Patrick Ford
Executive Director

Olabisi Matthews
Director of Enforcement

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
(415) 252-3100

BEFORE THE SAN FRANCISCO

ETHICS COMMISSION

In the Matter of	)	SFEC Complaint No. 24-817
	)	
Mayor Mark Farrell for Yes on Prop D, Mark Farrell for Mayor 2024, Mark Farrell, and Roy Herrera;	)	**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 the San Francisco Ethics Commission ("the Commission") and Mayor Mark Farrell for Yes on Prop D ("Respondent Ballot Measure Committee"), Mark Farrell for Mayor 2024 ("Respondent Mayoral Committee"), Mark Farrell, and Roy Herrera (collectively, "Respondents"). Respondent Ballot Measure Committee and Respondent Mayoral Committee will be referred to collectively as "Respondent Committees."

2. Respondents and the Commission agree to settle and resolve all legal issues contained in this agreement, and to reach a final disposition without an administrative hearing. Respondents and the Commission agree to settle and resolve all factual issues contained in this agreement for the purposes of this agreement only. In the event that the Commission proceeds with any other matters regarding Respondents, this agreement shall be inadmissible as a predicate or factual support in any other matters. 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 twenty 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.

Dated: 10-25-2024 | 16:03:11 [redacted]
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PATRICK FORD, EXECUTIVE DIRECTOR

SAN FRANCISCO ETHICS COMMISSION

Dated: 10/25/24 [redacted]

MARK FARRELL, ON BEHALF OF THE MARK FARRELL FOR MAYOR 2024 COMMITTEE, THE MAYOR MARK FARRELL FOR YES ON PROP D COMMITTEE, AND HIMSELF

Dated: 10-25-2024 | 14:36:24 Signed by: [redacted]
DF34D601CC68432...

ROY HERRERA

DECISION AND ORDER

The foregoing Stipulation of the parties in the matter of "Mayor Mark Farrell for Yes on Prop D, Mark Farrell for Mayor 2024, Mark Farrell, and Roy Herrera, Complaint No. 24-817," 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: _____ _____

THEIS FINLEV, CHAIRPERSON

SAN FRANCISCO ETHICS COMMISSION

Exhibit A

I. Introduction

Mark Farrell for Mayor 2024 ("Respondent Mayoral Committee") is a candidate committee launched on February 5, 2024 to support Mark Farrell's candidacy for Mayor of San Francisco in the November 2024 election. Mayor Mark Farrell for Yes on Prop D ("Respondent Ballot Measure Committee") is a primarily formed ballot measure committee controlled by Farrell and formed on March 18, 2024. Roy Herrera is the treasurer for both committees and is named as a Respondent solely in his capacity as treasurer. The ballot measure supported by Respondent Ballot Measure Committee qualified for the November 2024 ballot on July 19, 2024.

Jade Tu is the Principal Officer of the Respondent Ballot Measure Committee and the Campaign Manager for both committees. Margaux Kelly is a consultant in charge of running both committees and the principal officer as of October 11, 2024.

Respondent Committees violated City law when Respondent Ballot Measure Committee made, and Respondent Mayoral Committee accepted, a series of prohibited contributions. From April through October, Respondent Ballot Measure Committee reimbursed Respondent Mayoral Committee for more than its share of actual expenses. Because Respondent Ballot Measure Committee did not receive full and adequate consideration for the money that it gave to the Mayoral Committee, the excess payments are contributions in violation of City law.

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), as it applies to local elections. SF C&GCC § 1.106.

Candidates and treasurers "may be held personally liable for violations by their committees." SF C&GCC § 1.70(g). If two or more persons are responsible, they shall be "jointly and severally liable." SF C&GCC § 1.70(h).

<u>Definitions</u>
A contribution is any payment made for political purposes "except to the extent that full and adequate consideration is received." Gov't Code § 82015(a); 2 CCR § 18215(a); SF C&GCC

§ 1.106. A payment includes any "payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible. Gov't Code § 82044. A payment is made for political purposes if it is received by a candidate or a controlled committee. 2 CCR § 18215(a)(2).

Full and adequate consideration is defined as the fair market value of goods or services. Cal. Gov't Code § 82025.5. The Fair Political Practices Commission ("FPPC") has noted that because "payments are presumed contributions, it is the Committee's burden to demonstrate a fair market value." FPPC Advice Letter A-22-020.

A committee's principal officer is the individual "primarily responsible for approving the political activity of the committee," including authorizing the content of communications, determining strategy, and authorizing expenditures and contributions. 2 CCR § 18402.1(b).

