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7
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**

10 In the Matter of) FPPC No. 12/097
11)
12)
13 RYAN EMBREE, and EMBREE FOR CITY) DEFAULT DECISION AND ORDER
COUNCIL,)
14)
15 Respondents.) (Gov. Code §§ 11506 and 11520)
16)

17 Complainant, Fair Political Practices Commission (the "Commission"), hereby submits this
18 Default Decision and Order for consideration by the Commission at its next regularly-scheduled
19 meeting.

20 Pursuant to the California Administrative Procedure Act,¹ Respondent Ryan Embree and
21 Respondent Embree for City Council (collectively "Respondents") have been served with all of the
22 documents necessary to conduct an administrative hearing regarding the above-captioned matter,
23 including the following:

- 24 1. An Order Finding Probable Cause;
25 2. An Accusation;

26
27 ¹The California Administrative Procedure Act, which governs administrative adjudications, is
28 contained in Sections 11370 through 11529 of the Government Code.

- 1 3. A Notice of Defense (Two Copies);
- 2 4. A Statement to Respondents; and
- 3 5. A copy of Sections 11506 through 11508 of the Government Code.

4 Government Code Section 11506 provides that failure of a respondent to file a Notice of Defense
5 within 15 days after being served with an Accusation shall constitute a waiver of respondent's right to a
6 hearing on the merits of the Accusation. The Statement to Respondents, served on Respondents,
7 explicitly stated that a Notice of Defense must be filed in order to request a hearing. Respondents failed
8 to file a Notice of Defense within fifteen days of being served with the Accusation.

9 Government Code Section 11520 provides that, if the respondent fails to file a Notice of
10 Defense, the Commission may take action, by way of a default, based upon the respondent's express
11 admissions or upon other evidence, and that affidavits may be used as evidence without any notice to the
12 respondent.

13 Respondents violated the Political Reform Act as described in Exhibit 1, which are attached
14 hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate
15 summary of the law and evidence in this matter. This Default Decision and Order is submitted to the
16 Commission to obtain a final disposition of this matter.

17
18
19 Dated: _____

Gary S. Winuk
Chief of Enforcement
Fair Political Practices Commission

ORDER

The Commission issues this Default Decision and Order and imposes an administrative penalty of \$35,500 upon Respondent Ryan Embree and Respondent Embree for City Council, payable to the "General Fund of the State of California."

IT IS SO ORDERED, effective upon execution below by the Chair of the Commission at Sacramento, California.

Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Ryan Embree (“Respondent Embree”) was an unsuccessful candidate for Malibu City Council in the April 11, 2006, election, and Embree for City Council (“Respondent Committee”) was his candidate-controlled committee. As a candidate for city office and his controlled committee, Respondent Embree and Respondent Committee (collectively “Respondents”) were required to file periodic campaign statements under the Political Reform Act (the “Act”).¹

This matter arose out of a referral sent to the Fair Political Practices Commission’s (the “Commission”) Enforcement Division (the “Enforcement Division”) by the Malibu City Clerk (the “City Clerk”), alleging that Respondents failed to file required semiannual statements. The subsequent investigation by the Enforcement Division into the allegations revealed that Respondents committed seventeen violations of the Act by failing to file ten semiannual statements and failing to timely file seven semiannual statement.

For the purposes of this Default Decision and Order, Respondents’ violations of the Act are stated as follows:

COUNT 1: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the March 26 through June 30, 2006, reporting period, with the Malibu City Clerk by July 31, 2006, in violation of Government Code section 84200, subdivision (a).

COUNT 2: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the July 1 through December 31, 2006, reporting period, with the Malibu City Clerk by January 31, 2007, in violation of Government Code section 84200, subdivision (a).

COUNT 3: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the January 1 through June 30, 2007, reporting period, with the Malibu City Clerk by July 31, 2007, in violation of Government Code section 84200, subdivision (a).

COUNT 4: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the July 1 through December 31, 2007, reporting period, with the Malibu City Clerk by January 31, 2008, in violation of Government Code

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.

section 84200, subdivision (a).

COUNT 5: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the January 1 through June 30, 2008, reporting period, with the Malibu City Clerk by July 31, 2008, in violation of Government Code section 84200, subdivision (a).

COUNT 6: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the July 1 through December 31, 2008, reporting period, with the Malibu City Clerk by January 31, 2009, in violation of Government Code section 84200, subdivision (a).

COUNT 7: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the January 1 through June 30, 2009, reporting period, with the Malibu City Clerk by July 31, 2009, in violation of Government Code section 84200, subdivision (a).

COUNT 8: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to timely file a semiannual statement for the July 1 through December 31, 2009, reporting period, with the Malibu City Clerk by January 31, 2010, in violation of Government Code section 84200, subdivision (a).

COUNT 9: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to timely file a semiannual statement for the January 1 through June 30, 2010, reporting period, with the Malibu City Clerk by July 31, 2010, in violation of Government Code section 84200, subdivision (a).

COUNT 10: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to timely file a semiannual statement for the July 1 through December 31, 2010, reporting period, with the Malibu City Clerk by January 31, 2011, in violation of Government Code section 84200, subdivision (a).

COUNT 11: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to timely file a semiannual statement for the January 1 through June 30, 2011, reporting period, with the Malibu City Clerk by July 31, 2011, in violation of Government Code section 84200, subdivision (a).

COUNT 12: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to timely file a semiannual

statement for the July 1 through December 31, 2011, reporting period, with the Malibu City Clerk by January 31, 2012, in violation of Government Code section 84200, subdivision (a).

COUNT 13: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to timely file a semiannual statement for the January 1 through June 30, 2012, reporting period, with the Malibu City Clerk by July 31, 2012, in violation of Government Code section 84200, subdivision (a).

COUNT 14: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to timely file a semiannual statement for the July 1 through December 31, 2012, reporting period, with the Malibu City Clerk by January 31, 2013, in violation of Government Code section 84200, subdivision (a).

COUNT 15: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the January 1 through June 30, 2013, reporting period, with the Malibu City Clerk by July 31, 2013, in violation of Government Code section 84200, subdivision (a).

COUNT 16: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the July 1 through December 31, 2013, reporting period, with the Malibu City Clerk by January 31, 2014, in violation of Government Code section 84200, subdivision (a).

COUNT 17: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree for City Council failed to file a semiannual statement for the January 1 through June 30, 2014, reporting period, with the Malibu City Clerk by July 31, 2014, in violation of Government Code section 84200, subdivision (a).

DEFAULT PROCEEDINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT

When the Commission determines that there is probable cause for believing that the Act has been violated, it may hold a hearing to determine if a violation has occurred. (Section 83116.) Notice of the hearing, and the hearing itself, must be conducted in accordance with the Administrative Procedure Act (the “APA”).² (Section 83116.) A hearing to determine whether the Act has been violated is initiated by the filing of an accusation, which shall be a concise written statement of the charges specifying the statutes and rules which the respondent is alleged to have violated. (Section 11503.)

² The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections 11370 through 11529 of the Government Code.

Included among the rights afforded a respondent under the APA, is the right to file the Notice of Defense with the Commission within 15 days after service of the accusation, by which the respondent may (1) request a hearing, (2) object to the accusation's form or substance or to the adverse effects of complying with the accusation, (3) admit the accusation in whole or in part, or (4) present new matter by way of a defense. (Section 11506, subd. (a)(1)-(6).)

The APA provides that a respondent's failure to file a Notice of Defense within 15 days after service of an accusation constitutes a waiver of the respondent's right to a hearing. (Section 11506, subd. (c).) Moreover, when a respondent fails to file a Notice of Defense, the Commission may take action based on the respondent's express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the respondent. (Section 11520, subd. (a).)

PROCEDURAL REQUIREMENTS AND HISTORY

A. Initiation of the Administrative Action

Section 91000.5 provides that “[t]he service of the probable cause hearing notice, as required by Section 83115.5, upon the person alleged to have violated this title shall constitute the commencement of the administrative action.”

Section 83115.5 prohibits a finding of probable cause by the Commission unless the person alleged to have violated the Act is 1) notified of the violation by service of process or registered mail with return receipt requested; 2) provided with a summary of the evidence; and 3) informed of his right to be present in person and represented by counsel at any proceeding of the Commission held for the purpose of considering whether probable cause exists for believing the person violated the Act. Additionally, Section 83115.5 states that the required notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office.

Section 91000.5 provides that no administrative action pursuant to Chapter 3 of the Act, alleging a violation of any of the provisions of Act, shall be commenced more than five years after the date on which the violation occurred. However, if the person alleged to have violated the Act engaged in fraudulent concealment of his or her acts or identity, the five-year period shall be tolled for the period of concealment. (Section 91000.5, subd. (b).) A person is engaged in fraudulent concealment when that person knows of material facts related to his or her duties under the Act and knowingly conceals them in performing or omitting to perform those duties, for the purpose of defrauding the public of information to which it is entitled under the Act. (*Id.*)

Documents supporting the procedural history are included in the attached Certification of Records (“Certification”) filed herewith at Exhibit A, A-1 through A-7, and incorporated herein by reference.

In accordance with Sections 83115.5 and 91000.5, the Enforcement Division initiated the administrative action against Respondents in this matter by serving them with a Report in Support of a Finding of Probable Cause (the “PC Report”) dated September 22, 2014.

(Certification, Exhibit A-1.) Respondents were served by certified mail, return receipt requested.³ The PC Report was returned to the Enforcement Division unsigned on November 3, 2014. (Certification, Exhibit A-2.) Therefore, the administrative action commenced on November 3, 2014, the date the PC Report was returned to the Enforcement Division unsigned, and the five-year statute of limitations was effectively tolled on this date.

Additionally, Respondents have fraudulently concealed, to date, Respondent Committee's financial information that Respondents were required to disclose to the public for the periods in Counts 1 through 7. Respondents have been aware of their duty to file post-election campaign statements since at least August 29, 2007, when the Enforcement Division sent them a letter informing them that they had violated the Act by not filing post-election campaign statements. Respondents have concealed the information required to be disclosed to the public in their campaign statements by failing to file the campaign statements for the periods in Counts 1 through 7. Because Respondents have been aware of their duty to file campaign statements for the periods in Counts 1 through 7 since at least August 29, 2007, but, to date, have failed to file campaign statements for those periods, the five-year statute of limitations for Counts 1 through 7 is tolled from August 29, 2007, until the time that Respondents file campaign statements for the periods in Counts 1 through 7.

As required by Section 83115.5, the packet served on Respondents contained a cover letter, dated September 22, 2014, and a memorandum describing Probable Cause Proceedings, advising that Respondents had 21 days in which to request a probable cause conference and/or to file a written response to the PC Report. (Certification, Exhibit A-3.) Respondents neither requested a probable cause conference nor submitted a written response to the PC Report.

B. Ex Parte Request for a Finding of Probable Cause

Since Respondents failed to request a probable cause conference or submit a written response to the PC Report by the statutory deadline, the Enforcement Division submitted an Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation be Prepared and Served to General Counsel Zackery P. Morazzini on November 25, 2014. (Certification, Exhibit A-4.) Respondents were sent a copy of these documents. (*Id.*)

On December 2, 2014, General Counsel Zackery P. Morazzini issued a Finding of Probable Cause and Order to Prepare and Serve an Accusation. (Certification, Exhibit A-5.)

