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3 **FAIR POLITICAL PRACTICES COMMISSION**
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10

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12 In the Matter of) FPPC No. 10/526
13)
14 38TH ASSEMBLY DISTRICT REPUBLICAN) STIPULATION, DECISION and
CENTRAL COMMITTEE, and MICHAEL) ORDER
15 HILDEBRAND, JR., TREASURER,)
Respondents.)
16)

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18 Complainant, the Fair Political Practices Commission, and respondents 38th Assembly District
19 Republican Central Committee, and Michael Hildebrand, Jr. (collectively “Respondents”), agree that
20 this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next
21 regularly scheduled meeting.

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

25 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
26 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
27 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
28 the right to personally appear at any administrative hearing held in this matter, to be represented by an

1 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the
2 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
3 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondents violated the Political Reform Act by: failing
5 to itemize 44 contributions of \$100 or more, totaling \$10,469, received during the July 1, 2010, through
6 September 30, 2010, reporting period, in violation of Government Code sections 84200.5, subdivision
7 (e), 84200.7, subdivision (b)(2), and 84211, subdivisions (c) and (f) (Count 1); and failing to report
8 \$5,348 in contributions received during the October 17, 2010, through December 31, 2010, reporting
9 period, in violation of Government Code sections 84200, and 84211, subdivisions (a) and (d) (Count 2).

10 All counts are described in Exhibit 1, which is attached hereto and incorporated by reference as
11 though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

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1 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
2 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
3 of \$5,000. A cashier's check from Respondents in said amount, made payable to the "General Fund of
4 the State of California," is submitted with this Stipulation as full payment of the administrative penalty,
5 to be held by the State of California until the Commission issues its decision and order regarding this
6 matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall
7 become null and void, and within fifteen (15) business days after the Commission meeting at which the
8 Stipulation is rejected, all payments tendered by Respondents in connection with this Stipulation shall be
9 reimbursed to Respondents. Respondents further stipulate and agree that in the event the Commission
10 rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither
11 any member of the Commission, nor the Executive Director, shall be disqualified because of prior
12 consideration of this Stipulation.

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15 Dated: _____

16 Gary Winuk, Enforcement Chief,
17 On behalf of the
18 Fair Political Practices Commission

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20 Dated: _____

21 Michael Hildebrand, Jr., Respondent,
22 Individually and on behalf of
23 38th Assembly District Republican Central Committee

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25 Dated: _____

26 Brian Koegle, Treasurer,
27 On behalf of
28 38th Assembly District Republican Central Committee

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of 38th Assembly District Republican Central Committee, and Michael Hildebrand, Jr., Treasurer” FPPC No. 10/526, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent 38th Assembly District Republican Central Committee (“Respondent Committee”) is a state general purpose committee. Respondent Michael Hildebrand, Jr., (“Respondent Hildebrand”) was Respondent Committee’s treasurer at all times relevant to this matter.

This matter arose out of campaign statement non-filer referrals from the Secretary of the State (“SOS”) submitted to the Fair Political Practices Commission’s (the “Commission”) Enforcement Division (“Enforcement Division”) alleging Respondent Committee and Respondent Hildebrand (collectively “Respondents”) failed to file campaign statements. The subsequent investigation by the Enforcement Division revealed that Respondents failed to properly report contributions received by Respondent Committee, as required by the Political Reform Act (the “Act”).¹

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

COUNT 1: Respondent 38th Assembly District Republican Central Committee, and its treasurer Respondent Michael Hildebrand, Jr., failed to itemize 44 contributions of \$100 or more, totaling \$10,469, received during the July 1, 2010, through September 30, 2010, reporting period, in violation of Government Code sections 84200.5, subdivision (e), 84200.7, subdivision (b)(2), and 84211, subdivisions (c) and (f).

COUNT 2: Respondent 38th Assembly District Republican Central Committee, and its treasurer Respondent Michael Hildebrand, Jr., failed to report \$5,348 in contributions received during the October 17, 2010, through December 31, 2010, reporting period, in violation of Government Code sections 84200, and 84211, subdivisions (a) and (d).