Campaign Statement Reporting Requirements

Committees are required to file campaign statements that disclose 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.). These statements must include the total amount of contributions received and information for all expenditures and contributions over $100. Gov't Code § 84211(a), (c), (f), (i), (k). That information includes the name, address, amount of expenditure, and a brief description of any consideration. (Id.).

A contribution to a candidate committee "shall not be considered received" if it is not cashed, negotiated, or deposited, and is returned to the donor "before the closing date of the campaign statement on which the contribution would otherwise be reported." SF C&GCC § 1.114(g). A committee to support a ballot measure must file campaign statements on the 5th and 20th of each month during the signature gathering period. SF C&GCC § 1.113.

Contribution Prohibitions

No committee may contribute more than $500 to a candidate in the City and County of San Francisco Elections. SF C&GCC § 1.114(a); Gov't Code § 82047. No candidate committee shall solicit or accept a contribution that will cause the total amount contributed by such committee to exceed $500. *Id*.

Any committee that receives a prohibited contribution must forfeit it to the City and County of San Francisco. SF C&GCC § 1.114(f); 1.114.5(d). Except for contributions not considered received under the exception outlined in 1.114(g), prohibited contributions shall not be refunded to the contributor. See id.

III. Material Facts and Analysis

Background

Beginning in April 2024, Respondent Committees split certain expenses for their respective campaigns equally. The committees accomplished this using monthly reimbursement payments. For each month, Respondent Mayoral Committee paid for office space, insurance and utilities; staff salaries; canvassers and interns; consultants; and snacks. At regular intervals, Respondent Ballot Measure Committee paid Respondent Mayoral Committee for half of its incurred costs for each of these categories. Respondent Committees categorized these as "reimbursement" payments.

Because payments to political committees are presumed to be political contributions, Respondents must show that the Respondent Mayoral Committee provided fair and adequate consideration to Respondent Ballot Measure Committee in exchange for these payments. Any payments or partial payments for which Respondent Ballot Measure Committee did not receive fair and adequate consideration constitute contributions under law. As contributions, they are subject to the $500 limit on contributions to candidate committees, must be disclosed as contributions as required, and are subject to forfeiture insofar as they exceed the $500 limit.

From April through September, Respondent Ballot Measure Committee made – and Respondent Mayoral Committee accepted – a series of cash payments equal to approximately 50% of the Mayoral Committee's expenses for office space, insurance and utilities; staff salaries; canvassers and interns; consultants; and snacks. For expenses in May and June, Respondent Ballot Measure Committee initially paid significantly more than 50% of the Mayoral Committee's expenses. In late July, Respondent Mayoral Committee refunded these overpayments, bringing the total expenses covered by each committee back in line with the 50/50 split used in other months.

Payments from Respondent Ballot Measure Committee to Respondent Mayoral Committee

Beginning in May 2024, Respondent Ballot Measure Committee made a series of payments to Respondent Mayoral Committee to cover expenses initially paid for by the Mayoral Committee. At all times, the two committees shared the same treasurer, Roy Herrera,[1] and many senior staff, including campaign manager, field manager, and finance director.

May 8 Payments from Ballot Measure Committee to Mayoral Committee

In April 2024, Respondent Mayoral Committee spent a total of $26,000 on staff salaries.

On May 8, Respondent Ballot Measure Committee paid Respondent Mayoral Committee $7,500 as a reimbursement for the cost of staff salaries, accounting for 28.8% of the total. Respondent Ballot Measure Committee reported this payment on May 21 as "Shared Expense – Payroll."

[1] While Herrera is named as Respondent in his capacity as treasurer for the Respondent Committees, there is no allegation or evidence that he committed violations or filed inaccurate reports.

June 5 Payments from Ballot Measure Committee to Mayoral Committee

In May 2024, Respondent Mayoral Committee spent a total of $44,264.40 on staff salaries, $11,828.90 on canvassers, $5,500 for rent, $2,051.13 on renter's insurance, $3,000 on consulting from Riff City Strategies, and $604.25 on snacks.

On June 5, Respondent Ballot Measure Committee made a series of payments to the Mayoral Committee to reimburse these expenses. Respondent Ballot Measure Committee paid to reimburse the Mayoral Committee $36,515 for staff salaries, accounting for 82.4% of the total; $13,625 for canvassers, accounting for 115.2% of the total; $4,750 for rent, accounting for 86.4% of the total; $1,025 for renter's insurance, accounting for 50% of the total; $1,500 for consulting, accounting for 50% of the total; and $302.23 for food and snacks, accounting for 50% of the total. Respondent Ballot Measure Committee reported these payments, except the $300.23 for food, on a Form 460 filed June 20.

As described in more detail below, Respondent Mayoral Committee would later refund certain portions of these payments that were unintentional overpayments back to Respondent Ballot Measure Committee, resulting in total eventual reimbursements from the Ballot Measure Committee covering 50% of each listed expense.