C. The Issuance and Service of the Accusation

Under the Act, if the General Counsel makes a finding of probable cause, he or she shall prepare an accusation pursuant to Section 11503 of the APA, and have it served on the persons who are the subject of the probable cause finding. (Regulation 18361.4, subd. (e).)

³ Where any communication is required by law to be mailed by registered mail to or by the state, or any officer or agency thereof, the mailing of such communication by certified mail is sufficient compliance with the requirements of the law. (Section 8311.)

Section 11503 states:

A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

Section 11505, subdivision (a) requires that, upon the filing of the accusation, the agency shall 1) serve a copy thereof on the respondent as provided in Section 11505, subdivision (c); 2) include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506; 3) include (i) a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (ii) copies of Sections 11507.5, 11507.6, and 11507.7.

Section 11505, subdivision (b) set forth the language required in the accompanying statement to the respondent.

Section 11505, subdivision (c) provides that the Accusation and accompanying information may be sent to the respondent by any means selected by the agency, but that no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent has been served personally or by registered mail as set forth in Section 11505.

On December 3, 2014, Gary S. Winuk, the Commission's Chief of Enforcement, issued an Accusation against Respondents in this matter.

In accordance with Section 11505, the Enforcement Division attempted personal service of the Accusation and accompanying information, consisting of a Statement to Respondents, two copies of a Notice of Defense Form, and a copy of Government Code sections 11506 through 11508, on Respondents. After several failed attempts to personally serve Respondents with the Accusation and accompanying information, the Enforcement Division personally served Respondents with the Accusation and accompanying information on January 2, 2015, by substitute serve upon a security guard stationed at Respondents' residence. (Certification, Exhibit A-6.)

Along with the Accusation, the Enforcement Division served Respondent with a “Statement to Respondents” which notified them that they could request a hearing on the merits and warned that, unless a Notice of Defense was filed within 15 days of service of the Accusation, they would be deemed to have waived the right to a hearing. Respondents did not file a Notice of Defense within the statutory time period, which ended on January 17, 2015.

As a result, on January 21, 2015, the Enforcement Division sent a letter to Respondents advising them that this matter would be submitted for a Default Decision and Order at the Commission’s public meeting scheduled for February 19, 2015. A copy of the Default Decision and Order, and this accompanying Exhibit 1 with attachments, was included with the letter. (Certification, Exhibit A-7.)

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that the contributions and expenditures affecting election campaigns are fully and truthfully disclosed to the public, so that voters may be better informed, and improper practices may be inhibited. The Act therefore establishes a comprehensive campaign reporting system designed to accomplish this purpose of disclosure.

The following reflects the Act as it was in effect at the time of the relevant violations.

A. Duty to File Campaign Statements and Reports

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. (Section 82013, subd. (a).) A controlled committee is a committee that is controlled directly or indirectly by a candidate. A candidate controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions of the committee. (Section 82016, subd. (a).)

Under the Act's campaign reporting system, candidates and committees are required to file periodic campaign statements and reports disclosing their financial activities. Candidates for city office and their controlled committees are required to file a semiannual statement with the city clerk no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31. (Sections 84200, subd. (a), and 84215, subd. (a).)

All filing obligations continue until the committee is terminated by filing a statement of termination (Form 410) with the Secretary of State’s office and a copy with the city clerk. (Section 84214 and Regulation 18404.)

B. Joint and Several Liability

Under Sections 81004, subdivision (b), and 84100, and Regulation 18427, subdivision (a), it is the duty of a candidate to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of

such funds. A candidate may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee. (Sections 83116.5 and 91006.)

SUMMARY OF THE FACTS

Respondent Embree was an unsuccessful candidate for Malibu City Council in the April 11, 2006, election, and Respondent Committee has been his candidate-controlled committee at all relevant times.

On or about March 31, 2006, Respondents filed a preelection statement with the City Clerk for the February 26 through March 25, 2006, reporting period. On the preelection statement, Respondents reported having a cash balance of \$4,051 on March 25, 2006.

Respondents failed to file a semiannual statement for the periods ending June 30, 2006, December 31, 2006, June 30, 2007, December 31, 2007, June 30, 2008, December 31, 2008, June 30, 2009, December 31, 2009, June 30, 2010, December 31, 2010, June 30, 2011, December 31, 2011, June 30, 2012, December 31, 2012, June 30, 2013, December 31, 2013, and June 30, 2014, with the Malibu City Clerk (the "City Clerk") by July 31, 2006, January 31, 2007, July 31, 2007, January 31, 2008, July 31, 2008, January 31, 2009, July 31, 2009, January 31, 2010, July 31, 2010, January 31, 2011, July 31, 2011, January 31, 2012, July 31, 2012, January 31, 2013, July 31, 2013, January 31, 2014, and July 31, 2014, respectively.

On or about November 13, 2006, the Enforcement Division received a referral from the City Clerk for Respondents' failure to file a semiannual statement for the March 26 through June 30, 2006, reporting period.

The ensuing investigation by the Enforcement Division revealed that Respondents had failed to file a semiannual statement for the March 26 through June 30, 2006, and July 1 through December 31, 2006, reporting periods.

On or about August 29, 2007, the Enforcement Division sent Respondents a letter, warning them that they had failed to file a semiannual statement with the City Clerk for the March 26 through June 30, 2006, and July 1 through December 31, 2006, reporting periods, and requesting that they immediately file the missing semiannual statements with the City Clerk. (*In the Matter of Ryan Embree; Embree for City Council and Emily L. Harlow, Treasurer, FPPC No. 06/1024.*)

On or about January 31, 2011, the City Clerk sent Respondents an email reminding them of their obligation to file semiannual statements with the City Clerk.

On or about July 5, 2011, the City Clerk mailed Respondents a letter reminding them of their obligation to file semiannual statements and requesting that Respondents file nine outstanding semiannual statements.

On or about January 18, 2012, the City Clerk mailed Respondents a letter via certified mail, reminding Respondents of their obligation to file semiannual statements and requesting that Respondents file twelve outstanding semiannual statements.

On or about January 31, 2012, the City Clerk sent Respondents an email, reminding them of their obligation to file semiannual statements, requesting that Respondents file twelve outstanding semiannual statements, and informing Respondents that the matter would be referred to the Enforcement Division.

On or about February 17, 2012, the City Clerk referred the matter to the Enforcement Division.

On or about June 4, 2012, the Enforcement Division contacted Respondent Embree regarding his failure to file twelve semiannual statements, and Respondent Embree agreed that he would file all twelve outstanding statements and a statement of termination (Form 410) with the City Clerk and send a copy of each document to the Enforcement Division.

By July 2012, Respondents had not filed the twelve outstanding semiannual statements, and therefore the Enforcement Division contacted Respondent Embree again. Respondent Embree stated that he was still in the process of filing the missing semiannual statements and the statement of termination with the City Clerk.

On or about July 22, 2014, the Enforcement Division received a letter from Respondent Embree in which Respondent Embree stated that he was still attempting to resolve the matter.

On or about September 22, 2014, the Enforcement Division sent a letter to Respondent Embree, requesting that he file all outstanding semiannual statements.

On or about September 26, 2014, Respondents filed with the City Clerk a statement of termination and semiannual statements for the seven semiannual reporting periods between July 1, 2009, and December 31, 2012, reporting a cash balance of \$527 on July 1, 2009 and a cash balance of \$0 on December 31, 2012.

On or about September 29, October 8, and October 14, 2014, the Enforcement Division contacted Respondent Embree and requested that he file the seven outstanding semiannual statements for the March 23, 2006, through June 30, 2009, reporting periods.

To date, Respondents have not filed with the City Clerk semiannual statements for the seven reporting periods between March 26, 2006, and June 31, 2009, and the three reporting periods between January 1, 2013, and June 30, 2014.

///

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

Counts 1-7 and 15-17

By failing to file a semiannual statement with the City Clerk for the May 26 through June 30, 2006, July 1 through December 31, 2006, January 1 through June 30, 2007, July 1 through December 31, 2007, January 1 through June 30, 2008, July 1 through December 31, 2008, January 1 through June 30, 2009, January 1 through June 30, 2013, July 1 through December 31, 2013, and January 1 through June 30, 2014, reporting periods, Respondents violated Section 84200, subdivision (a).

Counts 8-14

By failing to timely file a semiannual statement with the City Clerk for the July 1 through December 31, 2009, January 1 through June 30, 2010, July 1 through December 31, 2010, January 1 through June 30, 2011, July 1 through December 31, 2011, January 1 through June 30, 2012, July 1 through December 31, 2012, reporting periods by January 31, 2010, July 31, 2010, January 31, 2011, July 31, 2011, January 31, 2012, July 31, 2012, and January 31, 2013, respectively, Respondents violated Section 84200, subdivision (a).

CONCLUSION

This matter consists of seventeen counts of violating the Act, which carry a maximum administrative penalty of \$5,000 per count for a total of \$85,000.

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 file campaign statements is a serious violation of the Act because it deprives the public of important information about a committee's contributors and financial activities.

Respondents' violations of the Act were deliberate at worst and negligent at best. Due to numerous verbal and written requests by the City Clerk and the Enforcement Division, Respondents were aware of their duty to file semiannual statements. Additionally, Respondents received a warning letter in 2007 for failing to file semiannual statements.

Counts 1-7 and 15-17: Failure to File Semiannual Statements

On January 15, 2015, the Commission imposed a \$2,500 fine in a default decision against

a candidate for city council and his controlled committee for failing to file a semiannual statement. During the relevant reporting period, the respondents received contributions totaling \$5,450 and made expenditures totaling \$26,561.86. (*In the Matter of Familias Por Maywood Supporting Aguirre Magana Varela for Maywood City Council and Felipe Aguirre*, FPPC No. 12/422.)

On November 20, 2014, the Commission imposed a \$2,000 fine in a default decision against a candidate for a school board and her controlled committee for failing to file a semiannual statement. The respondents had no history of enforcement actions, were inactive during the relevant period, and cooperated with the investigation. (*In the Matter of Monique Dollonne, Monique for School Board, and Thomas Rohrbecher*, FPPC No. 13/311.)

In this matter Respondents did not cooperate with the investigation and ignored multiple verbal and written requests by the City Clerk and the Enforcement Division to file semiannual statements. Additionally, Respondents reported having a cash balance of \$4,051 on March 25, 2006, and \$527 on July 1, 2009. Due to Respondents' failure to file semiannual statements for the periods between March 26, 2006, and June 30, 2009, \$3,524 of Respondents Committee's cash balance is unaccounted for.

Therefore a \$2,500 fine per count for Counts 1 through 7 and Counts 15 through 17, totaling \$25,000, is recommended.

Counts 8-14: Failure to Timely File Semiannual Statements

On November 20, 2014, the Commission imposed a \$1,000 fine on a candidate for State Assembly and his controlled committee for failing to timely file a post-election semiannual statement. The respondents received contributions totaling \$4,248 and made expenditures totaling \$50,082 during the relevant period. Respondents cooperated with the investigation and agreed to an early resolution of the matter. (*In the Matter of Pedro Rios and Pedro Rios for Assembly 2012*, FPPC No. 14/019.)

On October 16, 2014, the Commission imposed a \$1,000 fine on a candidate for state office and her controlled committee for failing to timely file a semiannual statement. The respondents had a history of enforcement actions, but agreed to an early resolution of the matter. (*In the Matter of Priya Mathur*, FPPC No. 13/1229.)

