

File No. 130274

Committee Item No. 9

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: 05/8/2013

Board of Supervisors Meeting

Date: _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER

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Completed by: Victor Young

Date May 3, 2013

Completed by: Victor Young

Date _____

1 [Accept Gift - Design Services and Furniture - \$26,445.43]

2
3 **Resolution authorizing the Office of the District Attorney to retroactively accept a gift of**
4 **design services and furniture, valued at a total of \$26,445.43 from various donors.**

5
6 WHEREAS, William Breall, Ryan Brooks, Ron Conway, Pius Lee, Farah and Victor
7 Makras, Martin Richards Interiors, Larry and Sergio Nibbi, Jim Reuben, Charlotte Mailliard
8 Shultz, Joseph Tsang, and Benny Yee, wish to support the operations of the District
9 Attorney's Office; and

10 WHEREAS, The District Attorney's Office has received the gift of furniture and design
11 services and has placed the furniture in the District Attorney's Executive Office and the Victim
12 Services Lounge; now, therefore, be it

13 RESOLVED, That the Board of Supervisors authorizes the District Attorney's Office to
14 retroactively accept the gift of design services and furniture, valued at \$26,445.43, received
15 between October 17, 2012 and December 14, 2012, from the above donors; and, be it

16 FURTHER RESOLVED, That the Chief Financial Officer will continue to exercise sole
17 discretion over the placement of the furniture in the District Attorney's Office; and, be it

18 FURTHER RESOLVED, That the District Attorney's Office shall retain the gift of
19 furniture for its useful life and only remove or dispose of the furniture in accordance with City
20 laws, rules, and procedures regarding surplus property.

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE DISTRICT ATTORNEY



George Gascón
District Attorney

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2013 MAR 19 PM 3:41

Angela Calvillo
Clerk of the Board
Board of Supervisors
1 Dr. Carlton B. Goodlett Place
Room 244
San Francisco, CA 94102-4689

March 19, 2013

Dear Ms. Calvillo:

Attached please find an original and four copies of proposed resolution for Board of Supervisors approval, which is for furniture and design services provided to the San Francisco District Attorney's Office. On the advice of the City Attorney we are submitting this resolution because the total sum value of gifts is greater than \$10,000, although no individual gave over \$10,000 (Admin Code 10.100-305 (a) and (b).) We respectfully request this be calendared in the Budget and Finance Committee as soon as possible.

The following person may be contacted regarding this matter:
Cristine Soto DeBerry, Chief of Staff
(415) 553-1747.

Sincerely,

Cristine Soto DeBerry

130274 ✓



GEORGE GASCÓN
District Attorney

DIRECT DIAL: (415) 553-1741

Memorandum

The San Francisco District Attorney's Office is grateful to the following people for their support of the District Attorney's Office. The Office received the following gifts that were used to furnish a portion of the Victim Services Lounge and the Executive Office:

William Breall – Furniture donation \$2,000 on December 11, 2012

Ryan Brooks – Furniture donation \$1,000 on November 30, 2012

Ron Conway – Furniture donation \$9,999 on October 15, 2012

Pius Lee – Furniture donation \$2,000 on December 11, 2012

Farah and Victor Makras – Furniture donation \$500 on November 30, 2012

Makras Real Estate – Furniture donation \$1,000 on January 14, 2013

Larry and Sergio Nibbi – Furniture donation \$1,000 on November 30, 2012

Jim Reuben – Furniture donation \$500 on November 30, 2012

Charlotte Mailliard Shultz – Furniture donation \$2,000 on November 8, 2012

Martin Richards Interiors – Labor \$4,446.43 on January 4, 2013

Joseph Tsang – Furniture donation \$1,000 on December 27, 2012

Benny Yee – Furniture donation \$1,000 on December 27, 2012

Box 11
Page

File # 130274

To: Hon. Board of Supervisors
From: Charles Marsteller
Date: April 1, 2013
Re: FPPC Complaint against Hon. Geo. Gascon

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2013 APR -1 PM 4:34
le

Please be advised that I have filed a complaint with the FPPC regarding the acceptance of \$26,000 in funds used to purchase office furniture - an action taken by the Hon. Geo Gascon.

