

1 JOHN ST. CROIX  
Executive Director  
2 SAN FRANCISCO ETHICS COMMISSION  
25 Van Ness Avenue, Suite 220  
3 San Francisco, CA 94102  
4 415-252-3100

5 Complainant

BEFORE THE SAN FRANCISCO  
ETHICS COMMISSION

7 In the Matter of ) Ethics Complaint No. 12-071030  
)  
8 NEIGHBORS AGAINST TRAFFIC & )  
POLLUTION/NO ON H, )  
9 and ) **STIPULATION, DECISION**  
SAN FRANCISCANS FOR CLEAN AIR & ) **AND ORDER**  
10 BETTER MUNI/YES ON A, )  
and )  
11 STEVEN MELE, Treasurer, )  
12 )  
Respondents. )  
13 )  
14 )

15 THE PARTIES STIPULATE AS FOLLOWS:

- 16 1. This Stipulation, Decision and Order (“Stipulation”) is made and entered into by and  
17 between Neighbors Against Traffic & Pollution/No on H (Identification Number 1300072), San  
18 Franciscans for Clean Air & Better Muni/Yes on A (Identification Number 1300074), and Treasurer  
19 Steven Mele (“Respondents”) and the San Francisco Ethics Commission (“the Commission”).
- 20 2. Respondents and the Commission deem it in their best mutual interest and advantage  
21 to settle and resolve all factual and legal issues in this matter and to reach a final disposition without  
22 the necessity of holding an administrative hearing to determine Respondents’ liability.
- 23 3. Respondents agree to pay a settlement in the amount of five thousand dollars  
24 (\$5,000.00) for violations of California Government Code section 84305(c), as incorporated into  
25 San Francisco Campaign & Governmental Conduct Code section 1.106.

1           4.       Within ten (10) business days after the Commission approves this Stipulation,  
2 Respondents shall deliver five thousand dollars (\$5,000.00) to the Commission. This settlement  
3 amount shall be paid by check or money order made payable to “the City and County of San  
4 Francisco.” The check or money order shall be delivered to the following address:

5                               San Francisco Ethics Commission  
6                               Attn: Enforcement Division  
7                               25 Van Ness Avenue, Suite 220  
8                               San Francisco, CA 94102

9           5.       Respondents understand, and hereby knowingly and voluntarily waive, any and all  
10 procedural rights under Section C3.699-13 of the San Francisco Charter and the Commission’s  
11 Regulations for Investigations and Enforcement Proceedings with respect to this matter. This  
12 includes, but is not limited to, the right to appear personally at any administrative hearing held in  
13 this matter, to be represented by an attorney at Respondents’ expense, to confront and cross-  
14 examine all witnesses testifying at the hearing and to subpoena witnesses to testify at the hearing.

15           6.       Respondents understand and acknowledge that this Stipulation is not binding on any  
16 other law enforcement agency, and does not preclude the Commission or its staff from cooperating  
17 with or assisting any other government agency with regard to the complaint, or any other matter  
18 related to it.

19           7.       This Stipulation is subject to approval by the Commission. In the event the  
20 Commission declines to approve this Stipulation, it shall become null and void.

21           8.       In the event the Commission rejects the Stipulation and a full evidentiary hearing  
22 before the Commission becomes necessary, the parties agree that no member of the Commission  
23 shall be disqualified because of his or her prior consideration of this Stipulation.

24           9.       This Stipulation, along with the attached Exhibit A, reflects the entire agreement  
25 between the parties hereto and supersedes any and all prior negotiations, understandings, and

1 agreements with respect to the transactions contemplated herein. This Stipulation may not be  
2 amended orally. Any amendment or modification to this Stipulation must be in writing duly  
3 executed by all parties.

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

7 11. For the reasons set forth in Exhibit A, the parties agree that five thousand dollars  
8 (\$5,000.00) is an appropriate settlement amount for Respondents' violation of California  
9 Government Code section 84305(c), as incorporated into San Francisco Campaign & Governmental  
10 Conduct Code section 1.106.

11 12. The parties hereto may sign different copies of this Stipulation, which will be  
12 deemed to have the same effect as though all parties had signed the same document.  
13

14  
15 Dated: \_\_\_\_\_

16 JOHN ST. CROIX, Executive Director  
17 San Francisco Ethics Commission, Complainant

18  
19 Dated: \_\_\_\_\_

20 STEVEN MELE, Treasurer, Neighbors Against Traffic &  
21 Pollution/No on H and San Franciscans for Clean Air  
22 & Better Muni/Yes on A, Respondents  
23  
24  
25

**DECISION AND ORDER**

The foregoing stipulation of the parties in “Neighbors Against Traffic & Pollution/No on H (Identification Number 1300072), and San Franciscans for Clean Air & Better Muni/Yes on A (Identification Number 1300074), and Steven Mele, Treasurer, San Francisco Ethics Commission Complaint Number 12-071030,” including the attached exhibit, 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: \_\_\_\_\_

SUSAN HARRIMAN, Chairperson  
San Francisco Ethics Commission

**EXHIBIT A**  
**Factual Background**

1  
2           1.       Respondents filed FPPC Form 410s, statements of organization, on August 7, 2007,  
3 forming their respective ballot measure committees.