In this matter, Respondents did not cooperate with the investigation and did not agree to an early resolution of the matter. Additionally, Respondents were active during the relevant periods and have a history of enforcement actions. Therefore a \$1,500 fine per count for Counts 8 through 14, totaling \$10,500, is recommended.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, and consideration of penalties in prior enforcement actions, the imposition of a total penalty of \$35,500 is recommended.

EXHIBIT A



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

DECLARATION OF CUSTODIAN OF RECORDS CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION Enforcement Division

CERTIFICATION OF RECORDS

The undersigned declares and certifies as follows:

1. I am employed by the California Fair Political Practices Commission (hereafter the "Commission"). My business address is: California Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, CA 95814.
2. I am a duly authorized custodian of the records maintained by the Commission in the Enforcement Division. I am authorized to certify copies of those records as being true and correct copies of the original records of the case which is in the custody of the Commission.
3. I have reviewed documents maintained in FPPC Case No. 12/097, *In the Matter of Ryan Embree and Embree for City Council*, and have caused copies to be made of documents contained therein. I certify that the copies attached hereto are true and correct copies of the documents maintained by the FPPC in that file in the normal course of agency business. The attached documents are as follows:
 - Copy of the Report in Support of a Finding of Probable Cause, dated September 22, 2014, sent to Ryan Embree and Embree for City Council (Respondents). (Exhibit A-1.)
 - Copy of the Certified Mail envelope, returned unclaimed, received by the Commission on November 3, 2014, for the Report in Support of a Finding of Probable Cause and accompanying documents. (Exhibit A-2.)
 - Copy of the cover letter to Respondents dated September 22, 2014, and accompanying documents, regarding probable cause proceedings. (Exhibit A-3.)
 - Copy of the Ex Parte Request for a Finding of Probable Cause dated November 25, 2014. (Exhibit A-4.)
 - Copy of the Finding of Probable Cause and Order to Prepare and Serve an Accusation dated December 2, 2014. (Exhibit A-5.)
 - Copy of the Proof of Service, dated January 2, 2015, the Accusation and accompanying documents. (Exhibit A-6.)
 - Copy of the Letter from Commission Counsel Milad Dalju to Respondent advising that this matter would be submitted for a Default Decision and Order, dated January 21, 2015. (Exhibit A-7.)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Executed on January 21, 2015 at Sacramento, California.

[redacted]

Tracey Brazier

EXHIBIT A-1

1 GARY S. WINUK
Chief of Enforcement
2 MILAD DALJU
Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660

5 Attorneys for Complainant
6

7 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

8 **STATE OF CALIFORNIA**

9
10 In the Matter of:

11 RYAN EMBREE, and
12 EMBREE FOR CITY COUNCIL,

13 Respondents.

FPPC No. 12/097

14 **REPORT IN SUPPORT**
15 **OF A FINDING OF**
16 **PROBABLE CAUSE**

Hearing Date: TBA

Hearing Time: TBA

Hearing Location: Commission Offices
428 J Street, Suite 620
Sacramento, CA 95814

17
18 **I. INTRODUCTION**

19 At all relevant times, Respondent Ryan Embree ("Respondent Embree") was an unsuccessful
20 candidate for a Malibu City Council seat in the April 11, 2006, election, and Embree for City Council
21 ("Respondent Committee") was his candidate-controlled committee. As a candidate for city office and
22 his candidate-controlled committee, Respondent Embree and Respondent Committee (collectively
23 "Respondents") were required to file periodic campaign statements under the Political Reform Act (the
24 "Act").¹ In this matter, Respondents failed to file 17 required semiannual statements.
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27 ¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to
28 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.

1 This Report in Support of a Finding of Probable Cause alleges that Respondents violated the
2 Act as follows:

3 COUNT 1: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
4 for City Council failed to file a semiannual statement for the March 26 through June 30,
5 2006, reporting period, by July 31, 2006, in violation of Government Code section
6 84200, subd. (a).

7 COUNT 2: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
8 for City Council failed to file a semiannual statement for the July 1 through December
9 31, 2006, reporting period, by January 31, 2007, in violation of Government Code section
10 84200, subd. (a).

11 COUNT 3: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
12 for City Council failed to file a semiannual statement for the January 1 through June 30,
13 2007, reporting period, by July 31, 2007, in violation of Government Code section
14 84200, subd. (a).

15 COUNT 4: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
16 for City Council failed to file a semiannual statement for the July 1 through December
17 31, 2007, reporting period, by January 31, 2008, in violation of Government Code
18 section 84200, subd. (a).

19 COUNT 5: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
20 for City Council failed to file a semiannual statement for the January 1 through June 30,
21 2008, reporting period, by July 31, 2008, in violation of Government Code section
22 84200, subd. (a).

23 COUNT 6: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
24 for City Council failed to file a semiannual statement for the July 1 through December
25 31, 2008, reporting period, by January 31, 2009, in violation of Government Code
26 section 84200, subd. (a).
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1 COUNT 7: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
2 for City Council failed to file a semiannual statement for the January 1 through June 30,
3 2009, reporting period, by July 31, 2009, in violation of Government Code section
4 84200, subd. (a).

5 COUNT 8: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
6 for City Council failed to file a semiannual statement for the July 1 through December
7 31, 2009, reporting period, by January 31, 2010, in violation of Government Code
8 section 84200, subd. (a).

9 COUNT 9: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
10 for City Council failed to file a semiannual statement for the January 1 through June 30,
11 2010, reporting period, by July 31, 2010, in violation of Government Code section
12 84200, subd. (a).

13 COUNT 10: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
14 for City Council failed to file a semiannual statement for the July 1 through December
15 31, 2010, reporting period, by January 31, 2011, in violation of Government Code
16 section 84200, subd. (a).

17 COUNT 11: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
18 for City Council failed to file a semiannual statement for the January 1 through June 30,
19 2011, reporting period, by July 31, 2011, in violation of Government Code section
20 84200, subd. (a).

21 COUNT 12: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
22 for City Council failed to file a semiannual statement for the July 1 through December
23 31, 2011, reporting period, by January 31, 2012, in violation of Government Code
24 section 84200, subd. (a).

1 COUNT 13: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
2 for City Council failed to file a semiannual statement for the January 1 through June 30,
3 2012, reporting period, by July 31, 2012, in violation of Government Code section
4 84200, subd. (a).

5 COUNT 14: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
6 for City Council failed to file a semiannual statement for the July 1 through December
7 31, 2012, reporting period, by January 31, 2013, in violation of Government Code
8 section 84200, subd. (a).

9 COUNT 15: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
10 for City Council failed to file a semiannual statement for the January 1 through June 30,
11 2013, reporting period, by July 31, 2013, in violation of Government Code section
12 84200, subd. (a).

13 COUNT 16: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
14 for City Council failed to file a semiannual statement for the July 1 through December
15 31, 2013, reporting period, by January 31, 2014, in violation of Government Code
16 section 84200, subd. (a).

17 COUNT 17: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
18 for City Council failed to file a semiannual statement for the January 1 through June 30,
19 2014, reporting period, by July 31, 2014, in violation of Government Code section
20 84200, subd. (a).

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24 **II. SUMMARY OF THE LAW**

25 All statutory references and discussions of law pertain to the Act's provisions as they existed at
26 the time of the violation.

1 **A. Jurisdiction**

2 Section 83116 provides the Fair Political Practices Commission (“Commission”) with
3 administrative jurisdiction to enforce the provisions of the Act. Prior to an enforcement action being
4 undertaken, the Executive Director of the Commission must make a finding that there is probable
5 cause to believe that the Act has been violated. After a finding of probable cause, the Commission
6 may then hold a hearing to determine what violations have occurred, and levy an administrative
7 penalty of up to \$5,000 for each violation.
8

9 **B. Standard for Finding Probable Cause**

10 A probable cause determination is governed by Sections 83115.5 and 83116, and Regulation
11 18361.4, subdivision (e). For the Executive Director to make a finding of probable cause, it is only
12 necessary that he or she be presented with sufficient evidence to lead a person of ordinary caution and
13 prudence to believe, or entertain a strong suspicion, that a respondent committed or caused a violation.
14 (Section 83115.5, and Regulation 18361.4 subd. (e).)

15 **C. Filing of Campaign Statements**

16 An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that
17 receipts and expenditures in election campaigns are fully and truthfully disclosed to the public, so that
18 voters may be better informed, and improper practices may be inhibited. To that end, the Act sets forth
19 a comprehensive campaign reporting system designed to accomplish these purposes of disclosure.
20

21 The Act includes within the definition of “committee” any person or combination of persons who
22 receives contributions of \$1,000 or more during a calendar year. (Section 82013, subd. (a).) A
23 controlled committee is a committee that is controlled directly or indirectly by a candidate. A candidate
24 controls a committee if he or she, his or her agent, or any other committee he or she controls has a
25 significant influence on the actions of the committee. (Section 82016, subd. (a).)
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1 Under the Act's campaign reporting system, candidates and committees are required to file
2 periodic campaign statements and reports disclosing their financial activities. Candidates for city office
3 and their controlled committees are required to file a semiannual statement with the city clerk no later
4 than July 31 for the period ending June 30, and no later than January 31 for the period ending December
5 31. (Sections 84200, subd. (a), and 84215, subd. (a).)

6 All filing obligations continue until the campaign is terminated by filing a statement of
7 termination (Form 410) with the Secretary of State's office and a copy with the city clerk. (Section
8 84214 and Regulation 18404.)

9
10 **D. Joint and Several Liability of the Candidate**

11 Under Sections 81004, subdivision (b), and 84100, and Regulation 18427, subdivision (a), it is
12 the duty of a candidate to ensure that the committee complies with all of the requirements of the Act
13 concerning the receipt and expenditure of funds, and the reporting of such funds. A candidate may be
14 held jointly and severally liable, along with the committee, for any reporting violations committed by
15 the committee. (Sections 83116.5 and 91006.)

16
17 **III. SUMMARY OF THE EVIDENCE**

18 The City of Malibu City Clerk ("City Clerk") issued Respondent Embree written notices on
19 January 31, 2011, July 5, 2011, January 18, 2012, and January 31, 2012, informing him that he had
20 failed to file 12 semiannual statements covering the March 26, 2006, through December 31, 2012,
21 reporting periods, and that he had a continued obligation to file semiannual statements until he
22 terminated his committee by filing the delinquent semiannual statements and a statement of termination
23 (Form 410).

24 On February 24, 2012, the Fair Political Practices Commission's Enforcement Division
25 ("Enforcement Division") received a referral from the City Clerk for Respondents' failure to file 12
26 semiannual statements covering the March 26, 2006, through December 31, 2011, reporting periods. On
27 May 4, 2012, the Enforcement Division called Respondent Embree and requested that he file the 12
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1 through December 31, 2013, and January 1 through June 30, 2014, reporting periods, respectively,
2 Respondents committed 17 violations of Section 84200, subdivision (a).

3 **IV. EXCULPATORY AND MITIGATING INFORMATION**

4 Respondent Embree was not successful in his campaign for a Malibu City Council seat.

5 **V. OTHER RELEVANT MATERIAL AND ARGUMENTS**

6 The failure to file a campaign statement is a serious violation of the Act because it deprives the
7 public of important information about a candidate's contributors and financial activities.

