarding top contributors of \$50,000 or more. Specifically,
17 the ads only disclosed words to the effect: “Committee major funding from: Safe and Affordable San
18 Francisco.” Aneel Bhusri and the San Francisco Apartment Association PAC were omitted as major
19 funders—despite each contributing \$50,000 to the SASF PAC.

20 At the time, Winnicker, the SASF PAC, Birkhead, Lutz, and Jansen were working in concert with
21 the VFRC PAC. For example:

- 22 1. Three of the consultants that VFRC used to place ads in this case were having early
23 discussions about the ad budget back in March 2018. Some of these same consultants were
24 copied on an April email that Winnicker sent to the San Francisco Apartment Association
25 PAC for the purpose of raising funds for the SASF PAC. (Ultimately, the Apartment PAC
26 contributed \$50,000, which went to the VFRC PAC through the SASF PAC, and the
27 consultants were paid by the VFRC PAC for placing the ads.)
28 2. On May 2, 2018, another person raising funds for the SASF PAC asked Aneel Bhusri to
contribute in order to help pay for a media campaign about Leno’s voting record and history
as a career politician. (Ultimately, Bhusri contributed \$50,000, which then comprised half of
the funds that SASF PAC sent to VFRC PAC—and it was the VFRC PAC that used the
money to pay for the media campaign.)

3. On May 10, 2018, consultants/vendors that the VFRC PAC later hired for its anti-Leno ads exchanged the following email: “Funds have been raised, treasurer is in place, committee just needs a Principal Officer to take the heat in the press and because most of our donors are owners of buildings/landlords, its [sic] been tricky finding the right person who will agree to it. Hoping that gets settled by tomorrow. Stand by.” The next day, Jansen was selected to be the principal officer of the SASF PAC.
4. On or about that same day (5/11/18), Lutz, Winnicker, and Birkhead looked into consulting with legal counsel “for advice on the Leno IE committee.”
5. After the election, in October 2018—at the direction of Winnicker—the VFRC PAC terminated and returned all of its unused funds to the SASF PAC, totaling approximately \$17,376.

In this way, Winnicker, the VFRC PAC, the SASF PAC, Birkhead, Lutz, and Jansen violated Section 84505, subdivision (a). This statute is a safeguard intended to prevent a breakdown of the top contributor disclosure rules—where a fundraising committee works so closely with the committee placing the advertisement and therefore becomes an extra layer between the top contributors and the PAC ultimately placing an advertisement. For settlement purposes, two counts are charged. Count 5 is for the mass mailing. Count 6 is for the online video.

STREAMLINE EXCLUSION

This case is excluded from the streamline settlement program, which does not encompass advertising violations involving failure to identify two or more top contributors of \$50,000 or more.⁴⁵

PROPOSED PENALTY

In 1996, California voters approved Proposition 208, which included a penalty enhancement for any violation of the Act’s advertising disclosure rules: up to three times the cost of the involved ads, including placement costs.⁴⁶ For purposes of any mainline stipulation, the penalty was not required to be this high, but could be this high, at the discretion of the Commission.

In 2017, the availability of this enhanced penalty was taken away by AB 249 in many cases.⁴⁷

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⁴⁵ Regulation 18360.1, subdivision (e)(6)(C)(iii).

⁴⁶ Section 84510, subdivision (a), as in effect from 1996 through 2017.

⁴⁷ Known as the California Disclose Act, Section 30 of AB 249 provided: “The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act.” This finding was included because Section 81012, subdivision (a), only allows for the Act to be amended by the Legislature if the amendment furthers the purposes of the Act.

