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6  
7 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

8 **STATE OF CALIFORNIA**

9  
10 In the Matter of ) FPPC No. 09/537  
11 )  
12 CHICO DEMOCRATS 08, and MICHAEL ) STIPULATION, DECISION and  
WORLEY; ) ORDER  
13 )  
14 Respondents. )  
15 )

16 Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission,  
17 and Respondents Chico Democrats 08 and Michael Worley, hereby agree that this Stipulation will be  
18 submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled  
19 meeting.

20 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this  
21 matter and to reach a final disposition without the necessity of holding an administrative hearing to  
22 determine the liability of Respondents.

23 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural  
24 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Section 18361.1  
25 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,  
26 the right to personally appear at any administrative hearing held in this matter, to be represented by an  
27 attorney at Respondents' 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 Respondents Chico Democrats 08 and Michael Worley, stipulate and agree that they violated the  
4 Political Reform Act by qualifying as a committee pursuant to Government Code Section 82013  
5 subdivision (a), and thereafter, failing to file required campaign statements and reports, in violation of  
6 Government Code Sections 84101, subdivision (a), 84200, subdivision (a), and 84204. (1 count); and by  
7 sending a mass mailing which failed to display the required sender identification, in violation of  
8 Government Code Section 84305, subdivision (a), (1 count), as described in Exhibit 1. Exhibit 1 is  
9 attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and  
10 accurate summary of the facts in this matter.

11 Respondents Chico Democrats 08 and Michael Worley, agree to the issuance of the Decision and  
12 Order, which is attached hereto. Respondents Chico Democrats 08 and Michael Worley, also agree to  
13 the Commission imposing upon it an administrative penalty in the amount of Four Thousand Dollars  
14 (\$4,000).

15 A cashier's check from Respondents totaling Four Thousand Dollars (\$4,000), made payable to  
16 the "General Fund of the State of California," is submitted with this Stipulation as full payment of the  
17 administrative penalty, to be held by the State of California until the Commission issues its Decision and  
18 Order regarding this matter. The parties agree that in the event the Commission refuses to accept this  
19 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission  
20 meeting at which the Stipulation is rejected, all payments tendered by Respondents in connection with  
21 this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and agree that in the  
22 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission  
23 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be  
24 disqualified because of prior consideration of this Stipulation.

1 Dated: \_\_\_\_\_

\_\_\_\_\_  
Roman G. Porter, Executive Director  
Fair Political Practices Commission

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4 Dated: \_\_\_\_\_

\_\_\_\_\_  
Michael Worley, individually and on behalf of  
Chico Democrats 08

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**DECISION AND ORDER**

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The foregoing Stipulation of the parties “In the Matter of Chico Democrats 08 and Michael  
9 Worley, FPPC No. 09/537,” including all attached exhibits, is hereby accepted as the final Decision and  
10 Order of the Fair Political Practices Commission, effective upon execution below by the Chairman.

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12 IT IS SO ORDERED.

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

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Dan Schnur, Chairman  
Fair Political Practices Commission

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## **EXHIBIT 1**

### **INTRODUCTION**

Respondent Chico Democrats 08 (“Respondent Committee”) was formed in 2008 as a federal political action committee for the Chico Democratic Club, which is a chartered entity of the Butte County Democratic Central Committee. Respondent Michael Worley has been the treasurer of Respondent Committee since its inception.

Despite qualifying as a state general purpose committee under the Political Reform Act (the “Act”)<sup>1</sup>, Respondents did not file campaign statements and reports as required. Additionally, in October 2008, Respondents paid for and sent a mass mailing to Chico residents which failed to provide proper sender identification.

For the purposes of this Stipulation, Respondents’ violations are as follows:

**COUNT 1:** Respondent Chico Democrats 08, in or about 2008, qualified as a committee pursuant to Government Code Section 82013 subdivision (a), and thereafter, Respondents Chico Democrats 08 and Michael Worley failed to file required campaign statements and reports, in violation of Government Code Sections 84101, subdivision (a), 84200, subdivision (a), and 84204.