8 To date, Respondents have not filed any of the 17 delinquent semiannual statements with the
9 Enforcement Division or the City Clerk.

10 Additionally, Respondents, in 2006, received a warning letter for failing to timely file a
11 semiannual statement.

12 **VI. CONCLUSION**

13 Probable cause exists to believe that Respondent Ryan Embree and Respondent Embree for
14 City Council committed 17 violations of the Act, as set forth above. An accusation should therefore be
15 issued in accordance with procedures described in Regulation 18361.4, subdivision (e), charging
16 Respondent Embree and Respondent Embree for City Council with violating the Act.

17 Dated: September 22, 2014

18 Respectfully submitted,

19 Gary S. Winuk
20 Chief of Enforcement

21 [redacted]
22

23 Milad Dalju
24 Commission Counsel
25 Enforcement Division
26

EXHIBIT A-2

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) 7006 0810 0000 5120 9409

[redacted]



FAIR POLITICAL PRACTICES COMMISSION

428 J STREET, SUITE 620

SACRAMENTO, CALIFORNIA 95814-2329



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EXHIBIT A-3



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

September 22, 2014

[redacted]

Re: In the Matter of Ryan Embree and Embree for City Council, FPPC No. 12/097

Dear Mr. Embree:

The Enforcement Division of the Fair Political Practices Commission (the "Commission") is proceeding with an enforcement action against you for the failure to comply with the filing and disclosure provisions of the Political Reform Act (the "Act").¹ Based on our investigation, it is our determination that you failed to file 17 semiannual campaign statements, in violation of Section 84200, subdivision (a).

A. Service of the Probable Cause Report

Having determined that you committed these violations of the Act, the Enforcement Division is authorized to bring this enforcement action against you, and may obtain an order that you pay a monetary penalty to the State of California of up to \$85,000. At this time, we are instituting an enforcement action against you by serving you with a Probable Cause Report, a copy of which is enclosed. This report details your violations and asks the Executive Director of this agency to find that probable cause exists to file an accusation against you with the Office of Administrative Hearings.

You have the right to submit a written response to the probable cause report prior to the time the Executive Director determines whether probable cause exists. That response may contain a summary of evidence, legal arguments, and any mitigating or exculpatory information you may wish to bring to the attention of the Executive Director. *If you wish to submit a written response, it must be filed with the Executive Director no later than 21 days following the date you were served with the report.*

You also have the right to request that a probable cause conference be held before the Executive Director makes any determination as to probable cause. At the conference, you are entitled to be present and to be represented by counsel. If you decide to proceed with a probable

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.

cause conference, one will be reserved for you at the Commission's offices upon your request. *In order to obtain a probable cause conference, you must make a written request for one, directed to my attention, no later than 21 days following the date you were served with the report.*

I have enclosed a memorandum that describes the probable cause procedure in some detail, along with copies of the most pertinent regulations.

B. Settlement Option

Although we are proceeding with an administrative action at this time, the Commission favors negotiated dispositions whenever feasible, so it is the practice of the Enforcement Division to give you an opportunity to reach an early resolution of the matter through a stipulated agreement. Therefore, if you are interested in reaching a settlement in this matter or have any questions regarding this settlement offer or the probable cause procedures, please contact me at (916) 327-6357.

Sincerely,

[redacted]

Milad Dalju
Commission Counsel
Enforcement Division

Enclosures



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

MEMORANDUM RE: PROBABLE CAUSE PROCEEDINGS

INTRODUCTION

The Fair Political Practices Commission is required by law to determine whether probable cause exists to believe that the Political Reform Act (the "Act") was violated before a public administrative accusation may issue. (Govt. Code §§ 83115.5, 83116.)

The probable cause proceedings before the Fair Political Practices Commission are unique, and most respondents and their attorneys are unfamiliar with them. Therefore, we have prepared this summary to acquaint you with the process.

THE LAW

Government Code sections 83115.5 and 83116 set forth the basic requirement that a finding of probable cause be made in a "private" proceeding before a public accusation is issued and a public hearing conducted in accordance with the Administrative Procedure Act.¹

The Commission has promulgated regulations further defining the probable cause procedure and delegating to the General Counsel the authority to preside over such proceedings and decide probable cause. A copy of these statutes and regulations are attached for your convenience.

In summary, the statutes and regulations entitle you to the following:

- a) A written probable cause report containing a summary of the law alleged to have been violated, and a summary of the evidence, including any exculpatory and mitigating information and any other relevant material and arguments;
- b) The opportunity to respond in writing and to request a probable cause conference within 21 days of service of the probable cause report;
- c) If the Commission met to consider whether a civil lawsuit should be filed in this matter, a copy of any staff memoranda submitted to the Commission and a transcript of staff discussions with the Commission at any such meeting; and
- d) If a timely request was made, a non-public conference with the General Counsel and the Enforcement Division staff to consider whether or not probable cause exists to believe the Act was violated.

THE PROCEDURE

A. Probable Cause Report

Administrative enforcement proceedings are commenced with the service, by certified mail or in person, of a probable cause report. The report will contain a summary of the law and the evidence, including any exculpatory and mitigating information of which the staff has

¹ But see Title 2, California Code of Regulations, Section 18362, which states that the Commission provides access to complaints, responses to complaints, and investigative files and information in accordance with the requirements of the Public Records Act. (Govt. Code § 6250, et seq.)

knowledge and any other relevant material and arguments. It is filed with the Executive Director.

B. Response to Probable Cause Report

Within 21 days of the service of the probable cause report, you may:

1. File a written response, and request a probable cause conference;
2. File a written response, and submit the matter for a probable cause determination on the written materials alone; or
3. Waive the probable cause conference entirely, and proceed to settlement or the issuance of an accusation.

By regulation, the written response may contain, "... a summary of evidence, legal arguments, and any mitigating or exculpatory information." (Cal. Code Regs., tit. 2, § 18361.4, subd. (c).) The response should be filed with the Executive Director, and a copy served upon the attorney for the Enforcement Division.

C. Staff Reply

The regulation permits the staff to submit a reply to any defense response within 10 days of the filing of the response. The staff will summarize evidence and arguments in a written rebuttal whenever possible. You will be served with a copy of any such reply.

D. Probable Cause Conference

Probable cause conferences are held at the offices of the Fair Political Practices Commission, which is located at 428 J Street, Ste. 620, Sacramento, CA 95814. You may appear at the conference in person or by telephone. The proceedings are not public unless all proposed respondents agree to open the conference to the public. Otherwise, the probable cause report, any written responses, and the probable cause conference itself are confidential.

Unless the probable cause conference is public, the only persons who may attend are the staff of the Commission, any proposed respondent and his or her attorney or representative, and, in the discretion of the General Counsel, witnesses.

The General Counsel or his/her designee is the presiding officer of the probable cause conference. The presiding officer may, but need not, permit testimony from witnesses. Probable cause conferences are less formal than court proceedings. The rules of evidence do not apply. The conferences will be recorded and a copy of the recording will be provided upon request.

Since it has the burden of proof, the Enforcement Division is permitted to open and close the conference presentations. The General Counsel may also hold the record open to receive additional evidence or arguments.

Probable cause conferences are not settlement conferences. The sole purpose of a probable cause conference is to determine whether or not there is probable cause to believe that the Political Reform Act was violated. Anyone who wishes to discuss settlement with the Enforcement Division may do so before or after the probable cause conference but not during the conference.

Pursuant to Title 2, California Code of Regulations, Section 18361.4, subdivision (e), the Executive Director will find probable cause:

- ... if the evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a proposed respondent committed or caused a violation.

Ordinarily probable cause determinations are made based upon the written probable cause report, any written response by the respondent, any written reply by the Enforcement Division, and the oral arguments presented at the conference. Timely written presentations are strongly recommended.

E. Probable Cause Order and Accusation

Once the matter is submitted to the General Counsel, the probable cause decision will normally be made within ten days. If the Executive Director finds probable cause, the General Counsel will issue a Finding of Probable Cause, which will be publicly announced at the next Commission Meeting. An accusation will be issued soon after the Finding of Probable Cause is publicly announced.

F. Continuances

Every reasonable effort is made to accommodate the schedules of parties and counsel. However, once a date has been set it is assumed to be firm and will not be continued except upon the order of the General Counsel after a showing of good cause. Settlement negotiations will be considered good cause only if the General Counsel is presented with a fully executed settlement, or is convinced that settlement is imminent.

G. Settlements

Settlement discussions may take place at any time except during the probable cause conference. In order to open settlement discussions, a proposed respondent or his or her counsel or representative should present a written offer to settle stating, where appropriate, the violations to be admitted, and the monetary penalty or other remedy to be tendered.

The Enforcement Division attorney assigned to the case will negotiate any potential settlement on behalf of the Fair Political Practices Commission, and will draft the language of the settlement agreement. The General Counsel will not directly participate in the negotiations, but will be represented by Enforcement Division attorneys. Staff attorneys will present settlement offers to the General Counsel for his/her approval.

CONCLUSION

This fact sheet was intended to give you a brief summary of the probable cause process at the Fair Political Practices Commission. Such a summary cannot answer every question that might arise in such proceedings. Therefore, if you have any questions that are not addressed by this fact sheet or the copies of the law and regulations we have attached, feel free to contact the attorney whose name appears on the probable cause report.

Attachments: Relevant Sections of (1) California Government Code , and (2) Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations.

CALIFORNIA GOVERNMENT CODE
Probable Cause Statutes

§ 8311. Mailing by certified mail

Wherever any notice or other communication is required by any law to be mailed by registered mail to or by the state, or any officer or agency thereof, the mailing of such notice or other communication by certified mail shall be deemed to be a sufficient compliance with the requirements of such law.

§ 83115.5. Prohibited finding of probable cause by commission unless alleged violator notified of violation; Manner of giving notice

No finding of probable cause to believe this title has been violated shall be made by the Commission unless, at least 21 days prior to the Commission's consideration of the alleged violation, the person alleged to have violated this title is notified of the violation by service of process or registered mail with return receipt requested, provided with a summary of the evidence, and informed of his right to be present in person and represented by counsel at any proceeding of the Commission held for the purpose of considering whether probable cause exists for believing the person violated this title. Notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office. A proceeding held for the purpose of considering probable cause shall be private unless the alleged violator files with the commission a written request that the proceeding be public.

§ 83116. Violations; Hearings; Cease and desist orders

When the Commission determines there is probable cause for believing this title has been violated, it may hold a hearing to determine if a violation has occurred. Notice shall be given and the hearing conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, Government Code). The Commission shall have all the powers granted by that chapter. When the Commission determines on the basis of the hearing that a violation has occurred, it shall issue an order that may require the violator to do all or any of the following:

- (a) Cease and desist violation of this title.
- (b) File any reports, statements, or other documents or information required by this title.
- (c) Pay a monetary penalty of up to five thousand dollars (\$5,000) per violation to the General Fund of the state. When the Commission determines that no violation has occurred, it shall publish a declaration so stating.

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- (a) Cease and desist violation of this title.
- (b) File any reports, statements, or other documents or information required by this title.
- (c) Pay a monetary penalty of up to five thousand dollars (\$5,000) per violation to the General Fund of the state. When the Commission determines that no violation has occurred, it shall publish a declaration so stating.