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.

¹ 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 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.

Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the 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. (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. (Section 81002, subd. (a).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.” (Section 81002, subd. (f).)

Duty to File Campaign Statements

The Act requires committees to file campaign statements at specific times disclosing information regarding contributions received and expenditures made by the committee. In 2010, state general purpose committees were required to file an original and one copy of all required campaign statements with the SOS, a copy with the Registrar-Recorder of Los Angeles County, and a copy with the Registrar of Voters of the City and County of San Francisco. (Section 84215, subd. (a).) A state general purpose committee is a committee to support or oppose candidates or measures voted on in a state election, or in more than one county. (Section 82027.5, subd. (b).)

Every state general purpose committee must file a preelection statement for each period in which it makes contributions or independent expenditures totaling \$500 or more. (Section 84200.5, subd. (e).) For the period ending September 30, a preelection statement must be filed no later than October 5.² (Section 84200.7, subd. (b)(1).) Additionally, every state general purpose committee must file a semiannual statement each year by July 31 for the period ending on June 30 and by January 31 for the period ending on December 31. (Section 84200, subd. (a).)

Required Reporting of Contributions Received

Section 84211, subdivisions (a), (c), and (d), require committees to disclose on each campaign statement: (1) the total amount of contributions received during the period covered by the campaign statement and the total cumulative amount of contributions received; (2) the total amount of contributions received during the period covered by the campaign statement from persons who have given a cumulative amount of \$100 or more; and (3) the total amount of contributions received from persons who have given the committee cumulative amounts of less than \$100 during the period covered by the statement.

² Under Regulation 18116, whenever the Act requires that a statement or report (other than late contribution reports required by Section 84203, late independent expenditure reports required by Section 84204, or notice by the contributor of a late in-kind contribution required by Section 84203.3) 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 or report shall be extended to the next regular business day.

A contribution is a payment of any kind made for political purposes for which full and adequate consideration is not made to the donor. (Sections 82015, subd. (a), and 82044; Regulation 18215, subd. (a).) A payment is made for a political purpose if, for instance, it is: (1) 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 (2) it is received by or made at the behest of a candidate or controlled committee. (Regulation 18215, subds. (a)(1) and (2).)

Section 84211, subdivision (f), further requires that certain identifying information be provided for each person from whom a cumulative amount of contributions of \$100 or more has been received during the period covered by the campaign statement, including the following: (1) the person's full name; (2) his or her street address; (3) his or her occupation; (4) the name of his or her employer, or if self-employed, the name of the business; (5) the date and amount received for each contribution received during the period covered by the campaign statement and if the contribution is a loan, the interest rate for the loan; and (6) the cumulative amount of contributions.

Treasurer Liability

Under Section 81004, subdivision (b), Section 84100 and Regulation 18427, subdivision (a), a committee's treasurer has the duty to ensure compliance with all requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. Pursuant to Sections 83116.5 and 91006, the treasurer of a committee may be held jointly and severally liable, along with the committee, for the committee's violations.

SUMMARY OF THE FACTS

At all times relevant, Respondent Committee was a state general purpose committee, and Respondent Hildebrand was its treasurer.

On September 7, 2010, Respondent Committee held a fundraiser, where it charged \$75 per guest and \$125 per couple to attend, and allowed guests to make additional contributions. At the fundraiser, Respondent Committee received 44 contributions of \$100 or more, totaling \$10,469, and \$5,715 in contributions of less than \$100.

On October 10, 2010, Respondents filed a preelection statement for the July 1, 2010, through September 30, 2010, reporting period, in which they reported all \$16,184 of the contributions received at the fundraiser as unitemized contributions of less than \$100. On June 27, 2012, Respondent Committee filed an amendment to the preelection statement, in which it properly reported and itemized, for the first time, the 44 contributions of \$100 or more received at the fundraiser.

During the October 17, 2010, through December 31, 2010, reporting period, Respondent Committee received \$5,348.49 in monetary contributions, all of which were contributions of less than \$100. Respondents filed a semiannual statement for that period on January 10, 2011, that reported zero monetary contributions. On June 27, 2012, Respondent Committee filed an

amendment to the semiannual statement, in which it reported, for the first time, the \$5,348.49 in monetary contributions.