**COUNT 2:** Respondents Chico Democrats 08 and Michael Worley, on or about October 31, 2008, sent a mass mailing which failed to display the required sender identification, in violation of Government Code Section 84305, subdivision (a).

### **SUMMARY OF THE LAW**

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act therefore establishes a campaign reporting system designed to accomplish this purpose of disclosure, and also requires senders of mass mailings to properly identify themselves on the mass mailings.

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#### **Duty to File a Statement of Organization**

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<sup>1</sup> The 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 18109 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.

Section 82013, subdivision (a) of the Act includes within the definition of “committee” any person or combination of persons who receives contributions of \$1,000 or more during a calendar year. This type of committee is commonly referred to as a “recipient committee.”

Under the Act, there are different kinds of recipient committees, defined by the type of election activity in which they engage. A recipient committee that is formed or exists primarily to support or oppose candidates or measures voted on in a state election or in more than one county is defined, at Section 82027.5, subdivision (b), as a “state general purpose committee.”

Under the Act’s campaign reporting system, Section 84101, subdivision (a) provides that every committee shall file a statement of organization within ten days after it qualifies as a committee. As such, a recipient committee must file a statement of organization within ten days after it receives any contribution that brings the total amount of the contributions that it has received to \$1,000 or more. The committee shall file the original of the statement of organization with the Secretary of State, and a copy of the statement of organization with the local filing officer with whom the committee is required to file the originals of its campaign reports under Section 84215.

### **Duty to File Campaign Statements and Reports**

Also under the Act’s campaign reporting system, recipient committees, as defined in Section 82013, subdivision (a), are required to file certain specified campaign statements and reports.

Section 84215, subdivision (a) requires a state general purpose committee to file the committee’s campaign statements and reports with the California Secretary of State (“SOS”), the Registrar-Recorder of Los Angeles County, the Registrar of Voters of the City and County of San Francisco, and the county of the committee’s domicile.

### **Duty to File Late Independent Expenditure Reports**

Pursuant to Section 84204 when a committee makes a late independent expenditure, as defined in Section 82036.5, the committee must disclose the expenditure in a late independent expenditure report filed at each office with which the committee is required to file its next campaign statement pursuant to Section 84215, within 24 hours of making the late independent expenditure. Section 82036.5 defines a “late independent expenditure” as any independent expenditure which totals in the aggregate one thousand dollars (\$1,000) or more and is made for or against any specific candidate or measure involved in an election before the date of the election but after the closing date of the last campaign statement required to be filed prior to the election by a candidate or committee participating in such election. Under Section 84200.7, for an election held in June or November of an even-numbered year, the late independent expenditure period covers the last 16 days before the election. Thus, for the November 4, 2008 election, the late independent expenditure period was October 19 – November 3, 2008.

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### **Duty to File Semi-annual Campaign Statements**

Section 84200, subdivision (a) requires all recipient committees to file semi-annual campaign statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31.<sup>2</sup> All filing obligations continue until the recipient committee is terminated by filing a statement of termination (Form 410) with the SOS and a copy with the local filing officer receiving the committee's original campaign statements. (Section 84214; Regulation 18404.)

### **Mass Mailing Sender Identification**

Section 84305, subdivision (a) requires candidates and committees to properly identify themselves when sending a mass mailing. Specifically, the statute provides that no single candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing. The name of the committee is that which is disclosed on the committee's statement of organization, pursuant to Section 84102.

Section 82041.5 defines a "mass mailing" as over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry. Regulation 18435, subdivision (a), provides that a mass mailing is over two hundred substantially similar pieces of mail sent in a calendar month. Regulation 18435, subdivision (b), defines the term "sender," as used in Section 84305, as the candidate or committee who pays for the largest portion of expenditures attributable to the designing, printing or posting of the mailing.

### **SUMMARY OF THE FACTS**

Respondent Chico Democrats 08 ("Respondent Committee") was formed in 2008 as a federal political action committee for the Chico Democratic Club, which is a chartered entity of the Butte County Democratic Central Committee. Respondent Michael Worley has been the treasurer of Respondent Committee since its inception.