SF Friends of Ethics joins me in support of this complaint.

If you have any questions, please feel free to contact me. 415/292.3441.

SWORN COMPLAINT FORM

(Form May Be Subject to Public Disclosure)*

AS REQUIRED BY GOVERNMENT CODE SECTION 83115, please complete the form below to file a sworn complaint with the Fair Political Practices Commission. **This form must be completed in its entirety and all pertinent information must be stated on this form, not as an attachment.**

Mail the complaint to: **Enforcement Division
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, California 95814**

Person Making Complaint

Last name: Marstell ^{er} MARSTELLER

First Name: Charles

Street Address:
835 Turk St. #608

City: San Francisco State: CA

Zip: 94102

Telephone: (415) ²⁹²~~587~~ - ³⁴⁴¹~~8110~~

Fax: () -

E-mail: cm_marstell^{er}@hotmail.com

***IMPORTANT NOTICE**

Under the California Public Records Act (Gov. Code Section 6250 and following), this sworn complaint and your identity as the complainant may be subject to public disclosure. Unless the Chief of Enforcement deems otherwise, within three business days of receiving your sworn complaint we will send a copy of it to the persons(s) you allege violated the law.

In some circumstances, the FPCC may claim your identity is confidential, and therefore not subject to disclosure. A court of law could ultimately make the determination of confidentiality. If you wish the FPCC to consider your identity confidential, do not file the complaint before you contact the FPCC (916-322-5660 or toll free at 866-ASK-FPCC) and discuss the complaint with an Enforcement Division attorney.

Description, With as Much Particularity as Possible, of Facts Constituting Alleged Violation and how you have personal knowledge that it occurred**

See attached statement.

****Please attach copies of any available documentation that is evidence of the violation, (for example, checks, campaign materials, etc., if applicable to the complaint). Note that a newspaper article is NOT considered evidence of a violation.**

Name and Addresses of Potential Witnesses, in addition to yourself, if Known:

Last Name: _____

First Name: _____

Street Address: _____

City: _____ State: _____

Zip: _____

Telephone: () _____

Fax: () _____

E-mail: _____



Last Name: _____

First Name: _____

Street Address:

City: _____ State: _____

Zip: _____ - _____

Telephone: (____) _____ - _____

Fax: (____) _____ - _____

E-mail: _____

Last Name: _____

First Name: _____

Street Address:

City: _____ State: _____

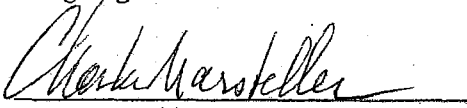
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Telephone: (____) _____ - _____

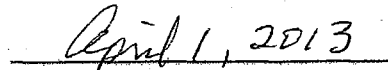
Fax: (____) _____ - _____

E-mail: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



(Signature)



(Date)

Charles Marsteller

(Please print your name)

Statement of FPPC Complaint filed by Charles Marsteller against George Gascón

This complaint filed by Charles Marsteller^e is endorsed by the Friends of Ethics group in San Francisco. Due to circumstances explained below (see header below regarding "Upcoming Board of Supervisors meeting"), this complaint presents an urgent matter. The complainant requests that the Fair Political Practices Commission (FPPC) swiftly act on this complaint to prevent additional violations from occurring.

Respondent George Gascón is the District Attorney of San Francisco. A March 31st article in the Matier & Ross column of the San Francisco Chronicle (*available online*: "DA shrugs off furniture fuss") and a Form 803 (*see Attached*) filed by Gascón on March 12, 2013 with the San Francisco Ethics Commission both indicate that \$22,000 in payments from multiple persons were made for office furniture for Gascón and the DA's office. The payments occurred between 10/15/12 and 1/14/13. In addition, the 803 states that \$4,446.43 in "In-Kind Services" was provided on 1/4/13 by Martin Richards interiors. According to the Chronicle article, for which Gascón was interviewed, the furniture included a glass-top desk, bookshelf, credenza, and chrome-framed chairs for Gascón's own office as well as sofa for the domestic-violence victims' waiting room across the hall from Gascón's office.