On its semiannual statement covering January 1 through June 30, 2024, Respondent Mayoral Committee reported receiving payments of $7,500 and $57,415 from Respondent Ballot Measure Committee, both for "Shared Expenses Reimbursement." These payments align with the May and June payments reported by Respondent Ballot Measure Committee.

July 1 Payments from Ballot Measure Committee to Mayoral Committee

In June 2024, Respondent Mayoral Committee spent a total of $24,233.43 on staff salaries; $20,630.40 on canvassers; $7,500 on rent; $615.12 on utilities; $3,000 on consulting; and $208.77 on food.

On July 1, Respondent Ballot Measure Committee made payments to the Mayoral Committee to reimburse these "shared expenses." Respondent Ballot Measure Committee paid to reimburse Respondent Mayoral Committee $43,055 for staff salaries, accounting for 177.7% of the total; $28,419 for canvassers, accounting for 137.8% of the total; $4,875 for rent, accounting for 65% of the total; $5,500 on consulting, accounting for 183.3% of the total; $104.93 on snacks, accounting for 50% of the total; and $1,000 for polling, an expense that Respondent Mayoral Committee does not appear to have incurred.

As described in more detail below, Respondent Mayoral Committee would later refund certain portions of these payments that were unintentional overpayments back to Respondent Ballot Measure Committee, resulting in total eventual reimbursements from the Ballot Measure Committee covering 50% of each listed expense.

On July 22, Respondent Ballot Measure Committee accurately reported the payments it had made to the Mayoral Committee for staff salaries, rent, and consulting; inaccurately reported the payments for canvassing; and reported no payments for polling or snacks.

August 15 Payments from Ballot Measure Committee to Mayoral Committee

Beginning on August 15, Respondent Ballot Measure Committee paid 50% of nearly all relevant Mayoral Committee expenses.

In July, Respondent Mayoral Committee spent a total of $104,780.50 on staff salaries; $99,179.65 on canvassers; $7,500 on rent (actually paid on June 28, 2024); $2,013.72 on utilities; $267.27 on food and snacks; and $3,000 on consulting from Riff City Strategies.

On August 15, Respondent Ballot Measure Committee made a series of payments to Respondent Mayoral Committee to reimburse exactly 50% of these expenses: $52,390.25 on staff salaries; $49,603.47 on canvassers; and $1,140 on utilities and snacks combined. Respondent had made an earlier payment on July 26, 2024, of $2,932.56 to reimburse the Mayoral Committee for July rent, which when combined with the July 1 payments and refunds, resulted in Respondent Ballot Measure Committee paying for exactly 50% of the rent for both months.

On August 12, Ethics Commission submitted a request for documents to Respondent Ballot Measure Committee for information about the payments to the Mayoral Committee.

August 23 and September 9 Payments from Ballot Measure Committee to Mayoral Committee

In August, Respondent Mayoral Committee spent a total of $67,281.46 on staff salaries; $27,139.68 on canvassers; $7,500 on rent; $3,000 for consulting from Riff City Strategies; $1,404.86 on utilities; and $7,413.57 on software.

On August 23 and September 9, Respondent Ballot Measure Committee made a series of payments to the Mayoral Committee to reimburse exactly 50% of these expenses: $33,650.73 on staff salaries; $13,569.84 on canvassers; $3,750 on rent; $1,500 on consulting; $702.43 on utilities; and $3,706.79 on software.

The Mayoral Committee paid $7,500 for September rent on August 30, 2024. (Id.). Respondent Ballot Measure Committee reimbursed the Mayoral Committee for $3,750 on September 9, 2024, accounting for 50% of the total. (Id.).

<u>Refund Payments from Respondent Mayoral Committee to Respondent Ballot Measure Committee</u>

On July 24, the San Francisco Chronicle published an article summarizing complaints about Respondent Ballot Measure Committee's spending in support of Farrell's Mayoral Committee.

On July 26, after the July 20 deadline for reporting payments made from July 1-15, the Mayoral Committee partially refunded payments made by the Ballot Measure Committee. The Mayoral Committee refunded $30,938.29 of the $43,055 that it received from the Ballot Measure Committee on July 1 for staff salaries; $1,051.28 of the $49,050 that it received from the Ballot Measure Committee on July 1 for canvassers; and $4,000 of the $5,500 it received from the Ballot Measure Committee on July 1 for consulting from Riff City Strategies. On July 24, the Ballot Measure Committee amended its reporting: these amendments accurately reported payment amounts for consulting and inaccurately reported payment numbers for staff and canvassers.