**REGULATIONS OF THE FAIR POLITICAL PRACTICES COMMISSION
TITLE 2, DIVISION 6 OF THE CALIFORNIA CODE OF REGULATIONS
Probable Cause Regulations**

§ 18361.1. Administrative Subpoenas.

The staff, under the direction of the Executive Director, shall seek to assure voluntary compliance with the Political Reform Act and shall investigate possible violations of the Act. The staff shall make reasonable efforts to obtain information on a voluntary basis prior to the issuance of an administrative subpoena. The Executive Director, in the exercise of his or her discretion, may forego this procedure with respect to an investigation in progress. The staff shall periodically report to the members of the Commission on the status of all investigations, including the reasons for the issuance of any administrative subpoena without first making reasonable efforts to obtain the information voluntarily. Failure to report to the Commission concerning the issuance of subpoenas shall not affect the validity of any administrative subpoena.

§ 18361.2. Memorandum Respecting Civil Litigation.

(a) If the Executive Director concludes civil litigation should be initiated, he or she shall submit to the Commission a written memorandum, which shall be first reviewed by the General Counsel, or an attorney from the Legal Division, summarizing the facts and the applicable law of the case and recommending the initiation of a lawsuit. The memorandum shall include all exculpatory and mitigating information known to the staff.

(b) The Commission shall review the memorandum at an executive session. The General Counsel, or an attorney from the Legal Division, and the Commission Assistant shall be in attendance. No other member of the staff may be present unless the Commission meets with a member of the staff for that person to answer questions. The Commission may not resume its deliberations until the person is no longer present. Any communication between the Commission and the person during the executive session shall be recorded. After review of the memorandum, the Commission may direct the Executive Director to do any of the following:

- (1) Initiate civil litigation.
- (2) Decide whether probable cause proceedings should be commenced pursuant to 2 Cal. Code of Regulations Section 18361.4.
- (3) Return the matter to the staff for further investigation.
- (4) Take no further action on the matter or take any other action it deems appropriate.

(c) If the Commission decides to initiate civil litigation, the Commission may then permit other members of the staff to attend the executive session.

(d) If the Executive Director deems it necessary, he or she may call a special meeting of the Commission to review a staff memorandum recommending the initiation of civil litigation.

(e) It is the intent of the Commission in adopting this section to preserve for the members of the Commission the authority to decide whether alleged violations should be adjudicated in administrative hearings or in civil litigation, while at the same time avoiding the possibility that

discussions with members of the staff might cause members of the Commission to prejudge a case that might be heard by the Commission under Government Code Section 83116.

§ 18361.3. Referral of Questions of Law to the Commission

If the Executive Director or any Commissioner believes that an enforcement decision should not be made until a question of law involving an interpretation of the Political Reform Act is resolved, the Executive Director or any Commissioner may submit the question to the entire Commission. The Commission shall consider the question in general terms at a regular public session. Prior to resolving the question of law, the Commission or the Executive Director may request the staff or any other interested party to submit a legal analysis of the question of law.

§ 18361.4. Probable Cause Proceedings

(a) **Probable Cause Report.** If the Chief of the Enforcement Division decides to commence probable cause proceedings pursuant to Sections 83115.5 and 83116, he or she shall direct the Enforcement Division staff to prepare a written report, hereafter referred to as "the probable cause report." The probable cause report shall contain a summary of the law and evidence gathered in connection with the investigation, including any exculpatory and mitigating information of which the staff has knowledge and any other relevant material and arguments. The evidence recited in the probable cause report may include hearsay, including declarations of investigators or others relating the statements of witnesses or concerning the examination of physical evidence.

(b) No probable cause hearing will take place until at least 21 calendar days after the Enforcement Division staff provides the following, by service of process or registered or certified mail with return receipt requested, to all proposed respondents:

- (1) A copy of the probable cause report;
- (2) Notification that the proposed respondents have the right to respond in writing to the probable cause report and to request a probable cause conference at which the proposed respondent may be present in person and represented by counsel, and;
- (3) If the Commission met in executive session on this matter pursuant to Regulation 18361.2, a copy of any staff memoranda submitted to the Commission at that time along with the recording of any discussion between the Commission and the staff at the executive session as required in subdivision (b) of Regulation 18361.2.

(c) Response to Probable Cause Report.

- (1) Each proposed respondent may submit a written response to the probable cause report. The response may contain a summary of evidence, legal arguments, and any mitigating or exculpatory information. A proposed respondent who submits a response must file it with the Commission Assistant who will forward the response to the General Counsel or an attorney in the Legal Division (the "hearing officer") and provide a copy, by service of process or registered or certified mail with return receipt requested, to all other proposed respondents listed in the probable cause report not later than 21 days following service of the probable cause report.
- (2) Within 21 calendar days following the service of the probable cause report, a proposed respondent may request discovery of evidence in the possession of the Enforcement Division. This request must be sent by registered or certified mail to the Commission Assistant. Upon receipt of the request, the Enforcement Division shall provide discovery

of evidence relied upon by the Enforcement Division sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a proposed respondent committed or caused a violation, along with any exculpatory or mitigating evidence. This is not a right to full discovery of the Enforcement Division file. The Enforcement Division shall provide access to documents for copying by the Respondent, or upon agreement among the parties, the Enforcement Division will provide copies of the requested documents upon payment of a fee for direct costs of duplication. The Enforcement Division shall provide such evidence by service of process or registered or certified mail with return receipt requested to all respondents, with a copy to the Commission Assistant. A respondent may submit a written response to the probable cause report described in subsection (1) no later than 21 calendar days after service of discovery.

- (3) The Commission staff may submit any evidence or argument in rebuttal to the response. When the Commission staff submits evidence or argument in rebuttal to the response, it shall provide a copy, by service of process or registered or certified mail with return receipt requested, to all proposed respondents listed in the probable cause report not later than 10 calendar days following the date the response was filed with the Commission Assistant. The hearing officer may extend the time limitations in this section for good cause. At any time prior to a determination of probable cause, the hearing officer may allow additional material to be submitted as part of the initial response or rebuttal.

(d) **Probable Cause Conference.** Any proposed respondent may request a probable cause conference. The request shall be served upon the Commission Assistant and all other proposed respondents not later than 21 days after service of the probable cause report unless the hearing officer extends the time for good cause. The Commission Assistant shall fix a time for the probable cause conference and the hearing officer shall conduct the conference informally. The conference shall be closed to the public unless a proposed respondent requests and all other proposed respondents agree to a public conference. If the conference is not public, only members of the Commission staff, any proposed respondent and his or her legal counsel or representative shall have the right to be present and participate. The hearing officer may allow witnesses to attend and participate in part or all of the probable cause conference. In making this determination, the hearing officer shall consider the relevancy of the witness' proposed testimony, whether the witness has a substantial interest in the proceedings, and whether fairness requires that the witness be allowed to participate. Representatives of any civil or criminal prosecutor with jurisdiction may attend the conference at the discretion of the hearing officer if they agree to respect the confidential nature of the proceedings. If the conference is not open to the public and none of the parties and the presiding officer object, the conference may be conducted in whole or in part by telephone. The probable cause conference shall be recorded. The hearing officer may determine whether there is probable cause based solely on the probable cause report, any responses or rebuttals filed and any arguments presented at the probable cause conference by the interested parties. If the hearing officer requires additional information before determining whether there is probable cause, he or she may permit any party to submit additional evidence at the probable cause conference.

(e) **Finding of Probable Cause.** The hearing officer may find there is probable cause to believe a violation has occurred if the evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a proposed respondent committed or caused a violation. A finding of probable cause by the hearing officer does not constitute a finding that a violation has actually occurred. The hearing officer shall not make a finding of probable cause if he or she is presented with clear and convincing evidence that, at a time prior

to the alleged violation, the violator consulted with the staff of the Commission in good faith, disclosed truthfully all the material facts, and committed the acts complained of either in reliance on the advice of the staff or because of the staff's failure to provide advice. If the hearing officer makes a finding of probable cause, the Enforcement Division shall prepare an Accusation pursuant to Section 11503 and have it served upon the person or persons who are subjects of the probable cause finding. The hearing officer shall publicly announce the finding of probable cause. The announcement shall contain a summary of the allegations and a cautionary statement that the respondent is presumed to be innocent of any violation of the Act unless a violation is proved in a subsequent proceeding. The Chief of the Enforcement Division shall be responsible for the presentation of the case in support of the Accusation at an administrative hearing held pursuant to Section 83116.

§ 18361.5. Administrative Hearings

(a) **Administrative Hearing Brief.** Not later than one week prior to a contested administrative hearing that is to be heard by the Commission itself, the Executive Director shall and any respondent may submit to the Commission a written brief describing the evidence to be presented at the hearing and outlining significant legal arguments expected to be raised. Prior to the contested hearing, when a brief is submitted by any party pursuant to this section, a copy shall be provided to all other parties to the administrative action.

(b) **Preliminary Matters and Hearing on Merits.** If the Executive Director determines that a hearing on the merits should be conducted before an administrative law judge alone pursuant to Government Code section 11512(a), he or she shall provide a copy of the accusation as well as a memorandum describing the issues involved to each member of the Commission. If, at the next regularly scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an administrative law judge is available. When the Commission decides to participate in a hearing on the merits, the Chairman of the Commission may decide that any or all motions as to procedural matters, validity or interpretation of the Political Reform Act, disqualification of any member of the Commission, or any other matters not related to the truth or falsity of the factual allegations in the accusation shall be heard by an administrative law judge alone prior to the hearing on the merits. Any such motions or matters shall be noticed in a timely fashion. Any person requesting reconsideration by the Commission of any decision of the administrative law judge shall submit, at least 14 days prior to the hearing on the merits, a written request for reconsideration setting forth the reasons for the request and including any appropriate points and authorities or affidavits.

(c) **Standard of Proof.** When an administrative hearing is conducted under Government Code section 83116, findings shall be made on a preponderance of the evidence and it shall require the concurrence of at least three members of the Commission to find a violation or impose any order.

(d) **Factors to be Considered by the Commission.** In framing a proposed order following a finding of a violation pursuant to Government Code section 83116, the Commission and the administrative law judge shall consider all the surrounding circumstances including but not limited to:

- (1) The seriousness of the violation;
- (2) The presence or absence of any intention to conceal, deceive or mislead;
- (3) Whether the violation was deliberate, negligent or inadvertent;

- (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);
- (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
- (6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

(e) Stipulated Orders. At any time before or during an administrative hearing and in lieu of such a hearing, the Executive Director and the person who is the subject of the investigation may stipulate to the entry of an order. The order must be approved by the Commission, which may consider the matter in executive session. The stipulated order shall set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under Government Code section 83116. The stipulated order shall be released publicly and shall have the force of an order of the Commission.

§ 18361.6. Probable Cause Presentation by Civil or Criminal Prosecutor

The Executive Director may permit any civil or criminal prosecutor, within the meaning of Government Code sections 91001 and 91001.5, to present a case for determination of probable cause under the procedures of regulation 18361.4 and to present such a case to the Commission at an administrative hearing if probable cause is found. When the Executive Director authorizes such a presentation, he or she may require that the prosecutor prepare the probable cause report described in subdivision (a) of regulation 18361.4 and present the case at any probable cause conference or administrative hearing that is held.