1 For example, in 2017 (before AB 249), Counts 5 and 6 could have been charged as a single count
2 with a maximum penalty of approximately \$235,650 (three times the cost of the ads)—but in 2018 (after
3 AB 249), the maximum penalty became \$5,000 per count.⁴⁸

4 The other counts in this case are subject to a maximum penalty of \$5,000 per count, as well.

5 A total of six counts are recommended. The maximum penalty for the counts charged is \$30,000.

6 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
7 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
8 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division
9 considers the facts and circumstances of the violation in the context of the following factors:⁴⁹

- 10 1. the extent and gravity of the public harm caused by the specific violation;
- 11 2. the level of experience of the violator with the requirements of the Act;
- 12 3. penalties previously imposed by the Commission in comparable cases;
- 13 4. the presence or absence of any intention to conceal, deceive or mislead;
- 14 5. whether the violation was deliberate, negligent or inadvertent;
- 15 6. whether the violator demonstrated good faith by consulting Commission staff or any other
16 governmental agency in a manner not constituting a complete defense under Section 83114,
subdivision (b);
- 17 7. whether the violation was isolated or part of a pattern—and whether the violator has a prior
18 record of violations of the Act or similar laws; and
- 19 8. whether the violator, upon learning of a reporting violation, voluntarily filed amendments to
20 provide full disclosure.

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26 ⁴⁸ Pre-AB 249, Section 84510 extended the penalty enhancement to “any person” violating Article 5 of Chapter 4 of
27 the Political Reform Act, where all of the advertising statutes are contained—but after AB 249, Section 84510 only extends
28 the penalty enhancement to certain enumerated violations, which do not include violation of Section 84505, regardless of the
level of intent. See Sections 84505; 84506, subdivision (a)(2); and 84510, subdivision (a)—as they were in effect immediately
prior to 1/1/18. Also, see Sections 83116, subdivision (c); and 84510—as they were in effect after 2017.

⁴⁹ These factors are set forth in Regulation 18361.5, subdivision (e)(1) through (8).

1 **Counts 1 – 4 (Campaign Filing Violations)**

2 Counts 1 through 4 comprise a variety of negligent campaign filing violations, as summarized in
3 the chart below:

4

Count	Description
1	SASF PAC’s failure to file required Form 497 24-hour reports with SF Ethics.
2	SASF PAC’s failure to file required Form 410 statement of organization with SF Ethics.
3	SASF PAC’s failure to file required Form 460 pre-election statement with SF Ethics.
4	VFRC PAC’s failure to file required Form 410 statement of organization with SF Ethics.

7

8 The public harm inherent in these types of campaign filing violations is that the public is deprived
9 of important, time-sensitive information regarding political activity, committee jurisdiction/type,
10 identities of principal officers, etc. Generally, these types of violations are considered to be more serious
11 where the public is deprived of information that was required to be disclosed before an election because
12 this has the potential to affect how votes are cast—so greater public harm is involved, and a higher
13 penalty is warranted. Another factor that influences the amount of the penalty is whether the public harm
14 was mitigated because some of the reportable activity was disclosed to the public on another campaign
15 filing.

16 *Comparable Case*

17 In late 2016, the Commission considered another case involving filing violations for the same
18 statements and reports that are the subjects of Counts 1 through 4 in the current case. [In the Matter of](#)
19 [Save Our Forest and Ranchlands Opposed to Measure B Sponsored by California Local Energy](#)
20 [Advancing Renewables, Jana Clark Sanders and Duncan McFetridge, Treasurer](#); FPPC Case No.
21 16/19753 (approved Nov. 17, 2016), the Commission imposed a penalty against a committee, its
22 treasurer, and its principal officer in the amount of \$1,500 for failure to timely file a Form 410 statement
23 of organization, \$1,500 for failure to timely file two Form 497 24-hour reports, and \$2,000 for failure to
24 timely file a pre-election campaign statement. The committee was sponsored by a nonprofit. Several
25 weeks before the election, it qualified as a recipient committee, primarily formed to oppose an upcoming
26 ballot measure, when it received a contribution in the amount of \$110,000—and contributed \$45,000 to
27 another PAC that was primarily formed to oppose the ballot measure in question. After contact from the

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1 Enforcement Division, the respondents filed all outstanding statements and reports—late, but well before
2 the election.

3 Both cases involve respondents with no history of prior, similar violations.

4 Count 1 of the current case involves failure to timely file three 24-hour reports regarding
5 contributions totaling \$125,000—roughly comparable to \$155,000 and two late reports in Save Our
6 Forest.

7 Counts 1 through 3 of the current case were the result of negligence regarding the proper
8 classification of the SASF PAC as a city general purpose committee.⁵⁰ Count 4 also appears to be the
9 result of negligence. In Save Our Forest, the violations appear to have been the result of negligence, as
10 well.