On August 15, after the deadline for reporting any payments that occurred between June 1 and July 15, the Mayoral Committee made another series of partial refund payments back to the Ballot Measure Committee. The Mayoral Committee partially refunded three payments initially made in June: $14,382.80 of the $36,515 that it initially received from the Ballot Measure Committee on June 5 for staff salaries; $7,710.56 of the $13,625 that it initially received from the Ballot Measure Committee on June 5 for canvassers; and $2,000 of the $4,750 that it initially received from the Ballot Measure Committee on June 5 for rent. Also on August 15, the Mayoral Committee partially refunded two more payments initially made in July: $37,683.52 of the $49,050 that it initially received from the Ballot Measure Committee on July 1 for canvassers; and the entire $1,000 that it initially received from the Ballot Measure Committee on July 1 for polling that the Mayoral Committee had never paid for in the first place.

After all refunds from the Mayoral Committee to the Ballot Measure Committee, investigators calculate the outstanding payments from the Ballot Measure Committee to account for approximately 50% of all staff salary, canvassers, rent, insurance, utility, contractor, and food and drink expenses for the Mayoral Committee between April and September.

Evidence of Consideration

There was no consideration for any payments made by Respondent Ballot Measure Committee to Respondent Mayoral Committee but later refunded back to the Ballot Measure Committee. Respondents acknowledge that the Ballot Measure Committee received nothing from the Mayoral Committee in exchange for the refunded portions of these payments. The refunded portions reflected overpayments that were unintentionally made. Thus, no consideration was received for them.

After all refunds, the Ballot Measure Committee covered approximately 50% of all relevant Mayoral Committee expenses in the following categories: (1) canvassers; (2) staff salaries; (3) contractors; (4) rent, utilities, and renter's insurance; and (5) snacks. These payments totaled $239,098.95.

Because the Ballot Measure Committee paid the Mayoral Committee $239,098.95 to cover approximately 50% of the cost of these expenses from April through September, the Ballot Measure Committee needed to have received half of the benefits of these services as full and

adequate consideration for payment. Otherwise, the payments would constitute contributions to the extent that consideration was not received.

Respondents provided and investigators reviewed over 1,500 pages of evidence to determine whether full and adequate consideration was provided by the Mayoral Committee to the Ballot Measure Committee in exchange for these payments.

Canvassers

Respondents provided evidence that staff produced a one-pager overview of the ballot measure supported by Respondent Ballot Measure Committee. Evidence also shows that staff trained canvassers to distribute this one-pager while attending campaign events and canvassing, and that staff further trained individuals to discuss the ballot measure while campaigning.

However, staff of the two committees noted that Respondents engaged only briefly in an effort to gather signatures in the period before measure qualification on July 19. Staff focused instead on voter education in the early phases of the campaign. Evidence also shows that canvassers hired during this early period of the campaign signed certain onboarding agreements that only mentioned Respondent Mayoral Committee, while making no mention of Respondent Ballot Measure Committee.

Staff Salaries

Staff spent a significant amount of time on fundraising, including direct outreach and planning and attending events.

On one hand, Respondent Ballot Measure Committee raised over $2 million in contributions over eight months. This involved staff time conducting outreach and follow-up; identifying potential donors; processing contributions; collecting required information; and reporting contributions. However, evidence shows that from the dates when each of the two committees were formed through October 17th, Respondent Mayoral Committee reported raising 2,145 contributions, while Respondent Ballot Measure Committee reported raising only 88 contributions. This disparity reflects the fact that while the Mayoral Committee was subject to a $500 limit on contributions from any single contributor, the Ballot Measure Committee could accept contributions of unlimited size. As of October 17, six separate contributors had each contributed over $100,000 to the Ballot Measure Committee (totaling just under $1.5 million, or 65% of the Ballot Measure Committee's total funds raised). On one hand, the vastly different number of contributions raised by the two committees indicates a gap in the amount of work that went into fundraising: fewer contributions require less time following up for information, processing payments, and tracking contributions. On the other hand, Respondents have supplied evidence indicating that they targeted small numbers of larger donations for the Ballot Measure Committee, which were more time-consuming and difficult to solicit.

As of October 18th, the Mayoral Committee had received just over $1 million in public funds through the City's public campaign financing program. Qualifying for this level of public funding requires significant staff effort on behalf of a candidate committee to collect contributor information to prove that contributors are residents of San Francisco.

