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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA

10 In the Matter of ) FPPC No. 12/430  
11 BADRU VALANI, )  
12 Respondent. ) STIPULATION, DECISION and  
13 ) ORDER  
14 )  
15 )

16  
17 Complainant Gary S. Winuk, Chief of the Enforcement Division of the Fair Political Practices  
18 Commission, and respondent Badru Valani hereby agree that this Stipulation will be submitted for  
19 consideration by the Fair Political Practices Commission at its next regularly scheduled 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 Respondent.

23 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural  
24 rights set forth in Sections 83115.5, 11503, and 11523 of the Government Code, and in Sections 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  
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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  
4 contributions in excess of the \$3,900 contribution limit to a candidate for elective state office by  
5 contributing \$5,500 to Assembly candidate Robert Livengood's 2010 primary election campaign, in  
6 violation of Section 85301, subdivision (a), of the Government Code (Count 1). Exhibit 1 is attached  
7 hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate  
8 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 \$2,000. A cashier's check from Respondent in said amount, made payable to the "General Fund of  
12 the State of California," is submitted with this Stipulation as full payment of the administrative penalty,  
13 to be held by the State of California until the Commission issues its decision and order regarding this  
14 matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall  
15 become null and void, and within fifteen (15) business days after the Commission meeting at which the  
16 Stipulation is rejected, all payments tendered by Respondent in connection with this Stipulation shall be  
17 reimbursed to Respondent. Respondent further stipulates and agrees that in the event the Commission  
18 rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither  
19 any member of the Commission, nor the Executive Director, shall be disqualified because of prior  
20 consideration of this Stipulation.

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23 Dated: \_\_\_\_\_

\_\_\_\_\_  
Gary S. Winuk  
Chief of Enforcement  
Fair Political Practices Commission

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27 Dated: \_\_\_\_\_

\_\_\_\_\_  
Badru Valani, Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Badru Valani”, FPPC No. 12/430,  
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 Chair.

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6 IT IS SO ORDERED.

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8  
9 Dated: \_\_\_\_\_

\_\_\_\_\_   
Ann Ravel, Chair  
Fair Political Practices Commission

## **EXHIBIT 1**

### **INTRODUCTION**

Amex Home Loan, Inc. (“Amex”), and Avex Funding Corporation (“Avex”) are California corporations, both located and doing business in Milpitas, California. Respondent Badru Valani (“Respondent Valani”), a resident of Milpitas, California, owned, and directed and controlled contributions made by, Amex and Avex at all times relevant to this matter.

On or about June 30, 2009, Avex made a \$2,500 contribution to Citizens for Livengood for Assembly 2010, and on or about October 12, 2009, Amex made a \$3,000 contribution to Citizens for Livengood for Assembly 2010. Both contributions were required to be aggregated as contributions from Respondent Valani because both corporations’ contributions were directed and controlled by him. Because Respondent Valani’s total aggregated contribution to Citizens for Livengood for Assembly 2010 exceeded \$3,900, he violated the contribution limit provisions of the Political Reform Act (“Act”).<sup>1</sup>

For the purposes of this Stipulation, Respondent Valani’s violation of the Act is stated as follows:

**COUNT 1:** Respondent Badru Valani contributed in excess of the \$3,900 contribution limit to a candidate for elective state office by contributing \$5,500 to Assembly candidate Robert Livengood’s 2010 primary election campaign, in violation of Section 85301, subdivision (a), of the Government Code.

### **SUMMARY OF THE LAW**

All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violations.

#### **Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act**

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Government Code Section 81001, subd. (h)) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited. (Government Code Section 81002, subd. (a)) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.” (Government Code Section 81002, subd. (f))

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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 Section 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.

## **Duty to Comply with Campaign Contribution Limits**

The Act imposes limitations on contribution that may be made to candidates for elective state office. Section 82015, subdivision (a), defines a “contribution” as any payment made for political purposes for which full and adequate consideration is not made to the donor. Regulation 18215, subdivision (a), provides that a payment is made for political purposes if it is for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate, or if it is received by a candidate.

Section 82007 defines a “candidate” to include an individual who receives a contribution or makes an expenditure with a view of bringing about his or her election to any elective office. Section 82024 defines “elective state office” to include the office of a member of the Legislature.