11 In other respects, however, there are some differences between the cases, which warrant a higher
12 penalty in the current case for Counts 1, 3, and 4.

13 *Aggravating and Mitigating Differences*

14 Lutz and Hidalgo were professional treasurers. Winnicker was a professional campaign
15 consultant. Thus, the current case involves respondents who were experienced with the requirements of
16 the Act. Similar facts were not noted in Save Our Forest. On the other hand, respondents contend the
17 designation as a state general purpose committee was based on a good faith but incorrect understanding
18 that the relevant date for determining how often (quarterly v. monthly) a committee must review its
19 activity to determine its status was from the date the committee filed its original Form 410 (December 1,
20 2017) not the qualification date (May 7, 2018), and as a result, their failure to file in San Francisco was
21 not based on any intent to conceal, deceive, or mislead.

22 Also, in Save Our Forest, after contact from the Enforcement Division, the respondents filed all
23 outstanding statements and reports with the required filing officer—late, but well before the election.

24
25 ⁵⁰ The PAC filed an initial, “not yet qualified” Form 410 on 12/1/17—shortly before Mayor Ed Lee passed away.
26 This filing was not required by law. More than five months later, on 5/7/18, the PAC qualified as a recipient committee, 29
27 days before the election. For purposes of the rules about determining initial filing jurisdiction—and whether this jurisdiction
28 needs to be updated on a monthly or quarterly basis—the date of 5/7/18 is what controls in this case. Respondents mistakenly
used the date of 12/1/17. If the proper date of 5/7/18 had been used, respondents would have known they needed to file as a
city general purpose committee—based on anticipated spending for the month of May and the fact that they would need to
verify their filing status at the end of the month.

1 Similar facts are not present in the current case.⁵¹ Nevertheless, there was at least some disclosure for the
2 public prior to the election with respect to Counts 1 through 3 involving the SASF PAC. (The required
3 statements and reports were not filed with SF Ethics before the election, but they were all timely filed
4 with the Secretary of State’s office. Thus, they were available to the public, albeit not with the required
5 filing officer where the public would have expected to find the information—and the statement of
6 organization that was filed with the Secretary of State did not disclose the proper filing jurisdiction for
7 the PAC. Additionally, regarding the contributions that were required to be reported on 24-hour reports,
8 which are the subject of Count 1, almost all of the funds were timely reported on 24-hour reports by the
9 recipients of the contributions—providing further disclosure for the public.)

10 Regarding the VFRC PAC, some reporting violations are not being charged, but are being noted
11 as aggravating information for purposes of Count 4. (These include Schedule G subvendor reporting
12 violations on Form 460 filings—and amendments after the election to remove references to a previously
13 reported mass mailing. The amendments were based on a belief that the mailing ultimately never was
14 sent, but this was a mistake. The mailing was sent, as reported initially.) Similar facts were not present in
15 Save Our Forest, where all known counts appear to have been charged.

16 *Recommended Penalty*

17 Under these circumstances, the following penalty is recommended for Counts 1 through 4:

18

Count	Description	Penalty
1	SASF PAC’s failure to file required Form 497 24-hour reports with SF Ethics.	\$2,000
2	SASF PAC’s failure to file required Form 410 with SF Ethics.	\$1,500
3	SASF PAC’s failure to file required Form 460 pre-election statement with SF Ethics.	\$3,000
4	VFRC PAC’s failure to file required Form 410 with SF Ethics.	\$2,500

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22 **Counts 5 and 6 (Avoidance of Top Contributor Disclosures)**

23 A vital purpose of the Act is to ensure transparency in advertising disclosures so that voters are
24 fully informed about the sources of funding for political ads. This includes identification of top
25 contributors of \$50,000 or more. Failure to provide this type of required information in advertising
26 “major funding” disclosures results in significant harm to the public—depriving the voters of important

27 _____
28 ⁵¹ Prior to the election, Enforcement contacted respondents about the complaint giving rise to this case, which focused on ad disclaimers and committee naming, not campaign filing.

1 information that the Act mandates must be disclosed before the election, when the information matters
2 most.