Accordingly, Respondents committed two violations of the Act, as follows:

Count 1

Failure to Timely Itemize Contributions Received of \$100 or More

Respondent 38th Assembly District Republican Central Committee, and its treasurer Respondent Michael Hildebrand, Jr., failed to itemize 44 contributions of \$100 or more, totaling \$10,469, received during the July 1, 2010, through September 30, 2010, reporting period, in violation of Government Code sections 84200.5, subdivision (e), 84200.7, subdivision (b)(2), and 84211, subdivisions (c) and (f).

Count 2

Failure to Timely Report Contributions Received

Respondent 38th Assembly District Republican Central Committee, and its treasurer Respondent Michael Hildebrand, Jr., failed to report \$5,348 in contributions received during the October 17, 2010, through December 31, 2010, reporting period, in violation of Government Code Sections 84200, and 84211, subdivisions (a) and (d).

CONCLUSION

This matter consists of two counts of violating the Act, which carry a maximum administrative penalty of \$5,000 per count for a total 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(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.

The failure to properly disclose contributions received is a serious violation of the Act because it deprives the public of important information about a committee's contributors and finances. In this matter, Respondents failed to report and itemize a significant number of contributions received by the committee. A significant number of the contributions in question were due prior to the pertinent election, but were not reported until after the pertinent election.

The facts of this case show a pattern of violations that, taken as a whole, resulted in a significant lack of disclosure of Respondent Committee's financial activities related to November 8, 2010, general election.

However, Respondents cooperated with the Enforcement Division's investigation into this matter, and in response to the Enforcement Division's request, properly reported the contributions in question. Additionally, Respondents have no history of violations under the Act.

Failure to Itemize Contributions on a Preelection Statement

Recent penalties approved by the Commission for failing to itemize contributions on a preelection statement include:

In the Matter of Fernando Vasquez, Vasquez for Downey Council 2010, and Jane Leiderman, Treasurer, FPPC No. 11/057. In March 2010, the Commission approved a \$2,000 penalty per count where the respondents failed to itemize eight monetary contributions of \$100 or more, totaling \$1,600. In mitigation, the Commission considered that the respondents cooperated with the investigation. In aggravation, the Commission considered that one of the respondents was a professional treasurer and had a history of violations under the Act.

In the Matter of Ralph Widmar, Ralph Widmar for City Council Committee, and Henry Ruhnke, FPPC No. 08/247. In August 2010, the Commission approved a \$2,000 penalty per count where the respondents failed to itemize six monetary contributions of \$100 or more, totaling \$8,931. In mitigation, the Commission considered that the respondents cooperated with the investigation and had no history of violations under the Act.

In this matter, Respondents failed to itemize 44 contributions of \$100 or more, totaling \$10,469. According to Respondent Committee, when it filed the original statement, it believed that all of the contributions raised at the fundraiser were contributions of \$100 or less because it charged \$75 per person to attend the fundraiser. However, after further review, Respondent Committee realized 44 of the contributions were of \$100 or more, due to the fact that some contributors at the fundraiser sponsored entire tables, paid for more than one guest, etc.

For these reasons, a \$3,000 penalty is recommended for Count 1.

Failure to Report Contributions Received on a Semiannual Statement

Recent penalties approved by the Commission for the failure to report contributions received on a semiannual statement include:

In the Matter of Arturo Chacon and Art Chacon for Water Board 2010, FPPC No. 08/652. In February 2011, the Commission approved a \$2,500 penalty per count where the respondents failed to report contributions totaling approximately \$12,000 on a semiannual statement. In mitigation, the Commission considered that the respondents cooperated with the investigation.

In this matter, Respondents failed to report \$5,348.49 in monetary contributions on a semiannual statement.

For these reasons, a \$2,000 penalty is recommended for Count 2.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, and consideration of penalties in prior enforcement actions, the imposition of a \$5,000 penalty on Respondents is recommended.

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