§ 18361.7. Executive Director Subpoena Authority

Notwithstanding 2 Cal. Code Regs. Section 18319: The Executive Director has the authority to issue a subpoena on behalf of the Commission pursuant to Government Code sections 83118 and 11510. The Executive Director may authorize the issuance of a subpoena duces tecum if he or she finds, based on information submitted to him or her in writing, that the information requested in the subpoena is material to a specific matter under investigation, and the Executive Director reasonably believes the person or entity has the desired information under its control.

§ 18361.8. Inapplicability of Regulations 18361.1 Through 18361.8 to Other Enforcement Procedures

None of the procedures described in regulations 18361.1 through 18361.8 and none of the provisions of Government Code sections 83115.5 and 83116 need be followed in connection with the disposition of any enforcement matter other than by way of an administrative hearing conducted pursuant to Government Code section 83116.

§ 18362. Access to Complaint Files

(a) Access to complaints, responses thereto, and investigative files and information shall be granted in accordance with the requirements of the Public Records Act (Government Code Section 6250, et seq.).

(b) When release of material is requested pursuant to subdivision (a), the Executive Director, or his or her designee, shall review the material prior to its release or prior to a claim of exemption to determine that the requirements of the Public Records Act have been satisfied.

(c) Any person requesting copies of material pursuant to subdivision (a) shall reimburse the Commission \$0.10 per page for each page copied or supply copying equipment and make copies in the offices of the Commission. Documents may not be removed from the offices of the Commission. If the request is for copies totaling ten pages or less, the copies shall be provided without charge for copying since the administrative costs do not warrant collection of \$1.00 or less. If the request is for copies totaling more than ten pages, reimbursements of copying costs shall include the cost for the first ten pages. Charges imposed pursuant to this subdivision are for the purpose of recovering the cost of copying.

(d) Requests for access and copies pursuant to subdivision (a) shall be made in writing and shall specifically identify the documents sought.

EXHIBIT A-4

1 GARY S. WINUK
Chief of Enforcement
2 MILAD DALJU
Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
Sacramento, CA 95814
4 Telephone: (916) 322-5660
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant

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

9 **STATE OF CALIFORNIA**

10 In the Matter of) FPPC No. 12/097
11)
12)
13 RYAN EMBREE, and EMBREE FOR CITY) EX PARTE REQUEST FOR A FINDING OF
COUNCIL,) PROBABLE CAUSE AND AN ORDER
14) THAT AN ACCUSATION BE PREPARED
15 Respondents.) AND SERVED
16) Gov. Code § 83115.5
17)
18)

17 **TO ZACKERY P. MORAZZINI, GENERAL COUNSEL OF THE FAIR POLITICAL**
18 **PRACTICES COMMISSION:**

19 Pursuant to Section 83115.5 of the Political Reform Act (the "Act")¹ and Regulation 18361.4,
20 Respondent Ryan Embree ("Respondent Embree") and Respondent Embree for City Council
21 ("Respondent Committee") were constructively served with a copy of a Report in Support of a Finding
22 of Probable Cause (the "Report") in the above-entitled matter. The Report (attached as "Exhibit A"),
23 was part of a packet of materials, including a cover letter and a memorandum describing probable cause
24 proceedings, which was sent to Respondent Embree and Respondent Committee (collectively
25

26 ¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory
27 references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices
28 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.

1 "Respondents") by the Enforcement Division on September 22, 2014, by certified mail, with a return
2 receipt requested. The packet of materials was returned unclaimed on November 3, 2014. (A copy of
3 the returned envelope is attached as "Exhibit B".)

4 In the cover letter and attached materials, Respondents were advised that they could respond in
5 writing to the Report, and orally present their case to the General Counsel at a probable cause
6 conference to be held in Sacramento. Respondents were further advised that in order to have a probable
7 cause conference, they needed to make a written request for one within 21 days of the date they were
8 served the Report. Additionally, Respondents were advised that if they did not request a probable cause
9 conference, such a conference would not be held, and probable cause would be determined based solely
10 on the Report and any written response that Respondents submitted within 21 days of the date they were
11 served the Report. Respondents did not submit a written response, nor did they request a probable cause
12 conference.

13 WHEREFORE, based on the attached Report, the Enforcement Division requests a finding by
14 the General Counsel that probable cause exists to believe that Respondent Ryan Embree and Respondent
15 Embree for City Council committed 17 violations of the Act, stated as follows:

16 COUNT 1: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
17 for City Council failed to file a semiannual statement for the March 26 through June 30,
18 2006, reporting period, by July 31, 2006, in violation of Government Code section 84200,
19 subd. (a).

20 COUNT 2: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
21 for City Council failed to file a semiannual statement for the July 1 through December
22 31, 2006, reporting period, by January 31, 2007, in violation of Government Code section
23 84200, subd. (a).

24 COUNT 3: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
25 for City Council failed to file a semiannual statement for the January 1 through June 30,
26 2007, reporting period, by July 31, 2007, in violation of Government Code section
27 84200, subd. (a).

1 COUNT 4: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
2 for City Council failed to file a semiannual statement for the July 1 through December
3 31, 2007, reporting period, by January 31, 2008, in violation of Government Code
4 section 84200, subd. (a).

5 COUNT 5: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
6 for City Council failed to file a semiannual statement for the January 1 through June 30,
7 2008, reporting period, by July 31, 2008, in violation of Government Code section
8 84200, subd. (a).

9 COUNT 6: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
10 for City Council failed to file a semiannual statement for the July 1 through December
11 31, 2008, reporting period, by January 31, 2009, in violation of Government Code
12 section 84200, subd. (a).

13 COUNT 7: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
14 for City Council failed to file a semiannual statement for the January 1 through June 30,
15 2009, reporting period, by July 31, 2009, in violation of Government Code section
16 84200, subd. (a).

17 COUNT 8: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
18 for City Council failed to file a semiannual statement for the July 1 through December
19 31, 2009, reporting period, by January 31, 2010, in violation of Government Code
20 section 84200, subd. (a).

21 COUNT 9: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
22 for City Council failed to file a semiannual statement for the January 1 through June 30,
23 2010, reporting period, by July 31, 2010, in violation of Government Code section
24 84200, subd. (a).

25 COUNT 10: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
26 for City Council failed to file a semiannual statement for the July 1 through December
27

1 31, 2010, reporting period, by January 31, 2011, in violation of Government Code
2 section 84200, subd. (a).

3 COUNT 11: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
4 for City Council failed to file a semiannual statement for the January 1 through June 30,
5 2011, reporting period, by July 31, 2011, in violation of Government Code section
6 84200, subd. (a).

7 COUNT 12: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
8 for City Council failed to file a semiannual statement for the July 1 through December
9 31, 2011, reporting period, by January 31, 2012, in violation of Government Code
10 section 84200, subd. (a).

11 COUNT 13: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
12 for City Council failed to file a semiannual statement for the January 1 through June 30,
13 2012, reporting period, by July 31, 2012, in violation of Government Code section
14 84200, subd. (a).

15 COUNT 14: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
16 for City Council failed to file a semiannual statement for the July 1 through December
17 31, 2012, reporting period, by January 31, 2013, in violation of Government Code
18 section 84200, subd. (a).

19 COUNT 15: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
20 for City Council failed to file a semiannual statement for the January 1 through June 30,
21 2013, reporting period, by July 31, 2013, in violation of Government Code section
22 84200, subd. (a).

23 COUNT 16: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
24 for City Council failed to file a semiannual statement for the July 1 through December
25 31, 2013, reporting period, by January 31, 2014, in violation of Government Code
26 section 84200, subd. (a).

1 COUNT 17: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
2 for City Council failed to file a semiannual statement for the January 1 through June 30,
3 2014, reporting period, by July 31, 2014, in violation of Government Code section
4 84200, subd. (a).

5
6 Additionally, after finding probable cause exists, the Enforcement Division requests an order by
7 the General Counsel that an accusation be prepared against Respondents, pursuant to Section 11503, and
8 served upon them forthwith.

9 A copy of this request was mailed via U.S. Mail to Respondent on November 25, 2014, at their
10 last known address, as follows:

11 [redacted]
12
13

14
15 Dated: November 25, 2014

Respectfully Submitted,

16 **FAIR POLITICAL PRACTICES COMMISSION**

17 By: Gary S. Winuk
18 Chief of Enforcement

19 [redacted]
20

21 Milad Dalju
22 Commission Counsel
23 Enforcement Division
24
25
26
27
28

EXHIBIT A-5

1 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

2 STATE OF CALIFORNIA

3
4 In the Matter of) FPPC No. 12/097
5)
6 RYAN EMBREE, and EMBREE FOR CITY) FINDING OF PROBABLE CAUSE AND
7 COUNCIL,) ORDER TO PREPARE AND SERVE AN
8 Respondents.) ACCUSATION
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10) Gov. Code § 83115.5
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26 By means of an Ex Parte Request for a Finding of Probable Cause and an Order that an
27 Accusation be Prepared and Served (the "Ex Parte Request"), dated November 25, 2014, the
28 Enforcement Division submitted the above-entitled matter to the General Counsel for a determination of
29 probable cause. As set forth in the Ex Parte Request, the Enforcement Division sent a Report in Support
30 of a Finding of Probable Cause (the "Report") to Respondent Ryan Embree ("Respondent Embree") and
31 Respondent Embree for City Council ("Respondent Committee") concerning this matter on September
32 22, 2014, by certified mail, with a return receipt requested. Accompanying the Report was a packet of
33 materials that informed Respondents of their right to file a written response to the Report and/or to
34 request a probable cause conference within 21 days of the date they were served the Report.
35 Constructive service on Respondents was made on November 3, 2014, when the Report was returned to
36 the Enforcement Division as "unclaimed". During the 21 days that followed construction service of the
37 Report, Respondents did not file a response to the Report or request a probable cause conference.
38 Pursuant to California Code of Regulations Title 2, Section 18361.4,¹ a determination of probable cause
39 may be made solely on papers submitted when the respondent does not request that a probable cause
40 conference be held.

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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.

1 In making a probable cause determination, it is the duty of the General Counsel to determine
2 whether probable cause exists for believing that a respondent has violated the Political Reform Act as
3 alleged by the Enforcement Division in the probable cause report served on the respondent.

4 Probable cause to believe a violation has occurred can be found to exist when "the evidence is
5 sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion
6 that the proposed respondent(s) committed or caused a violation." (Regulation 18361.4,
7 subd. (e).)

8 The Report served on Respondents and the subsequent Ex Parte Request in this matter allege 17
9 violations of the Political Reform Act were committed, as follows:

10 COUNT 1: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
11 for City Council failed to file a semiannual statement for the March 26 through June 30,
12 2006, reporting period, by July 31, 2006, in violation of Government Code section 84200,
13 subd. (a).

14 COUNT 2: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
15 for City Council failed to file a semiannual statement for the July 1 through December
16 31, 2006, reporting period, by January 31, 2007, in violation of Government Code section
17 84200, subd. (a).

18 COUNT 3: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
19 for City Council failed to file a semiannual statement for the January 1 through June 30,
20 2007, reporting period, by July 31, 2007, in violation of Government Code section
21 84200, subd. (a).

22 COUNT 4: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
23 for City Council failed to file a semiannual statement for the July 1 through December
24 31, 2007, reporting period, by January 31, 2008, in violation of Government Code
25 section 84200, subd. (a).