Despite qualifying as a state general purpose committee under the Act, Respondents did not file campaign statements and reports as required. Additionally, in October 2008, Respondents paid for and sent a mass mailing to Chico residents which failed to provide proper sender identification.

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### **COUNT 1**

(Failure to File Required Campaign Statements and Reports)

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<sup>2</sup> Under Regulation 18116, whenever the Act requires that a semi-annual statement be filed prior to or not later than a specified date or during or within a specified period, and the deadline falls on a Saturday, Sunday or official state holiday, the filing deadline for such a statement shall be extended to the next regular business day. Because the January 31, 2009 deadline (semi-annual statement) fell on Saturday, the filing deadline was extended to February 2, 2009.

On September 29, 2008, Respondents filed a Statement of Organization with the Federal Election Commission (FEC), describing itself as a political action committee. Additionally, for reporting periods in 2008, Respondents filed the following reports with the FEC:

| <b>Date</b>  | <b>Report Type</b>  | <b>Total Receipts<br/>(Contributions)</b> | <b>Total<br/>Disbursements<br/>(Expenditures)</b> |
|--------------|---|---|---|
| 10/24/2008   | Report of Receipts and Disbursements (FEC) for the period of 8/21 – 9/30/2008   | \$6,841.00                                | \$1,211.35  |
| 10/27/2008   | Report of Receipts and Disbursements (FEC) for the period of 10/1 – 10/15/2008  | \$3,873.51                                | \$5,613.65  |
| 12/8/2008    | Report of Receipts and Disbursements (FEC) for the period of 10/16 – 11/24/2008 | \$3,431.05                                | \$7,071.61  |
| 2/2/2009     | Report of Receipts and Disbursements (FEC) for the period of 11/25 – 12/31/2008 | \$1,555.00                                | \$1,554.61  |
| <b>TOTAL</b> |   | <b>\$15,700.56</b>                        | <b>\$15,451.22</b>                                |

According to the filings identified above, as of September 15, 2008, Respondents had received \$1,000 in contributions. Expenditures made by Respondent Committee from September 7 through October 14, 2008, were related to fundraising and voter registration regarding the upcoming federal election. However, Respondents reported making expenditures on or about October 29 through November 3, 2008, related to a slate card for local candidates, and to a mass mailer regarding a local Chico candidate and four California statewide ballot measures. The evidence in this case revealed the following information:

| <b>Date of Expenditure</b> | <b>Description</b>   | <b>Amount</b> |
|----------------------------|--|---------------|
| 10/29/2008                 | Strickly Mail: Slate Card – Local Candidates   | \$3,375.82    |
| 10/30/2008                 | Automate Mailing: Data Processing, Production, Full Mailing Service, Postage; Mailer – Local Props/Candidate | \$1,845.65    |
| 10/31/2008                 | Strickly Mail: Slate Card – Local Candidates   | \$958.83      |
| 11/03/2008                 | Strickly Mail: (no further description)  | \$418.15      |

Respondent Worley, during an interview with the Commission’s Special Investigator, Beatrice Moore, stated that he thought that by complying with federal reporting requirements, Respondents had no obligation to comply with California reporting requirements. He has since received training in this regard in which he learned that the state reporting requirements are not trumped by the federal reporting requirements.

Thus, because Respondent Committee received \$1,000 or more in contributions, and engaged in local and statewide political activity beginning on or about October 29, 2008, Respondents

qualified as a state general purpose committee under the Act. Therefore, under the Act, Respondents should have filed the following statements and reports:

| <b>Type of Report</b>   | <b>Due Date</b> |
|---|-----------------|
| Statement of Organization   | 11/08/2008      |
| Late Independent Expenditure Report (Reporting Period of 10/19 – 11/3/2008)<br>Independent Expenditure made on 10/29/2008 in the amount of \$3,375.82 | 10/30/2008      |
| Late Independent Expenditure Report (Reporting Period of 10/19 – 11/3/2008)<br>Independent Expenditure made on 10/30/2008 in the amount of \$1,845.65 | 10/31/2008      |
| Semi-Annual Campaign Statement (Reporting Period of 10/19 – 12/31/2008)   | 2/2/2009        |

Although Respondents filed a statement of organization with the FEC, and Respondents reported all contributions and expenditures on FEC report forms, Respondent failed to file any of the above named statements and reports required by the Act. Thus, by failing to file required campaign statements and reports, Respondents violated Government Code Sections 84101, subdivision (a), 84200, subdivision (a), and 84204.