4           2.       The “Neighbors Against Traffic & Pollution/No on H” committee was formed to  
5 oppose Proposition H in the November 6, 2007 election, and “San Franciscans for Clean Air &  
6 Better Muni/Yes on A” committee was formed to support Proposition A in the November 6, 2007  
7 election.

8           3.       On September 26, 2007, Supervisor Aaron Peskin signed his name to Respondents’  
9 amended FPPC Form 410s listing himself as a controlling officeholder for Respondent committees.

10           4.       On October 11, 2007, Respondents mailed 56,127 copies of a campaign flier  
11 (“FLIER ONE”) to San Francisco voters. Side 1 of FLIER ONE stated: “Yes on A [...] A Chance  
12 to Reduce Global Warming Right Here at Home...” Side 1 also included a list of various groups  
13 that “sponsored and endorsed” the Respondents’ Yes on A committee. Side 2 of FLIER ONE  
14 stated: “Reform Muni and Reduce Global Warming By Voting Yes on A.” Side 2 also stated: “The  
15 Sierra Club Endorses Yes on A” and included a statement of support from the Sierra Club and the  
16 San Francisco League of Conservation Voters.

17           5.       On October 14, 2007, the San Francisco Chronicle published an editorial entitled,  
18 “THE CHRONICLE RECOMMENDS CAMPAIGN 2007: Muni ‘reform’ falls short.” The article  
19 made several statements regarding the merits of Proposition A, including statements that the  
20 measure was “an otherwise well-conceived package” and that “Proposition A attempts to address  
21 Muni’s woes in these concrete ways...” The editorial also stated that a parking limitation was  
22 “jammed into Proposition A at the last minute in order to trump the recklessly crafted Proposition  
23 H.” The last line of the editorial noted the Chronicle’s “opposition to Proposition A.”  
24  
25

1           6.       On October 16, 2007, Respondents mailed 56,127 copies of a campaign flier  
2 (“FLIER TWO”) to San Francisco voters. Side 1 of FLIER TWO stated: “Under Bush, polluters  
3 are rewarded and global warming is ignored...now billionaire Republican Don Fisher is bringing  
4 Bush’s agenda to San Francisco with Measure H.” Side 2 of FLIER TWO stated: “Don’t let a  
5 republican billionaire take San Francisco backwards.” Side 2 also urged voters to “Vote Yes on A”  
6 and “Vote No on H.” Under the heading, “Vote Yes on A,” FLIER TWO stated: “‘concrete’, ‘well-  
7 conceived’ – SF Chronicle, 10/14/07.”

8           7.       On October 21, 2007, the San Francisco Chronicle published an article entitled, “The  
9 Worst of Politics, the Worst of Policy,” urging voters to reject Proposition H. The first line read:  
10 “The most dangerous measure on the San Francisco’s Nov. 6 ballot is the one with the most benign-  
11 sounding summary.”

12           8.       On October 24, 2007, Respondents mailed 41,115 copies of a campaign flier  
13 (“FLIER THREE”) to San Francisco voters. Side 1 of FLIER THREE stated: “Republican  
14 billionaire Don Fisher’s Measure H [...] Loopholes...you can drive a Hummer through.” FLIER  
15 THREE also urged voters to vote “Yes on A” and to vote “No on H.” Under the heading, “Yes on  
16 A,” FLIER THREE stated: “‘well-conceived’, ‘concrete’ (10/14/07) San Francisco Chronicle.”

17           9.       On October 30, 2007, the San Francisco Chronicle published an editorial entitled,  
18 “Warning: Wrong-way ad.” The editorial stated: “Yet even within these games of political and  
19 show-biz hucksterism, there are certain rules of decorum. That line was clearly violated in a recent  
20 mailer by a San Francisco group advocating Yes on A and No on H (identifying itself as neighbors,  
21 environmentalists, Muni riders and Supervisor Aaron Peskin). Immediately beneath ‘Yes on A’ it  
22 listed three words from an Oct. 14 Chronicle editorial: ‘well-conceived’ and ‘concrete.’ It was flat-  
23 out deceptive. The headline of that editorial was ‘Muni reform falls short.’ Just so the record is  
24  
25

1 clear: Our position is *no* on A, *no* on H and *no* on sleazy advertising that knowingly misrepresents  
2 our position.”

3 10. Supervisor Aaron Peskin’s name as a controlling officeholder did not appear on  
4 either FLIER ONE or FLIER TWO; however, it did appear on FLIER THREE.