Though the furniture payments were clearly made "at the behest of" the District Attorney, Gascón's filing of a Form 803 was inappropriate for these amounts. Behested payments required to be disclosed on a Form 803 do not include payments for personal or campaign purposes (see Government Code Section 82015). Since the furniture payments at issue were made for the benefit of Gascón's own use, they would not constitute a behested payment that must be reported on Form 803.

Consequently, the payments were either gifts or campaign contributions. Pursuant to Government Code Sections 82015 and 82028, the primary distinction between contributions and gifts is that contributions are made for "political purposes" while a gift "confers a personal benefit on the recipient." This complaint considers the applicability of both scenarios.

The furniture payments as contributions

Pursuant to Government Code section 82015(a), a contribution includes "a payment ... except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes." Review of the known surrounding circumstances regarding the furniture payments suggests that they were made for political purposes, including the following:

1. The number of monetary donors involved (10 individuals and 2 businesses), the time frame of their payments, and that the furniture appears to have been purchased using the combination of the payments suggests a coordinated fundraising and purchasing effort, akin to campaign activity.
2. Some if not most of the furniture donors are involved in San Francisco politics. For example, six of the individual donors of the furniture payments (Ronald Conway, Farah & Victor Makras, Jim Reuben, William Breall, & Benny Yee) were also campaign

contributors to Gascón's campaign committee, each having donated the maximum allowed under local law. Victor Makras is also the principal of Makras Real Estate, one of the two business donors of the furniture payments. As for the other business donor of the furniture (Nibbi Brothers), various individual members of the Nibbi family were also maximum campaign contributors to Gascón's campaign committee. In addition, Ron Conway, who made the largest donation for the furniture, is a regular Major Donor filer and gave \$25,000 in 2011 to a committee (San Francisco Alliance for Jobs and Sustainable Growth PAC) that made thousands of dollars in independent expenditures in support of Gascón, as well as also utilized the same Treasurer (Jim Sutton) as Gascón. (Source: Online database of San Francisco Ethics Commission)

3. San Francisco Campaign & Governmental Conduct Code Section 1.108(a)(2) ("Prohibition on Multiple Officeholder Accounts") provides, in part: "All funds, services or in-kind contributions received by a candidate committee for expenses incurred directly in connection with carrying out the candidate's usual and necessary duties of holding office shall be deposited, credited or otherwise reported to the candidate committee's Campaign Contribution Trust Account. Such contributions shall be subject to the contribution limits in Section 1.114 of this Chapter. An elected officeholder may not establish or control any other committees or accounts for the purpose of making officeholder expenses." While local law does not directly bear on the meaning of state law in terms of whether a payment was a contribution or gift, this local statute indicates the climate in which the furniture payments were made. In San Francisco, payments received by an officeholder's committee, or, by extension, an officeholder, for officeholder expenses are campaign contributions. Obviously, use of furniture in Gascón's own office is directly connected to his usual and necessary duties of holding office. Gascón could presumably avoid automatic application of this statute only if staff of the District Attorney office unconnected to his committee received the furniture payments and/or in-kind donation.

Additional investigation into the circumstances surrounding the payments may further confirm their character as contributions.

In the event that the payments were in fact contributions to Gascón, the following violations occurred:

- Gascón's committee failed to disclose the receipt of multiple monetary contributions (as well potentially various furniture expenditures) or in-kind contributions, depending upon the facts of the fundraising (a violation related to the account used for deposit of the funds may also have been committed);
- Any of the donors regarding the furniture who qualified as Major Donors, such as Ron Conway, may have failed to disclose their contribution made.

The furniture payments as gifts

In the event that the furniture payments did not qualify as contributions, they would qualify as gifts because they conferred a personal benefit on Gascón. As the photo accompanying the Chronicle article shows, Gascón is personally using most of the purchased furniture. As gifts,

the violations committed by Gascón turn on whether the gifts were gifts to an agency or gifts to an individual official.