1 COUNT 5: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
2 for City Council failed to file a semiannual statement for the January 1 through June 30,
3 2008, reporting period, by July 31, 2008, in violation of Government Code section
4 84200, subd. (a).

5 COUNT 6: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
6 for City Council failed to file a semiannual statement for the July 1 through December
7 31, 2008, reporting period, by January 31, 2009, in violation of Government Code
8 section 84200, subd. (a).

9 COUNT 7: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
10 for City Council failed to file a semiannual statement for the January 1 through June 30,
11 2009, reporting period, by July 31, 2009, in violation of Government Code section
12 84200, subd. (a).

13 COUNT 8: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
14 for City Council failed to file a semiannual statement for the July 1 through December
15 31, 2009, reporting period, by January 31, 2010, in violation of Government Code
16 section 84200, subd. (a).

17 COUNT 9: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
18 for City Council failed to file a semiannual statement for the January 1 through June 30,
19 2010, reporting period, by July 31, 2010, in violation of Government Code section
20 84200, subd. (a).

21 COUNT 10: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
22 for City Council failed to file a semiannual statement for the July 1 through December
23 31, 2010, reporting period, by January 31, 2011, in violation of Government Code
24 section 84200, subd. (a).

25 COUNT 11: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
26 for City Council failed to file a semiannual statement for the January 1 through June 30,
27

1 2011, reporting period, by July 31, 2011, in violation of Government Code section
2 84200, subd. (a).

3 COUNT 12: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
4 for City Council failed to file a semiannual statement for the July 1 through December
5 31, 2011, reporting period, by January 31, 2012, in violation of Government Code
6 section 84200, subd. (a).

7 COUNT 13: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
8 for City Council failed to file a semiannual statement for the January 1 through June 30,
9 2012, reporting period, by July 31, 2012, in violation of Government Code section
10 84200, subd. (a).

11 COUNT 14: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
12 for City Council failed to file a semiannual statement for the July 1 through December
13 31, 2012, reporting period, by January 31, 2013, in violation of Government Code
14 section 84200, subd. (a).

15 COUNT 15: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
16 for City Council failed to file a semiannual statement for the January 1 through June 30,
17 2013, reporting period, by July 31, 2013, in violation of Government Code section
18 84200, subd. (a).

19 COUNT 16: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
20 for City Council failed to file a semiannual statement for the July 1 through December
21 31, 2013, reporting period, by January 31, 2014, in violation of Government Code
22 section 84200, subd. (a).

23 COUNT 17: Respondent Ryan Embree and his candidate-controlled committee Respondent Embree
24 for City Council failed to file a semiannual statement for the January 1 through June 30,
25 2014, reporting period, by July 31, 2014, in violation of Government Code section
26 84200, subd. (a).

1 Based on the Ex Parte Request given to me, I find that notice has been given to Respondents, as
2 provided by Section 83115.5 and Regulation 18361.4, subdivision (b). I further find, based on the
3 Report and the Ex Parte Request, that there is probable cause to believe Respondents violated the
4 Political Reform Act as alleged in Counts 1 through 17, as identified above.

5 I therefore direct that the Enforcement Division issue an accusation against Respondent Ryan
6 Embree and Respondent Embree for City Council in accordance with this finding.

7 IT IS SO ORDERED.

8
9 Dated: 12-2-14

10 
11 Zackery P. Morazzini
12 General Counsel
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EXHIBIT A-6

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of eighteen years, and not a party to the above entitled action.

I am a registered process server.

My name, address, telephone number, and registration number and county are:

Name: George Sano
Firm: George Sano Investigations (GSI)
Address: 360 E. First St. #773, Tustin, CA 92780
Telephone Number: (714) 486-3606
Registration Number: PSC2623
County: Orange

On this date I served the following documents:

1. Statement to Respondents; In the Matter of Ryan Embree and Embree for City Council, FPPC No. 12/097,
2. Accusation; In the Matter of Ryan Embree and Embree for City Council, FPPC No. 12/097,
3. Notice of Defense (Two Copies); In the Matter of Ryan Embree and Embree for City Council, FPPC No. 12/097,
4. Copy of California Government Code sections 11506 through 11508; In the Matter of Ryan Embree and Embree for City Council, FPPC No. 12/097.

I served the above-listed documents as follows:

- Personal Service. I personally delivered the above-listed documents as follows:

Person served: Peter Haines, Security Guard

Address where served: [redacted] [redacted] [redacted] [redacted]

Date of delivery: 12/22/14

Time of delivery: 3:15pm

- Mail. On 12/23/14, I deposited the above-listed documents in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed as follows:

Ryan Embree And Embree For City Council

[redacted] [redacted] [redacted]

[redacted] [redacted]

The Fee for the service was: \$75.00

I declare under penalty of perjury under the laws of the [redacted] the foregoing is true and correct.

[redacted]

Date: 01/02/2015

(SIGNATURE)

1 GARY S. WINUK
Chief of Enforcement
2 MILAD DALJU
Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
Sacramento, CA 95814
4 Telephone: (916) 322-5660
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant

7 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

8 **STATE OF CALIFORNIA**

9
10 In the Matter of)
11) FPPC No. 12/097
12) ACCUSATION
RYAN EMBREE, and EMBREE FOR CITY)
13 COUNCIL,) (Gov. Code §11503)
14 Respondents.)

15 Complainant Fair Political Practices Commission, after a finding of probable cause made
16 pursuant to Government Code section 83115.5, hereby alleges the following:

17 **JURISDICTION**

18 1. Complainant is the Fair Political Practices Commission (the "Commission") and makes
19 this Accusation in his official capacity and in the public interest.

20 2. The authority to bring this action is derived from Title 2, California Code of Regulations,
21 Sections 18361 and 18361.4, subdivision (e), and the statutory law of the State of California, specifically
22 including, but not limited to, Government Code sections 83111, 83116, and 91000.5, which assign to the
23 Commission the duty to administer, implement, and enforce the provisions of the Political Reform Act,
24 found at Government Code sections 81000 through 91014.

1 11. Any individual who is listed on the ballot for election to any elective office qualifies as a
2 "candidate". (Section 82007.)

3 12. Any person or combination of persons who receive contributions of \$1,000 or more
4 during a calendar year qualify as a "committee". (Section 82013, subd. (a).)

5 13. A candidate-controlled committee is a committee that is controlled directly or indirectly
6 by a candidate. (Section 82016, subd. (a).)

7 14. A candidate controls a committee if he or she, his or her agent, or any other committee he
8 or she controls has a significant influence on the actions of the committee. (*Id.*)

9 **B. Duty to File Semiannual Statements**

10 15. Section 84200, subdivision (a), requires all candidates and committees pursuant to
11 Section 82013, subd. (a), to file semiannual statements each year no later than July 31 for the period
12 ending June 30, and no later than January 31 for the period ending December 31.²

13 16. Section 84215, subdivision (d), requires candidates for city office and their controlled
14 committees to file their semiannual statements with the clerk of the city.

15 17. The candidate and committee's filing obligations continue until a statement of
16 termination (Form 410) is filed with the Secretary of State's office and a copy with the clerk of the city.
17 (Section 84214 and Regulation 18404.)

18 **C. Factors to be Considered by the Commission**

19 18. In framing a proposed order following a finding of a violation pursuant to Section 83116,
20 the Commission and the administrative law judge shall consider all the surrounding circumstances
21 including but not limited to: (1) The seriousness of the violation; (2) The presence or absence of any
22 intention to conceal, deceive or mislead; (3) Whether the violation was deliberate, negligent or
23 inadvertent; (4) Whether the violator demonstrated good faith by consulting the Commission staff or
24

25 ²Under Regulation 18116, whenever the Act requires that a statement or report (other than late contribution reports
26 required by Section 84203, late independent expenditure reports required by Section 84204, or notice by the contributor of a
27 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
28 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.

1 any other government agency in a manner not constituting a complete defense under Section 83114(b);
2 (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of
3 violations of the Political Reform Act or similar laws; and (6) Whether the violator, upon learning of a
4 reporting violation, voluntarily filed amendments to provide full disclosure. (Regulation 18361.5,
5 subd. (d).)

6 GENERAL FACTS

7 19. Complainant incorporates paragraphs 1 – 18 of this Accusation, as though completely set
8 forth herein.

9 20. Respondent Embree was an unsuccessful candidate for a City of Malibu City Council
10 seat in the April 11, 2006, election.

11 21. Respondent Committee has been Respondent Embree's candidate-controlled committee
12 at all relevant times.

13 22. Respondents failed to file a semiannual statement with the Malibu City Clerk ("City
14 Clerk") by July 31, 2006, January 31, 2007, July 31, 2007, January 31, 2008, July 31, 2008, January 31,
15 2009, July 31, 2009, January 31, 2010, July 31, 2010, January 31, 2011, July 31, 2011, January 31,
16 2012, July 31, 2012, January 31, 2013, July 31, 2013, January 31, 2014, and July 31, 2014, for the
17 March 26 through June 30, 2006, July 1 through December 31, 2006, January 1 through June 30, 2007,
18 July 1 through December 31, 2007, January 1 through June 30, 2008, July 1 through December 31,
19 2008, January 1 through June 30, 2009, July 1 through December 31, 2009, January 1 through June 30,
20 2010, July 1 through December 31, 2010, January 31 through June 30, 2011, July 1 through December
21 31, 2011, January 1 through June 30, 2012, July 1 through December 31, 2012, January 1 through June
22 30, 2013, July 1 through December 31, 2013, and January 1 through June 30, 2014, reporting periods,
23 respectively.

24 23. On or about November 13, 2006, the Commission's Enforcement Division (the
25 "Enforcement Division") received a referral from the City Clerk for Respondents' failure to file a
26 semiannual statement for the March 26 through June 30, 2006, reporting period.

1 24. On or about August 29, 2007, the Enforcement Division sent Respondents a letter,
2 warning them that they had failed to file a semiannual statement with the City Clerk for the March 26
3 through June 30, 2006, and July 1 through December 31, 2006, reporting periods, and requesting that
4 they immediately file the missing semiannual statements with the City Clerk.

5 25. On or about January 31, 2011, the City Clerk sent Respondents an email reminding them
6 of their obligation to file semiannual statements with the City Clerk.

7 26. On or about July 5, 2011, the City Clerk mailed Respondents a letter via certified mail,
8 reminding Respondents of their obligation to file semiannual statements and requesting that
9 Respondents file nine outstanding semiannual statements.

10 27. On or about January 18, 2012, the City Clerk mailed Respondents a letter via certified
11 mail, reminding Respondents of their obligation to file semiannual statements and requesting that
12 Respondents file twelve outstanding semiannual statements.

13 28. On or about January 31, 2012, the City Clerk sent Respondents an email, reminding them
14 of their obligation to file semiannual statements, requesting that Respondents file twelve outstanding
15 semiannual statements, and informing them that the matter would be referred to the Commission.

16 29. On or about February 17, 2012, the City Clerk referred the matter to the Enforcement
17 Division. ✓

18 30. On or about June 4, 2012, the Enforcement Division contacted Respondent Embree
19 regarding his failure to file twelve semiannual statements, and Respondent Embree agreed that he would
20 file all twelve outstanding semiannual statements and a statement of termination (Form 410) with the
21 City Clerk and send a copy to the Enforcement Division.