Respondents also spent staff time planning and executing events, including 130 house parties and 21 fundraisers. For the vast majority of these events, Committee staff provided hosts with invitation language that indicated the events were designed to primarily benefit the Mayoral Committee. This language discussed why "Mark Farrell is running for Mayor." It includes several paragraphs discussing problems in the City and what the candidate plans to do about it. It asks recipients to join in supporting Farrell's candidacy. It does not mention a ballot measure. It does not mention the issues addressed by the ballot measure. It includes a link to donate to the Mayoral Committee but not the Ballot Measure Committee. In each case, there is a link to RSVP that opens an event page that unambiguously states that each event is "in support of Mark Farrell for Mayor 2024." The event pages make no mention of the ballot measure. The evidence showed that staff had language about the ballot measure that it used for certain events, but that for the majority of events, the language was referred to as "info for a candidate campaign event."

On the other hand, evidence indicates that the candidate, Mark Farrell, likely mentioned the ballot measure at most events, and that staff and the candidate solicited contributions to the Ballot Measure Committee at most events. While this does not justify an even split in costs and benefits, it does indicate that Respondent Ballot Measure Committee received some consideration for staff time and payments that went into these events.

When calculating consideration received by Respondent Ballot Measure Committee for fundraising efforts, investigators also considered over 100 email communications that indicated to contributors that contributions to Respondent Ballot Measure Committee would benefit Mr. Farrell, including some that suggested that money given to Respondent Ballot Measure Committee would benefit Farrell's Mayoral campaign.

This evidence includes several emails from the candidate stating that Respondent Ballot Measure Committee "is my PAC and the best way to help me directly – the contributions are unlimited." This matches numerous other communications where donors, staff, and the candidate refer to Respondent Ballot Measure Committee as a PAC. In two examples, potential contributors ask for information about Farrell's "PAC," and staff directs them to Respondent Ballot Measure Committee. In one case, in an email chain titled "Mayor's race: personal favor[,]" a donor states that he "remember[s] that you have a PAC," and asks which entity can take a $5,000 check. Staff directed him to Respondent Ballot Measure Committee.

In numerous communications from both the candidate and his staff, they noted that "contributions to the [Ballot Measure] committee are hugely impactful to the campaign and the ballot measure itself…it is one of the most significant ways you could impact the campaign." In

another set of dozens of emails, Farrell and his staff asked for contributions to Respondent Mayoral Committee up to the $500 maximum, before adding that "Most significantly...this [ballot measure] committee will greatly benefit both my campaign and the ballot measure itself…contributions have no limits…[t]his would far and away be the most significant way you can impact our campaign." In 15 documented other examples, campaign staff emailed individuals who attempted to contribute over $500 to Respondent Mayoral Committee, informing them of a refund for their contribution over the limit and offering that "If you are interested in further financially supporting Mark, he has opened a ballot measure committee that can accept contributions."

This evidence further dilutes the benefit received by Respondent Ballot Measure Committee in exchange for any payments that went toward fundraising since even when raising funds for the Ballot Measure Committee, Farrell and staff appeared to be also focused on supporting Farrell's candidacy for Mayor.

Staff signed contracts with Respondent Mayoral Committee when hired. These contracts did not mention Respondent Ballot Measure Committee. This further indicates that staff were likely to devote more time and attention to the Mayoral Committee's work.

Respondent Committees chose this reimbursement arrangement out of convenience. In doing so, they should have diligently tracked staff hours and spending across the two committees to ensure that resources were allocated equally between the two committees. The committees' compliance counsel, Herrera Arellano LLP, issued a memorandum in July 2024 justifying the reimbursements at issue in this case on that very basis. In this memo, the firm explained that "staff time, in particular, is tracked and accounted for regarding how much each staffer's time is devoted to the candidate committee compared to the ballot measure committee." This memo was shared with local journalists who were reporting on the committees' finances. Campaign Manager Jade Tu and top consultant Margaux Kelly confirmed to investigators that no such tracking was done. Kelly informed investigators that the committees decided in advance on a 50/50 split of certain expenses based on an assumption that many major campaign activities would be conducted jointly to benefit both committees and did not track the allocation of staff time across committees. Investigators understand that beginning in October 2024, the Committees have started tracking time in this manner to ensure proper reimbursement in the final weeks and months of the campaigns.

Consultant

Respondent Ballot Measure Committee covered half of the monthly expenses for campaign consultant Riff City Strategies. Evidence indicates that Riff City's contract was only with Respondent Mayoral Committee and did not mention Respondent Ballot Measure Committee.

Investigators reviewed documents and determined that Riff City did conduct work directly for Respondent Ballot Measure Campaign, including and especially on its media campaign from July through September.

Overhead – Office Rent, Utilities, Insurance, and Snacks

Respondent Ballot Measure Committee paid for staff, canvasser, and consultant salaries and contracts. It naturally follows that if Respondent Ballot Measure Committee received benefits from their work, it also received benefits – and appropriately covered the costs – of any overhead, including office space, renter's insurance, utilities, and snacks. All parties agree that overhead costs should be apportioned based on the benefits received from staff, canvasser, and consultant work.