FPPC Regulation 18944 “sets forth circumstances under which a payment made to a state or local government agency, that is controlled by the agency and used for official agency business, is not considered a reportable or limited gift to an individual public official, although the official receives a personal benefit from the payment.” Regulation 18944 provides that a gift qualifies as a gift to an agency rather than a gift to an official if the qualifying terms are met:

- (1) “The agency head, or his or her designee, determines and controls the agency's use of the payment.”
- (2) “The payment must be used for official agency business.”
- (3) “Within 30 days after use of the payment, the agency reports the payment on” a Form 801, which must be filed with the same filing officer that maintains the agency’s employees Statements of Economic Interest [In this instance, the filing officer would be unclear, since Gascón must file his SEI with the San Francisco Ethics Commission while designated SEI filers of the DA’s office must file their SEIs with the DA’s office]. In addition, the applicable filing officer must post the Form 801, or the information contained on it, on its website.

After searching the websites of both the San Francisco Ethics Commission and the District Attorney’s office, it appears that neither website posts information regarding gifts to the District Attorney’s office, including regarding the furniture payments. Presumably, no Form 801s were filed by the DA regarding the furniture payments. Based on the website omission if not the failure to file various Form 801s as well, the full requirements for qualifying these gifts as gifts to an agency were not met. Consequently, any gifts resulting from the furniture payments would be personal gifts to Gascón.

In the event that the payments were in fact gifts to Gascón, the following violations occurred:

- Gascón has received multiple gifts in violation of the \$440 annual gift limit from a single source;
- Gascón may have failed to report multiple gifts received in 2012 on his Annual Statement of Economic Interest due on April 2, 2012 (the day after this complaint was mailed to the FPPC).

Upcoming Board of Supervisors meeting and other circumstances indicating the District Attorney is disregarding the law

This complaint presents an urgent matter because the District Attorney appears to be actively disregarding the applicable state law regarding the furniture payments.

First of all, the amount of payments create some appearance of an attempt to evade requirements. The largest donor of the furniture payments, Ron Conway, was also the first donor of the payments, paying \$9,999 on October 15, 2012. The \$9,999 amount is curious figure. The amount appears to be selected because it falls short of a threshold provided by the San Francisco Charter which requires approval of the San Francisco Board of Supervisors before a department

may accept a gift of \$10,000 or more. This suggests that at least Conway believed that his payment constituted a gift.

Second, the District Attorney moved to March of 2013 to characterize that payments as behested payments required to be disclosed on a Form 803. While such a form (if due) would have been filed late, this act appears to have been motivated by a reluctance to characterize the payments as contributions (the amounts in question would severely violated San Francisco's applicable contribution limits) or gifts (since Regulation 18944 was not complied with, the amount in question would severely violate the state gift limit).

Third, the March 31st Chronicle article gives the impression that the DA is defiant regarding the ethics rules, stating "Gascón, whose staff had run the idea past the city attorney's office, is offering no apologies. "I won't even bother to defend it," he told us." The article further states: "As for those raising questions about the propriety of insiders passing the hat for law enforcement furniture? "People have way too much time on their hands," Gascón said."

Fourth, the Agenda for the April 2, 2012 meeting of the Board of Supervisors (*available online*) provides the following information regarding a proposed resolution on p. 13:

"[Accept Gift - Design Services and Furniture - \$26,445.43]

Resolution authorizing the Office of the District Attorney to retroactively accept a gift of design services and furniture, valued at a total of \$26,445.43 from various donors.

(District Attorney)

03/25/2013; RECEIVED FROM DEPARTMENT.

04/02/2013; RECEIVED AND ASSIGNED to the Budget and Finance Sub-Committee."

Apparently, Gascón decided that he should seek to sanitize any violation of San Francisco's Charter provision regarding acceptance of gifts by requesting retroactive approval from the Board of Supervisors. Despite apparently considering the furniture payments to be gifts as of submitting this resolution request on March 25, 2013, Gascón does not appear to have moved to withdraw or amend his Form 803 filed on March 12, 2013 which incorrectly characterized the payments as behested payments. Thus, Gascón has on one hand stated the payments on not gifts and then on the other hand treated them as if they were gifts.