5 11. On October 23, 2007, Respondents mailed 41,114 copies of FLIER TWO to San  
6 Francisco voters with Supervisor Aaron Peskin’s name on the flier.

7 12. On October 30, 2007, a complaint was filed with the Commission alleging: (1)  
8 failure to disclose the name of a controlling officeholder on mass mailings; and (2) distributing  
9 campaign fliers which contained a false endorsement. Supervisor Aaron Peskin, Neighbors Against  
10 Traffic & Pollution/No on H committee, and San Franciscans for Clean Air & Better Muni/Yes on  
11 A committee were named as Respondents. At all times, only Respondent committees’ campaign  
12 manager was responsible for management, final edits and distribution of campaign literature;  
13 Respondent committees’ treasurer managed committee finances and was not responsible for  
14 campaign literature.  
15

16 13. On October 31, 2007, Respondents mailed 30,004 copies of FLIER ONE to San  
17 Francisco voters with Supervisor Aaron Peskin’s name on the flier.

**Applicable Law**

1  
2 14. Committees sending mass mailings to voters in San Francisco must disclose their  
3 name, street address and city on the mass mailing. California Government Code section 84305(a)  
4 (“Cal. Gov. Code”); San Francisco Campaign & Governmental Conduct Code section 1.106 (“S.F.  
5 C&GC”).

6 15. A “mass mailing” is two hundred substantially similar pieces of mail sent within a  
7 calendar month. Cal. Gov. Code § 83112; California Code of Regulations section 18435(a) (“Cal.  
8 Code Regs.”); S.F. C&GC § 1.106.

9 16. If a controlled committee sends a mass mailing, the name of the person controlling  
10 the committee shall be included on the mass mailing in addition to the name, street address and city  
11 of the committee. Cal. Gov. Code § 84305(c); S.F. C&GC § 1.106.

12 17. A “controlled committee” is a committee that is controlled directly or indirectly by a  
13 candidate or that acts jointly with a candidate or controlled committee in connection with the  
14 making of expenditures. Cal. Gov. Code § 82016; S.F. C&GC § 1.106.

15 18. California Fair Political Practices Commission (“FPPC”) campaign disclosure forms  
16 allow individuals to officially declare “controlling officeholder, candidate, or state measure  
17 proponent” status via signature. See FPPC Form 410, available at,  
18 <http://www.fppc.ca.gov/forms/1-05forms/410.pdf>.

19 20. No individual or committee may sponsor a campaign advertisement that contains a  
20 false endorsement, where the person acts with knowledge of the falsity of the endorsement or with  
21 reckless disregard for the truth or falsity of the endorsement. S.F. C&GC § 1.163.5(a).

22 23. A “false endorsement” is a statement, signature, photograph, or image representing  
24 that a person expressly endorses or conveys support for or opposition to a candidate or measure  
25

1 when in fact the person does not expressly endorse or convey support for or opposition to the  
2 candidate or measure as stated or implied in the campaign communication. S.F. C&GC §  
3 1.163.5(a).

4 21. To “sponsor” means to pay for, direct, supervise or authorize the production of  
5 campaign advertisements. S.F. C&GC § 1.163.5(a).

6 22. Committees, including treasurers, are responsible for complying with the above-  
7 referenced laws and may be held liable for violations of these laws. Cal. Gov. Code § 91006; S.F.  
8 C&GC §§ 1.106, 1.170(g).

9 23. Any person who intentionally or negligently violates these laws is liable in an  
10 administrative proceeding before the Commission for penalties in an amount of up to five thousand  
11 dollars (\$5,000) for each violation or three times the amount not reported, whichever is greater.  
12 S.F. C&GC § 1.170(c).  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1 excluded from the scope of San Francisco Campaign & Governmental Conduct Code section  
2 1.163.5. Although Commission staff takes seriously the concern that the statements were  
3 misleading, it has decided not to proceed with probable cause given the specific facts of the case.  
4 The Commission staff will, however, closely review any future claims of false endorsements.

5 31. Furthermore, on October 30, 2007, the San Francisco Chronicle clarified its position  
6 regarding the endorsements by publishing an editorial entitled “Warning: Wrong-way ad” that  
7 responded to the fliers.

#### 8 **Factors in Mitigation**

9 32. Respondents have been cooperative in all phases of the investigation.

10 33. On October 23, 2007 and October 31, 2007, Respondents mailed amended versions  
11 of their initial mailings which complied with the mass mailing disclosure requirements of San  
12 Francisco Campaign & Governmental Conduct Code section 1.106 and California Government  
13 Code section 84305(c).  
14

#### 15 **Factors in Aggravation**

16 34. Respondents mailed 112,254 fliers to San Francisco voters without fully disclosing  
17 the required information, thereby depriving voters from being fully informed.

18 35. Although Respondents mailed amended versions of their initial fliers, the second  
19 mailings reached only 10% of the voters who received the original versions.  
20  
21  
22  
23  
24  
25