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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
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11

12 In the Matter of) FPPC No. 09/774
13)
14 GEORGE BARICH) STIPULATION, DECISION and
15) ORDER
16 Respondent.)
17)

18 Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission,
19 and Respondent George Barich (“Respondent”) agree that this Stipulation will be submitted for
20 consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of Respondent, pursuant to Section 83116 of the Government Code.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to, the
27 right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondent’s own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent violated the Political Reform Act by making a
4 cash campaign contribution of \$1,000, in violation of section 84300 of the Government Code (1 count);
5 and by failing to establish a single campaign bank account upon receipt of contributions of \$1,000 or
6 more for his 2008 Cotati City Council campaign, in violation of section 85201 of the Government Code
7 (1 count). All counts are described in Exhibit 1, which is attached hereto and incorporated by reference
8 as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

9 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
10 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
11 of Seven Thousand Five Hundred Dollars (\$7,500). A cashier's check from Respondent in said amount,
12 made payable to the "General Fund of the State of California," is submitted with this Stipulation as full
13 payment of the administrative penalty, to be held by the State of California until the Commission issues
14 its decision and order regarding this matter. The parties agree that in the event the Commission refuses
15 to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
16 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in
17 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and
18 agrees that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
19 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
20 shall be disqualified because of prior consideration of this Stipulation.

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Dated: _____
Roman G. Porter, Executive Director
Fair Political Practices Commission

Dated: _____
George Barich, Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of George Barich,” FPPC No. 09/774,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chairman.

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6 IT IS SO ORDERED.

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8 Dated: _____

Dan Schnur, Chairman
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

At all relevant times, Respondent George Barich (“Respondent”) was a resident in the City of Cotati. In 2006, Respondent was a campaign volunteer in Cotati City Council Member John Guardino’s November 7, 2006 campaign. John Guardino was a candidate for Cotati City Council in the November 7, 2006 election. The controlled committee for John Guardino’s November 7, 2006 campaign was Friends of John Guardino (“Guardino Committee”). In this matter, prior to becoming a campaign volunteer, Respondent made a cash contribution of \$1,000 to the Guardino Committee.

Additionally, Respondent successfully ran for Cotati City Council in the November 4, 2008 election. However, Respondent failed to establish a single bank account upon receipt of contributions of \$1,000 or more to his campaign committee. Respondent failed to file a Statement of Organization once he received or spent over \$1,000, failed to designate that a bank account was designated for the use of campaign purposes, and failed to use the campaign account exclusively for campaign purposes.

For the purposes of this Stipulation, Respondent’s violations of the Political Reform Act (the “Act”)¹ are stated as follows:

COUNT 1: Respondent George Barich made a cash campaign contribution of \$1,000, in violation of Section 84300, subdivision (a), of the Government Code.

COUNT 2: Respondent George Barich failed to establish a single campaign bank account upon receipt of contributions of \$1,000 or more for his 2008 Cotati City Council campaign, in violation of Section 85201 of the Government Code.

SUMMARY OF THE LAW

Prohibition of Cash Contributions of \$100 or More

Under Section 84300, subdivision (a), no contribution of one hundred dollars (\$100) or more shall be made or received in cash.

One Campaign Bank Account Requirement

To ensure full disclosure of campaign activity and to guard against improper use of campaign funds, the Act requires campaign funds to be segregated from nonpolitical, personal

¹The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

accounts and kept in a single, designated campaign bank account. (Section 85201.) Section 85201, subdivision (b), requires a candidate who raises contributions of one thousand dollars (\$1,000) or more in a calendar year to set forth the name and address of the financial institution where the candidate has established a campaign contribution account and the account number on the committee statement of organization. A candidate shall establish a separate controlled committee and campaign bank account for each specific office identified in statements filed by the candidate. (Regulation 18521.)

All contributions or loans made to the candidate, to a person on behalf of the candidate, or to the candidate's controlled committee must be deposited in the campaign bank account. (Section 85201, subdivision (c).) Any personal funds that will be used to promote the election of the candidate must be deposited in the campaign bank account prior to expenditure. (Section 85201, subdivision (d).) All campaign expenditures must be made from the campaign bank account. (Section 85201, subdivision (e).)

SUMMARY OF THE FACTS

COUNT 1 – Making a Cash Contribution

Towards the end of July 2006, prior to becoming a campaign volunteer, Respondent made a contribution of \$1,000 in cash to the Guardino Committee.