As a condition of settlement in this case, on \_\_\_\_\_, Respondents filed a statement of organization, and a semi-annual campaign statement for the reporting period of October 19 through December 31, 2008.

### **COUNT 2**

(Failure to Provide Proper Sender Information on a Mass Mailer)

According to documents maintained by Respondents, on October 31, 2008, approximately 6,000 residents of Chico, CA, received a 8 ½” x 11” postcard mailer opposing Chico City Councilmember candidate Larry Wahl, and opposing California statewide Propositions 4, 8, and 11. The front of the mailer included the following sender and postage information:

|   |  |
|---|--|
| <p><b>Republicans &amp; Democrats</b><br/> <b>Against Drunk Drivers</b><br/>                 P.O. Box 4924<br/>                 Chico, CA 95927</p> | <p>PRSR STD<br/>                 US Postage<br/> <b>PAID</b><br/>                 Automate</p> |
|---|--|

Despite the sender information identifying “Republicans & Democrats Against Drunk Drivers,” Respondent Worley, during an interview with the Commission’s Special Investigator, Beatrice Moore, admitted that the mailer was sent by Respondent Committee. He stated that “Republicans & Democrats Against Drunk Drivers” does not exist, and someone involved in the planning of the mailer made up the name because it made the mailer “look better.” The return address information included the P.O. Box used by Respondent Committee. According to documents maintained by Respondents, Respondent Committee spent approximately \$2,762 to produce and mail the postcard to approximately 6,000 Chico residents. Thus, the mass mailing should have identified Respondent Committee as the sender of the mass mailing.

By failing to provide Respondent Committee’s proper sender information on the mass



mailing named above, Respondents violated Government Code Section 84305, subdivision (a).

### **CONCLUSION**

This matter consists of two counts of violating the Act, carrying a maximum administrative penalty of \$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.

For Count 1, failing to file campaign statements is a serious violation of the Act as it violates one of the central purposes of the Act, that receipts and expenditures in election campaigns are fully and truthfully disclosed to the public, so that voters may be better informed, and improper practices may be inhibited. The public harm inherent in these violations is that the public is deprived of important and timely information from Respondents regarding the amounts of contributions and the recipients. The typical administrative penalty for failing to file campaign statements has varied depending on the facts of the case.

For Count 2, failure to include the proper sender identification on a mass mailing can be a serious violation of the Act as it deprives the public of important information regarding the sponsor of the mailing. The typical administrative penalty for a failure to include the proper sender identification on a mass mailing violation, depending on the facts of the case, has been in the low to middle range of available penalties.

### **FACTORS IN AGGRAVATION**

In this matter, Respondents failed to file a statement of organization, two late independent expenditure reports, and a semi-annual campaign statement. Thus, the public had no information regarding Respondent Committee's local and statewide political activity during this time. Additionally, the sender identification provided on the mass mailers was misleading because a committee that doesn't exist was identified instead of Respondent Committee, the true sender.

### **FACTORS IN MITIGATION**

Respondents have no history of violating the Act, and cooperated with the investigation. Additionally, Respondents filed a statement of organization with the FEC, and Respondents reported all contributions and expenditures on FEC report forms. Respondent Worley mistakenly thought that by complying with federal reporting requirements, Respondents had no obligation to comply with California reporting requirements. He has since received training in this regard, and the delinquent

reports were filed as a condition of the settlement of this case.

**PENALTY**

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of the agreed upon penalty of Five Thousand Dollars (\$5,000). Two Thousand Five Hundred Dollars (\$2,500) each for Counts 1 – 2.

\* \* \* \* \*