Collectively, the above circumstances give the appearance of a disregard for the law, if not evidencing the active intent of attempts to evade requirements.

Some pertinent unknown facts:

- Who fundraised or coordinated the payments used for the office furniture?
- How where the payments deposited?

Behested Payment Report

A Public Document

FILED Behested Payment Report

| | | | |
|--|-------------------|--|---|
| 1. Elected Officer or CPUC Member (Last name, First name) George Gascon | | Date Stamp 13 MAR 1 | California Form 803 For Official Use Only SAN FRANCISCO ETHICS COMMISSION |
| Agency Name District Attorney, City and County of San Francisco | | 2013 MAR 13 10 58 AM ETHICS COMMISSION | |
| Agency Street Address Hall of Justice- 850 Bryant Street, Room 322, SF CA 94103 | | DATE OF ORIGINAL FILING: _____ (month, day, year) | |
| Designated Contact Person (Name and title, if different) Eugene Cleninden, CFO | | <input type="checkbox"/> Amendment (See Part 5) | |
| Area Code/Phone Number 415-553-1895 | E-mail (Optional) | | |

2. Payor Information (For additional payors, include an attachment with the names and addresses.)

See attached.

Name _____

Address _____ City _____ State _____ Zip Code _____

3. Payee Information (For additional payees, include an attachment with the names and addresses.)

See attached.

Name _____

Address _____ City _____ State _____ Zip Code _____

4. Payment Information (Complete all information.)

Date of Payment: See attached. (month, day, year) Amount of Payment: (In-Kind FMV) \$ _____ (Round to whole dollars.)

Payment Type: Monetary Donation or In-Kind Goods or Services (Provide description below.)

Brief Description of In-Kind Payment: _____

Purpose: (Check one and provide description below.) Legislative Governmental Charitable
Describe the legislative, governmental, charitable purpose, or event: Furniture for District Attorney's Executive Office and Victim Services Lounge

5. Amendment Description or Comments

6. Verification

I certify, under penalty of perjury under the laws of the State of California, that to the best of my knowledge, the information contained herein is true and complete.

Executed on 2-11-2013 DATE By _____ (Redacted) Elected Officer or CPUC Member

DISTRICT ATTORNEY GEORGE GASCON - FORM 803 - PAYOR INFORMATION

| Date Rec'd | Payor | Amount | Payment Type | Address | City | State | Zip |
|------------|----------------------------|-------------|-------------------|---------|---------------|-------|-------|
| 10/15/12 | Ron Conway | \$ 9,999.00 | Monetary Donation | | San Francisco | CA | 94109 |
| 11/8/2012 | Charlotte Malliard Schultz | \$ 2,000.00 | Monetary Donation | | San Francisco | CA | 94133 |
| 11/30/12 | Ryan Brooks | \$ 1,000.00 | Monetary Donation | | San Francisco | CA | 94118 |
| 11/30/12 | Farah and Viktor Makras | \$ 500.00 | Monetary Donation | | San Francisco | CA | 94123 |
| 11/30/12 | Nibbi Brothers Contractors | \$ 1,000.00 | Monetary Donation | | San Francisco | CA | 94107 |
| 11/30/12 | Jim Reuben | \$ 500.00 | Monetary Donation | | San Francisco | CA | 94121 |
| 12/11/12 | William Brealf | \$ 2,000.00 | Monetary Donation | | San Francisco | CA | 94117 |
| 12/11/12 | Pius Lee | \$ 2,000.00 | Monetary Donation | | San Francisco | CA | 94108 |
| 12/27/2012 | Benny Yee | \$ 1,000.00 | Monetary Donation | | San Francisco | CA | 94122 |
| 12/27/12 | Joseph Tsang | \$ 1,000.00 | Monetary Donation | | San Francisco | CA | 94131 |
| 1/4/13 | Martin Richards Interiors | \$ 4,446.43 | In-kind Services | | San Francisco | CA | 94109 |
| 1/14/13 | Makias Real Estate | \$ 1,000.00 | Monetary Donation | | San Francisco | CA | 94114 |