It is relevant that only the Mayoral Committee was a signatory to the campaign's office and renter's insurance policy. This would tend to indicate that the Mayoral Committee might be the primary beneficially of those items. In particular, it is not clear that the Ballot Measure Committee had any right to file claims under the insurance policy in which it was not listed as a policy holder nor as an additional insured.

Analysis of Consideration

Respondents made staff of the committees available to answer extensive questions throughout the Commission's investigation. Respondents also provided over 1,500 pages of evidence.

Investigators have reviewed all evidence. The evidence clearly shows a large increase in work on behalf of Respondent Ballot Measure Committee – and therefore consideration received by Respondent Ballot Measure Committee – around the time when the ballot measure qualified for the ballot, July 19. For that reason, the parties believe it is appropriate to calculate actual consideration received differently for the two time periods: April through mid-July; and mid-July through September. These calculations are based on a review of all evidence.

The parties estimate that from April through mid-July, Respondent Ballot Measure Committee benefited from 25% of the work done by staff, consultants, and canvassers. It follows that Respondent Ballot Measure Committee should have paid only 25% of these costs, as well as 25% of overhead costs. Any payments above 25% of expenses should be considered contributions.

The parties estimate that from mid-July through September, Respondent Ballot Measure Committee benefited from 35% of the work done by staff, consultants, and canvassers. It follows that Respondent Ballot Measure Committee should have paid only 35% of these costs, as well as 35% of overhead costs. Any payments above 35% of expenses should be considered contributions.

The above estimates for the payments that Respondent Mayoral Committee never refunded are reflected in Table A, below.

Table A: Summary of Payments from Ballot Measure Committee (BMC) to Mayoral Committee (Never Refunded)					
Month of Expense	Total Relevant Expense Paid by Candidate Committee	Consideration received by BMC (as a % of total benefit)	BMC's Permitted Reimbursement Amount (Total Expense x % of benefit)	Total Amount Paid by BMC	Total Amount of Excess (Contribution Amount)
April	$26,000	25%	$6,500	$7,500	$1,000
May	$67,247.18	25%	$16,811.80	$33,623.59	$16,811.79
June	$57,923.70	25%	$14,480.93	$28,961.85	$14,480.92
July	$216,741.14	30%	$65,022.34	$108,383.72	$43,361.38
August	$113,739.57	35%	$39,808.85	$56,879.79	$17,070.94
September	$7,500	35%	$2,625	$3,750	$1,125
TOTAL	**$467,152**	**-**	**$139,749**	**$239,099**	**$93,850**

IV. Conclusions of Law

Counts 1-2: Refunded Contributions

COUNT ONE: Respondents violated SF C&GCC § 1.114(a) on June 5, 2024, when Respondent Ballot Measure Committee made, and Respondent Mayoral Committee accepted, three contributions for a total of $24,093.36, which were later refunded.

COUNT TWO: Respondents violated SF C&GCC § 1.114(a) on July 1, 2024, when Respondent Ballot Measure Committee made, and Respondent Mayoral Committee accepted, four contributions for a total of $74,773.09, which were later refunded.

Respondent Ballot Measure Committee made seven total payments that Respondent Mayoral Committee later refunded. Respondent Ballot Measure Committee received no consideration for these payments. These payments are therefore contributions in their entirety under law. Even though the payments were unintentional, they were deposited and not returned within the relevant reporting period.

Respondent Ballot Measure Committee made three contributions on June 5, 2024, and four contributions on July 1, 2024. In total, these contributions are equal to $74,773.09.

Respondent Mayoral Committee refunded these contributions in a series of transactions completed on July 26 and August 15, after the deadline date for reporting all seven contributions. Because the refund occurred after the reporting deadline, Respondent Mayoral Committee was required by law to forfeit the payment to the City rather than returning it to Respondent Ballot Measure Committee.

Because Respondent Mayoral Committee did not refund these contributions before the reporting deadline, the law considers the contributions accepted. Because no committee may contribute more than $500 to a candidate for local office in San Francisco, all contributions beyond the first $500 violated City law and needed to be disgorged to the City rather than returned to the donor. SF C&GCC § 1.114(a); see Gov't Code § 82047.

Counts 3-5: Non-Refunded Contributions (April through June)

COUNT THREE: Respondents violated SF C&GCC § 1.114(a) on May 1, 2024, when Respondent Ballot Measure Committee made, and Respondent Mayoral Committee accepted, one prohibited contribution totaling $500, which were never refunded.

COUNT FOUR: Respondents violated SF C&GCC § 1.114(a) on June 5, 2024, when Respondent Ballot Measure Committee made, and Respondent Mayoral Committee accepted, six prohibited contributions totaling $16,811.79, which were never refunded.