3 The ads that were placed by the VFRC PAC in the current case identified the SASF PAC as a top
4 contributor of \$50,000 or more. In this way, respondents complied with the requirements of Sections
5 84503, and 84504.1 through 84504.3—but they violated Section 84505 by avoiding disclosure of Aneel
6 Bhusri and the San Francisco Apartment Association PAC as top contributors of \$50,000 or more.

7 *Comparable Case*

8 Recently, the Commission considered another case involving violation of this same statute. [In the](#)
9 [Matter of Protect the City of Commerce, Sponsored by California Commerce Club, Inc., Hector Chacon,](#)
10 [Paul Fickas, California Alliance Group, LLC, and Rita Copeland](#); FPPC Case No. 16/120 (approved Jun.
11 17, 2021), three “hit piece” mass mailings were sent—at a cost of approximately \$17,233—by a
12 committee that was sponsored by a local casino. This sponsorship was required to be disclosed, as part of
13 the committee’s name, in the advertising “paid for by” language, but the sponsorship was concealed, in
14 violation of Sections 84505 and 84506. (This was not the first time that the casino, known as the
15 California Commerce Club, had concealed such a sponsorship.)⁵² One count was charged, for which the
16 maximum penalty was noted to be \$51,699 (three times the cost of the ads under Section 84510). The
17 Commission imposed a penalty in the amount of \$40,000 for the single count that was charged.

18 As noted above, some of the respondents in the current case were experienced professionals who
19 had reason to be familiar with the Act. Similar facts were present in Protect the City of Commerce.

20 Also, Protect the City of Commerce involved other violations that were noted as aggravating
21 information in support of a higher penalty, but not charged. The same is true of the current case (as noted
22 above in connection with Count 4).

23 Respondents’ advertising efforts in the current case were successful in terms of the election
24 results. In Protect the City of Commerce, the advertising efforts of the respondents were at least partially
25 successful.

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28 ⁵² See [Appendix III: Summary of Enforcement Decisions](#), page 63.

1 *Mitigating Differences*

2 In the current case, respondents cooperated with Enforcement by entering into a tolling agreement
3 with respect to the statute of limitations. Similar facts were not present in Protect the City of Commerce.

4 In the current case, there is some reason to believe that Aneel Bhusri and the San Francisco
5 Apartment Association PAC deliberately were omitted as top contributors in violation of Section 84505.
6 However, the statute is complex, not well-known (especially given that only one other penalty has been
7 imposed under Section 84505 by the Commission), and respondents maintain that their violations were
8 the result of negligence. Consistent with this, respondents do not have a history of prior, similar
9 advertising violations. Additionally, there was some level of pre-election disclosure for the public (on
10 campaign filings with the Secretary of State) regarding the contributions from Bhusri and the Apartment
11 PAC. This suggests that respondents did not intend to wholly conceal their major funding sources.

12 Similarly, some level of pre-election disclosure for the public was noted in Protect the City of
13 Commerce—but ultimately, in that case, it was found that some of the respondents possessed a history of
14 prior, similar violations, which indicated an intent to conceal/downplay, deceive, and mislead.

15 *Aggravating Differences*

16 The mass mailing and online ads in the current case cost at least \$26,800 and \$51,750 for Counts
17 5 and 6, respectively. Combined, the ads cost at least \$78,550—more than four-and-a-half times the cost
18 of the ads in Protect the City of Commerce (which cost \$17,233).

19 *Recommended Number of Counts and Penalty (Post-AB 249)*

20 The Commission was able to impose a penalty enhancement (up to three times the cost of the ads)
21 in Protect the City of Commerce, so only one count was needed to ensure that the penalty fit the
22 wrongdoing. Since the current case involves violations occurring shortly after the operative date of AB
23 249, no penalty enhancement may be applied. The maximum penalty that may be imposed is \$5,000 per
24 count. Under these circumstances (and the ones outlined above), Enforcement recommends two
25 advertising counts (one for the mass mailing plus one for the online ad campaign)—and a penalty in the
26 amount of \$4,500 per count. (For similar reasons, Counts 1-4 are being charged in the current case, but in
27 Protect the City of Commerce it is likely that they would have been noted as aggravating information,
28 only.)