At all relevant times, the City of Cotati had a local campaign contribution limit of \$350. A Guardino Committee volunteer that received the \$1,000 cash contribution divided the contribution between three separate individuals. The Guardino Committee disclosed the contribution as received by these three separate individuals. The Respondent was not disclosed as a contributor on the statement covering the period of August 11, 2006, through September 30, 2006. The Guardino Committee filed an amendment to the above mentioned campaign statement, which indicates that Respondent was the true source of the \$1,000 contribution received on or about September 4, 2006.

Respondent contends that he made a \$1,000 cash contribution to the Coalition to Protect Cotati's Future. However, the Coalition to Protect Cotati's Future-Yes on P (I.D. No. 1262047) was also a primarily formed ballot measure committee that had reporting requirements under the Act. Thus, this contribution would have been a violation of the Act whether he made it to the Guardino Committee or the Coalition to Protect Cotati's Future-Yes on P. Respondent does admit that the \$1,000 cash contribution was in fact received by the Guardino Committee.

By contributing more than \$100 in cash to a campaign committee, Respondent violated Government Code section 84300, subdivision (a).

COUNT 2 –Campaign Bank Account

Respondent successfully ran for Cotati City Council in the November 4, 2008 local election. On August 7, 2008, Respondent filed a Candidate Campaign Statement Short Form ("Form 470"), disclosing that he anticipated receiving and spending less than \$1,000 in the

calendar year. On October 6, 2008, Respondent filed a Pre-Election Campaign Statement, for the period January 1, 2008, through September 30, 2008. The Pre-Election Campaign Statement disclosed expenditures over \$1,000, but failed to disclose any contributions or loans made to the Respondent's campaign committee. Respondent failed to file a Statement of Organization ("Form 410") once he received or spent over \$1,000. The Form 410 requires that a bank account is designated for the use of campaign purposes.

During the November 4, 2008 local election, Respondent paid campaign expenses from a previously existing personal bank account. Respondent paid a total of \$2,857.60 from this account for election campaign printing expenses and signs and continued to use this account to pay \$4,245.20 for expenses associated with his recall. Additionally, Respondent continued to use this personal bank account to pay monthly life insurance payments. Respondent contends that he unsuccessfully attempted to end the automatic life insurance payments during his 2008 campaign.

By receiving contributions and making expenditures from a personal bank account, without opening a separate campaign bank account, Respondent violated Government Code section 85201.

CONCLUSION

This matter consists of 2 counts of violating the Act, which carry a maximum administrative penalty of Five Thousand Dollars (\$5,000) per count for a total of Ten Thousand Dollars (\$10,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

COUNT 1 – Making a Cash Contribution

Violation of the cash contribution prohibition has historically been considered a very serious violation, as it can prevent tracking of the true source of campaign contributions. In this case, this is exactly the kind of harm which occurred.

The typical administrative penalty for making a cash contribution of one hundred dollars (\$100) or more is typically at the upper end of the penalty range.

Aggravating Factors

The cash contribution in this case violated the City of Cotati campaign contribution limits. In this matter, the cash contribution was actually laundered by other parties and falsely reported on campaign statements, such that there was great public harm because the public was deprived of information about who was contributing financially to the Guardino campaign.

Mitigating Factors

Respondent has no prior enforcement history.

Based on the particular facts and circumstances of this matter, an administrative penalty of Four Thousand Five Hundred Dollars (\$4,500) is appropriate for this violation.

COUNT 2 –Campaign Bank Account

The purpose behind establishing a campaign bank account is to ensure that contributions to and expenditures made in support of a campaign are accurately reported. The typical administrative penalty for failing to establish a campaign bank account is typically at the middle of the penalty range.

Aggravating Factors

Respondent was previously a candidate for elected office, and has had campaign and reporting requirements since 1998. Respondent's failure to establish a campaign bank account is aggravated by his failure to properly prepare campaign statements to accurately report his campaign activity, failure to properly report loans from himself on these statements, and failure to properly file a Form 410 for his 2008 election committee.

Mitigating Factors

Respondent amended the required campaign statements after the Enforcement Division brought the violations to his attention and as a condition of settlement. Additionally, Respondent has no prior enforcement history and states that he has learned from this experience.

Based on the particular facts and circumstances of this matter, an administrative penalty of Three Thousand Dollars (\$3,000) is appropriate for this violation.

Accordingly, the facts of this case justify an imposition of the agreed upon total administrative penalty of Seven Thousand Five Hundred Dollars (\$7,500).