COUNT FIVE: Respondents violated SF C&GCC § 1.114(a) on July 1, 2024, when Respondent Ballot Measure Committee made, and Respondent Mayoral Committee accepted, five prohibited contributions totaling $14,480.92, which were never refunded.

From April through June, the parties agree that Respondent Ballot Measure Committee received 25% of the benefits of all staff time and overhead costs. Respondent Ballot Measure Committee's payments beyond this 25% are therefore contributions. Beyond the first $500, these are prohibited contributions over the limit.

In April, Respondent Mayoral Committee incurred $26,000 on staff salaries. Setting consideration received at 25% of staff time, Respondent Ballot Measure Committee's reimbursement payment should have been $6,500. Because Respondent Ballot Measure Committee paid $7,500, the excess is a contribution of $1,000. This results in a contribution of $500 over the contribution limit. At this point, since the $500 had been reached and exceeded, all future contributions from the Ballot Measure Committee to the Mayoral Committee were prohibited as over the limit.

In May and June, after refunds, Respondent Ballot Measure Committee covered 50% of all relevant expenses but only received the benefit of 25% of all staff time and overhead costs. Because Respondents had already reached the $500 limit, all contributions were prohibited.

In May, Respondent Mayoral Committee incurred $67,247.18 in relevant expenses. Setting consideration received at 25% of staff and overhead, Respondent Ballot Measure Committee's reimbursement payment should have been $16,811.80. Because Respondent Ballot Measure Committee paid $33,623.59, the excess is a prohibited contribution of $16,811.79.

In June, Respondent Mayoral Committee incurred $57,923.70 in relevant expenses. Setting consideration received at 25% of staff and overhead, Respondent Ballot Measure Committee's reimbursement payment should have been $14,480.93. Because Respondent Ballot Measure Committee paid $28,961.85, the excess is a prohibited contribution of $14,480.92.

Count 6: Non-Refunded Contributions (July)

COUNT SIX: Respondents violated SF C&GCC § 1.114(a) on July 26, 2024 and August 15, 2024 when Respondent Ballot Measure Committee made, and Respondent Mayoral Committee accepted, five prohibited contributions totaling $43,361.38, which were never refunded.

Respondents agree that for the month of July, Respondent Ballot Measure Committee received, on average, 30% of the benefits of all staff time and overhead costs – approximately 25% during the first half of the month and 35% during the second half of the month, averaging to 30% across the month of July. Respondent Ballot Measure Committee's payments beyond this 30% are therefore contributions. Because Respondents had already exceeded the $500 limit, all contributions were prohibited.

In July, Respondent Mayoral Committee incurred $216,741.14 in relevant expenses. Setting consideration received at 30% of staff and overhead, Respondent Ballot Measure Committee's reimbursement payment should have been $65,022.34. Because Respondent Ballot Measure Committee paid $108,383.72, the excess is a prohibited contribution of $43,361.38.

Counts 7-8: Non-Refunded Contributions (August through September)

COUNT SEVEN: Respondents violated SF C&GCC § 1.114(a) on August 23, 2024 and September 9, 2024 when Respondent Ballot Measure Committee made, and Respondent Mayoral Committee accepted, seven prohibited contributions totaling $17,070.94, which were never refunded.

COUNT EIGHT: Respondents violated SF C&GCC § 1.114(a) on September 9, 2024 when Respondent Ballot Measure Committee made, and Respondent Mayoral Committee accepted, one prohibited contribution totaling $1,125, which was never refunded.

Respondents agree that for the months of August and September, Respondent Ballot Measure Committee received, on average, 35% of the benefits of all staff time and overhead costs. Respondent Ballot Measure Committee's payments beyond this 35% are therefore contributions. Because Respondents had already exceeded the $500 limit, all contributions were prohibited.

In August, Respondent Mayoral Committee incurred $113,739.57 in relevant expenses. Setting consideration received at 35% of staff and overhead, Respondent Ballot Measure Committee's reimbursement payment should have been $39,808.85. Because Respondent Ballot Measure Committee paid $56,879.79, the excess is a prohibited contribution of $17,070.94.

These counts cover payments made through September 16, 2024. For September expenses to that point, Respondent Mayoral Committee incurred $7,500 in relevant expenses. Setting consideration received at 35% of staff and overhead, Respondent Ballot Measure Committee's reimbursement payment should have been $2,625. Because Respondent Ballot Measure Committee paid $3,750, the excess is a prohibited contribution of $1,125.

V. Penalty Assessment

This matter consists of eight counts in which Respondent Ballot Measure Committee made, and Respondent Mayoral Committee accepted, prohibited contributions, two of which were reversed after the deadline for reporting.