Summary Chart

The following agreed-upon penalty is recommended in this case, based on the foregoing circumstances:

Count	Description	Respondents	Penalty
1	Failure to file required Form 497 24-hour reports with SF Ethics.	SASF PAC Lutz Jansen	\$2,000
2	Failure to file required Form 410 with SF Ethics.		\$1,500
3	Failure to file required Form 460 pre-election statement with SF Ethics.		\$3,000
4	Failure to file required Form 410 with SF Ethics.	VFRC PAC Hidalgo Winnicker Birkhead	\$2,500
5	Avoidance of top contributor disclosure (mass mailing).	Winnicker VFRC PAC SASF PAC Birkhead Lutz Jansen	\$4,500
6	Avoidance of top contributor disclosure (online ad campaign).		\$4,500
TOTAL:			\$18,000

CONCLUSION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and respondents Safe & Affordable San Francisco; Voters for a Real Change, Opposing Mark Leno for Mayor 2018; Tony Winnicker; Kim Lutz; Derek Jansen; Sonia Hidalgo; and Robb Birkhead hereby agree as follows:

1. Respondents violated the Act as described in the foregoing pages, which are a true and accurate summary of the facts in this matter.
2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose of reaching a final disposition without the necessity of holding an administrative hearing to determine the liability of respondents pursuant to Section 83116.
4. Respondents have consulted with their attorney, Thomas A. Willis of Olson Remcho. Respondents understand and hereby knowingly and voluntarily waive, any and all procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is

1 not limited to, the right to appear personally at any administrative hearing held in this matter, to be
2 represented by an attorney at respondents' own expense, to confront and cross-examine all witnesses
3 testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
4 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
5 reviewed.

6 5. Respondents agree to the issuance of the decision and order set forth below. Also,
7 respondents agree to the Commission imposing against them an administrative penalty in the amount of
8 \$18,000. One or more payments totaling this amount—to be paid to the General Fund of the State of
9 California—is/are submitted with this stipulation as full payment of the administrative penalty described
10 above, and they will be held by the State of California until the Commission issues its decision and order
11 regarding this matter.

12 6. If the Commission refuses to approve this stipulation—then this stipulation shall become
13 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
14 rejected, all payments tendered by respondents in connection with this stipulation shall be reimbursed to
15 respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing
16 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
17 Director, shall be disqualified because of prior consideration of this Stipulation.

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1 7. The parties to this agreement may execute their respective signature pages separately. A
2 copy of any party’s executed signature page—including a hardcopy of a signature page transmitted via
3 fax or as a PDF email attachment—is as effective and binding as the original.

4
5 Dated: _____

_____ James M. Lindsay, Chief of Enforcement
Fair Political Practices Commission

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8 Dated: _____

_____ Kim Lutz, individually, and on behalf of Safe &
Affordable San Francisco, Respondents

9
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11 Dated: _____

_____ Derek Jansen, individually, and on behalf of Safe &
Affordable San Francisco, Respondents

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14 Dated: _____

_____ Tony Winnicker, individually, and on behalf of Voters
for a Real Change, Opposing Mark Leno for Mayor
2018, Respondents

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16
17 Dated: _____

_____ Sonia Hidalgo, individually, and on behalf of Voters for
a Real Change, Opposing Mark Leno for Mayor 2018,
Respondents

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19
20 Dated: _____

_____ Robb Birkhead, individually, and on behalf of Voters
for a Real Change, Opposing Mark Leno for Mayor
2018, Respondents

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24 The foregoing stipulation of the parties “In the Matter of Safe & Affordable San Francisco;
25 Voters for a Real Change, Opposing Mark Leno for Mayor 2018; Tony Winnicker; Kim Lutz; Derek
26 Jansen; Sonia Hidalgo; and Robb Birkhead,” FPPC Case No. 2018-00341, is hereby accepted as the final

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1 decision and order of the Fair Political Practices Commission, effective upon execution below by the
2 Chair.

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4 IT IS SO ORDERED.

5
6 Dated: _____

_____ Adam E. Silver, Chair
Fair Political Practices Commission