Under Section 85301, subdivision (a), a person may not make to a candidate for elective state office, other than a candidate for statewide elective office, a contribution totaling more than \$3,000 per person. Section 83124 requires the Fair Political Practices Commission (the “Commission”) to biennially adjust the contribution limits in Section 85301 to reflect changes in the Consumer Price Index. The adjusted contribution limit in effect for candidates for the Senate or Assembly for an election period between January 1, 2010, and December 31, 2010, was \$3,900 per person. (Regulation 18545, subd. (a).)

## **Aggregation of Campaign Contributions by Affiliated Entities**

For purposes of the contribution limits set forth in Chapter 5 of the Act, Section 85311, subdivision (b), provides that contributions of an entity whose contributions are directed and controlled by any individual shall be aggregated with contributions made by that individual and any other entity whose contributions are directed and controlled by the same individual. Pursuant to Section 85311, subdivision (a)(1), an “entity” means any person, other than an individual. Section 82047 defines a “person” as an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.

## **SUMMARY OF THE FACTS**

Amex and Avex are both California corporations, located and doing business in Milpitas, California. Respondent Valani, a resident of Milpitas, California, owned, and directed and controlled contributions made by, Amex and Avex at all times relevant to this matter.

Citizens for Livengood for Assembly 2010 was Robert Livengood’s candidate controlled committee for his campaign for Assembly in the 2010 primary election.

On June 30, 2009, Avex made a \$2,500 contribution to Citizens for Livengood for Assembly 2010, and on October 12, 2009, Amex made a \$3,000 contribution to Citizens for Livengood for Assembly 2010.

On March 17, 2010, Robert Livengood terminated Citizens for Livengood for Assembly 2010, and his name did not appear on the ballot in the June 8, 2010, primary election.

## **Making Contributions in Excess of the Contribution Limit**

In 2010, a person could not make contributions to a candidate for elective state office totaling more than \$3,900 per election. (Sections 85301, subdivisions (a), and 83124.) As such, Respondent Valani, Amex, and Avex, as affiliated entities, could only make up to \$3,900 in aggregated contributions to any state legislative candidate in the 2010 primary election.

By contributing a total of \$5,500 to Assembly candidate Robert Livengood's 2010 primary election campaign, Respondent Valani violated the contribution limits set forth in Section 85301, subdivision (a).

### **CONCLUSION**

This matter involves one count of violating the Act which carries a maximum administrative penalty of \$5,000.

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(s) demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the respondent voluntarily filed amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

Making a contribution in excess of the campaign contribution limit is one of the most serious violations of the Act as it circumvents the limits on campaign contributions proscribed by California's voters and provides an unfair advantage to one candidate over another in an election. The typical administrative penalty for a violation of the contribution limit, depending on the facts of the case, has been in the high range of penalties.

However, Respondent has no history of enforcement actions, has cooperated with the Commission's investigation into this matter, and his violation of the Act was inadvertent at best and negligent at worst. Additionally, Respondent's violation was mitigated by the fact that Robert Livengood withdrew from the pertinent election and his name never appeared on the ballot.

The Commission recently approved the following fine for violations of Section 85301, subdivision (a):

- *In the Matter of Gregory C. Hill, Greg Hill for Assembly '05, and Betty Presley*, FPPC No. 06/1163. A penalty of approximately \$2,800 per count was approved by the Commission on June 12, 2008, for accepting contributions in excess of the contribution limit by an Assembly candidate. In that matter, the respondent, a candidate for Assembly, received an \$18,000 loan in excess to the \$3,300

contribution limit at the time. In mitigation, the bulk of the loan was returned within nine days of being received, the funds were never expended by the committee, and the respondent withdrew from the race before the pertinent election.

In this matter, Respondent's violation is less harmful because his contribution in excess of the contribution limit was much lower. Therefore an imposition of an administrative penalty in the amount of \$2,000 for Count 1 is recommended. This is in the low-range of penalties recommended for a violation of Section 85301, subdivision (a).

### **RECOMMENDED PENALTY**

After consideration of the factors of Regulation 18361.5 and consideration of penalties in prior enforcement actions, the imposition of a \$2,000 penalty on Respondent Badru Valani is recommended.