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).

<u>Refunded Contributions – Counts One and Two</u>

In Counts One and Two, Respondent Ballot Measure Committee made seven contributions for a total of $98,866.45. Respondent Mayoral Committee refunded these contributions on July 26 and August 15, respectively, after the deadline for reporting but in what the Enforcement Division considers to be a reasonable amount of time.

In aggravation, Respondents were required by law to forfeit the unlawful contributions to the City. Because the refunds occurred after the deadline for reporting, the law requires disgorgement rather than refunding the Respondent Ballot Measure Committee, and because Respondents simply reversed the transaction, they improperly benefited by restoring the funds back the Ballot Measure Committee, which subsequently made many additional payments to

the Mayoral Committee.

In mitigation, Respondents provided voluminous contemporaneous email evidence showing that this overpayment occurred in error. Significantly, Respondents noticed and took steps to reverse these transactions before the Ethics Commission reached out to Respondents as part of this investigation and before media reports were issued on the payments. Further, the potential harm in a reversed transaction of this size is that it serves as an interest-free loan to the Mayoral Committee. In this case, however, public evidence and internal campaign documents provided by Respondents clearly demonstrate that Respondent Mayoral Committee was not in dire financial need of these overpayments at the time, and did not use all of the funds during the period before the reversal. Documents plainly show that Respondents intended for Respondent Ballot Measure Committee to cover 50% of relevant expenses, and these overpayments were a result of the payments being made on estimated expense numbers rather than actual expense numbers.

The Commission must balance between the significant sum of money that Respondent Committees failed to forfeit as required and the facts surrounding these two. The parties agree that a fair balance for Counts 1 and 2 is a penalty set at 15% of the refunded contributions.

Count 1: $3,614 ($24,093.36 in prohibited contributions later refunded)
Count 2: $11,215.96 ($74,773.09 in prohibited contributions later refunded)

Non-Refunded Contributions – Counts Three through Eight

In Counts Three through Eight, the Ballot Measure Committee made a series of payments covering approximately 50% of relevant expenses incurred by the Mayoral Committee. Each count reflects the amount of each respective payment that exceeded the consideration received by the Ballot Measure Committee, estimated based on over 1,500 pages of evidence, testimony, and public documents.

The Enforcement Division considers these violations to be significant. Respondent Ballot Measure Committee is not subject to the same $500 contribution limit as Respondent Mayoral Committee, and by covering more than its fair share of expenses, it gave the candidate committee an unfair leg-up in a competitive election by opening an additional channel of financial support that undermined the existing contribution limit that applies to all candidates in the race. The July 2024 memo from Respondents' compliance counsel plainly shows that Respondents knew or should have known that the best way to ensure appropriate reimbursements was to diligently track time worked across the two committees. Instead, Respondents decided the reimbursements should be for 50% of relevant expenses and no tracking was done. Respondents publicly represented through this memo that they were properly tracking and allocating staff time when in fact they were not. Respondents also initially produced an incomplete record in response to a subpoena served by the Ethics Commission, which delayed resolution of this case.

In mitigation, Respondents hired additional representation and promptly turned over a significant supplemental production. Respondents then cooperated diligently with this investigation. Respondents also adopted new procedures beginning in mid-October designed to accurately track staff time across the two committees, allowing for more accurate reimbursement in the final weeks and months of the campaign. Staff members of the committees also made themselves available to answer questions during the final weeks and months of the campaign.

The harm in this case is tied directly to the contribution amounts. For that and the above reasons, Respondent Committees agree to set penalties for each of Counts Three through Eight at the amount of the prohibited contributions. As seen below, these are the same figures as those calculated above for each respective count.

Count 3: $500 (prohibited contribution totaling $500 never refunded)
Count 4: $16,811.79 (prohibited contributions totaling $16,811.70 never refunded)
Count 5: $14,480.92 (prohibited contributions totaling $14,480.92 never refunded)
Count 6: $43,361.38 (prohibited contributions totaling $43,361.38 never refunded)
Count 7: $17,070.94 (prohibited contributions totaling $17,070.94 never refunded)
Count 8: $1,125 (prohibited contribution of $1,125 never refunded)

Finally, although Respondent Ballot Measure Committee and Respondent Mayoral Committee have joint and several liability, for the purposes of this stipulation only, Respondents agree that both the Respondent Ballot Measure Committee and the Respondent Mayoral Committee will each pay a minimum of 25% of the total penalty given the nature of the violations. Herrera, who is named as a Respondent solely in his capacity as treasurer for the Respondent Committees, shall not be personally liable for any part of the penalty.

Total Penalties: $108,179.99