22 31. In July 2012, Respondents had not filed the twelve outstanding semiannual statements,
23 and therefore the Enforcement Division contacted Respondent Embree again. Respondent Embree stated
24 that he was still in the process of filing the missing semiannual statements and the statement of
25 termination with the City Clerk.

1 41. Respondents failed to file a semiannual statement with the City Clerk by July 31, 2006,
2 for the March 26 through June 30, 2006, reporting period.

3 42. As of the date of this Accusation, Respondents have not filed a semiannual statement
4 with the City Clerk for the March 26 through June 30, 2006, reporting period.

5 **COUNT 2**

6 **Violation: Failure to File a Semiannual Statement in Violation of Government Code Section 84200,**
7 **subdivision (a).**

8 43. Complainant incorporates paragraphs 1 – 42 of this Accusation, as though completely set
9 forth herein.

10 44. Respondents had a duty to file a semiannual statement with the City Clerk by January 31,
11 2007, for the July 1 through December 31, 2006, reporting period.

12 45. Respondents failed to file a semiannual statement with the City Clerk by January 31,
13 2007, for the July 1 through December 31, 2006, reporting period.

14 46. As of the date of this Accusation, Respondents have not filed a semiannual statement
15 with the City Clerk for the July 1 through December 31, 2006, reporting period.

16 **COUNT 3**

17 **Violation: Failure to File a Semiannual Statement in Violation of Government Code Section 84200,**
18 **subdivision (a).**

19 47. Complainant incorporates paragraphs 1 – 46 of this Accusation, as though completely set
20 forth herein.

21 48. Respondents had a duty to file a semiannual statement with the City Clerk by July 31,
22 2007, for the January 1 through June 30, 2007, reporting period.

23 49. Respondents failed to file a semiannual statement with the City Clerk by July 31, 2007,
24 for the January 1 through June 30, 2007, reporting period.

25 50. As of the date of this Accusation, Respondents have not filed a semiannual statement
26 with the City Clerk for the January 1 through June 30, 2007, reporting period.

1 COUNT 4

2 Violation: Failure to File a Semiannual Statement in Violation of Government Code Section 84200,
3 subdivision (a).

4 51. Complainant incorporates paragraphs 1 – 50 of this Accusation, as though completely set
5 forth herein.

6 52. Respondents had a duty to file a semiannual statement with the City Clerk by January 31,
7 2008, for the July 1 through December 31, 2007, reporting period.

8 53. Respondents failed to file a semiannual statement with the City Clerk by January 31,
9 2008, for the July 1 through December 31, 2007, reporting period.

10 54. As of the date of this Accusation, Respondents have not filed a semiannual statement
11 with the City Clerk for the July 1 through December 31, 2007, reporting period.

12 COUNT 5

13 Violation: Failure to File a Semiannual Statement in Violation of Government Code Section 84200,
14 subdivision (a).

15 55. Complainant incorporates paragraphs 1 – 54 of this Accusation, as though completely set
16 forth herein.

17 56. Respondents had a duty to file a semiannual statement with the City Clerk by July 31,
18 2008, for the January 1 through June 30, 2008, reporting period.

19 57. Respondents failed to file a semiannual statement with the City Clerk by July 31, 2008,
20 for the January 1 through June 30, 2008, reporting period.

21 58. As of the date of this Accusation, Respondents have not filed a semiannual statement
22 with the City Clerk for the January 1 through June 30, 2008, reporting period.

1 COUNT 6

2 Violation: Failure to File a Semiannual Statement in Violation of Government Code Section 84200,
3 subdivision (a).

4 59. Complainant incorporates paragraphs 1 – 58 of this Accusation, as though completely set
5 forth herein.

6 60. Respondents had a duty to file a semiannual statement with the City Clerk by January 31,
7 2009, for the July 1 through December 31, 2008, reporting period.

8 61. Respondents failed to file a semiannual statement with the City Clerk by January 31,
9 2009, for the July 1 through December 31, 2008, reporting period.

10 62. As of the date of this Accusation, Respondents have not filed a semiannual statement
11 with the City Clerk for the July 1 through December 31, 2008, reporting period:

12 COUNT 7

13 Violation: Failure to File a Semiannual Statement in Violation of Government Code Section 84200,
14 subdivision (a).

15 63. Complainant incorporates paragraphs 1 – 62 of this Accusation, as though completely set
16 forth herein.

17 64. Respondents had a duty to file a semiannual statement with the City Clerk by July 31,
18 2009, for the January 1 through June 30, 2009, reporting period.

19 65. Respondents failed to file a semiannual statement with the City Clerk by July 31, 2009,
20 for the January 1 through June 30, 2009, reporting period.

21 66. As of the date of this Accusation, Respondents have not filed a semiannual statement
22 with the City Clerk for the January 1 through June 30, 2009, reporting period.

1 COUNT 8

2 Violation: Failure to Timely File a Semiannual Statement in Violation of Government Code Section
3 84200, subdivision (a).

4 67. Complainant incorporates paragraphs 1 – 66 of this Accusation, as though completely set
5 forth herein.

6 68. Respondents had a duty to file a semiannual statement with the City Clerk by January 31,
7 2010, for the July 1 through December 31, 2009, reporting period.

8 69. Respondents failed to file a semiannual statement with the City Clerk by January 31,
9 2010, for the July 1 through December 31, 2009, reporting period.

10 70. Respondents did not file a semiannual statement for the January 1 through June 30, 2009,
11 reporting period, with the City Clerk until September 26, 2014.

12 COUNT 9

13 Violation: Failure to Timely File a Semiannual Statement in Violation of Government Code Section
14 84200, subdivision (a).

15 71. Complainant incorporates paragraphs 1 – 70 of this Accusation, as though completely set
16 forth herein.

17 72. Respondents had a duty to file a semiannual statement with the City Clerk by July 31,
18 2010, for the January 1 through June 30, 2010, reporting period.

19 73. Respondents failed to file a semiannual statement with the City Clerk by July 31, 2010,
20 for the January 1 through June 30, 2010, reporting period.

21 74. Respondents did not file a semiannual statement for the January 1 through June 30, 2010,
22 reporting period, with the City Clerk until September 26, 2014.

1 COUNT 10

2 Violation: Failure to File a Semiannual Statement in Violation of Government Code Section 84200,
3 subdivision (a).

4 75. Complainant incorporates paragraphs 1 – 74 of this Accusation, as though completely set
5 forth herein.

6 76. Respondents had a duty to file a semiannual statement with the City Clerk by January 31,
7 2011, for the July 1 through December 31, 2010, reporting period.

8 77. Respondents failed to file a semiannual statement with the City Clerk by January 31,
9 2011, for the July 1 through December 31, 2010, reporting period.

10 78. Respondents did not file a semiannual statement for the July 1 through December 31,
11 2010, reporting period, with the City Clerk until September 26, 2014.

12 COUNT 11

13 Violation: Failure to File a Semiannual Statement in Violation of Government Code Section 84200,
14 subdivision (a).

15 79. Complainant incorporates paragraphs 1 – 78 of this Accusation, as though completely set
16 forth herein.

17 80. Respondents had a duty to file a semiannual statement with the City Clerk by July 31,
18 2011, for the January 1 through June 30, 2011, reporting period.

19 81. Respondents failed to file a semiannual statement with the City Clerk by July 31, 2011,
20 for the January 1 through June 30, 2011, reporting period.

21 82. Respondents did not file a semiannual statement for the January 1 through June 30, 2011,
22 reporting period, with the City Clerk until September 26, 2014.

1 COUNT 12

2 Violation: Failure to File a Semiannual Statement in Violation of Government Code Section 84200,
3 subdivision (a).

4 83. Complainant incorporates paragraphs 1 – 82 of this Accusation, as though completely set
5 forth herein.

6 84. Respondents had a duty to file a semiannual statement with the City Clerk by January 31,
7 2012, for the July 1 through December 31, 2011, reporting period.

8 85. Respondents failed to file a semiannual statement with the City Clerk by January 31,
9 2012, for the July 1 through December 31, 2011, reporting period.

10 86. Respondents did not file a semiannual statement for the July 1 through December 31,
11 reporting period, with the City Clerk until September 26, 2014.

12 COUNT 13

13 Violation: Failure to File a Semiannual Statement in Violation of Government Code Section 84200,
14 subdivision (a).

15 87. Complainant incorporates paragraphs 1 – 86 of this Accusation, as though completely set
16 forth herein.

17 88. Respondents had a duty to file a semiannual statement with the City Clerk by July 31,
18 2012, for the January 1 through June 30, 2012, reporting period.

19 89. Respondents failed to file a semiannual statement with the City Clerk by July 31, 2012,
20 for the January 1 through June 30, 2012, reporting period.

21 90. Respondents did not file a semiannual statement for the January 1 through June 30, 2012,
22 reporting period, with the City Clerk until September 26, 2014.

1 COUNT 14

2 Violation: Failure to File a Semiannual Statement in Violation of Government Code Section 84200,
3 subdivision (a).

4 91. Complainant incorporates paragraphs 1 – 90 of this Accusation, as though completely set
5 forth herein.

6 92. Respondents had a duty to file a semiannual statement with the City Clerk by January 31,
7 2013, for the July 1 through December 31, 2012, reporting period.

8 93. Respondents failed to file a semiannual statement with the City Clerk by January 31,
9 2013, for the July 1 through December 31, 2012, reporting period.

10 94. Respondents did not file a semiannual statement for the July 1 through December 31,
11 2012, reporting period, with the City Clerk until September 26, 2014.

12 COUNT 15

13 Violation: Failure to File a Semiannual Statement in Violation of Government Code Section 84200,
14 subdivision (a).

15 95. Complainant incorporates paragraphs 1 – 94 of this Accusation, as though completely set
16 forth herein.

17 96. Respondents had a duty to file a semiannual statement with the City Clerk by July 31,
18 2013, for the January 1 through June 30, 2013, reporting period.

19 97. Respondents failed to file a semiannual statement with the City Clerk by July 31, 2013,
20 for the January 1 through June 30, 2013, reporting period.

21 98. As of the date of this Accusation, Respondents have not filed a semiannual statement
22 with the City Clerk for the January 1 through June 30, 2013, reporting period.

1 **COUNT 16**

2 **Violation: Failure to File a Semiannual Statement in Violation of Government Code Section 84200,**
3 **subdivision (a).**

4 99. Complainant incorporates paragraphs 1 – 98 of this Accusation, as though completely set
5 forth herein.

6 100. Respondents had a duty to file a semiannual statement with the City Clerk by January 31,
7 2014, for the July 1 through December 31, 2013, reporting period.

8 101. Respondents failed to file a semiannual statement with the City Clerk by January 31,
9 2014, for the July 1 through December 31, 2013, reporting period.

10 102. As of the date of this Accusation, Respondents have not filed a semiannual statement
11 with the City Clerk for the July 1 through December 31, 2013, reporting period.

12 **COUNT 17**

13 **Violation: Failure to File a Semiannual Statement in Violation of Government Code Section 84200,**
14 **subdivision (a).**

15 103. Complainant incorporates paragraphs 1 – 102 of this Accusation, as though completely
16 set forth herein.

17 104. Respondents had a duty to file a semiannual statement with the City Clerk by July 31,
18 2014, for the January 1 through June 30, 2014, reporting period.

19 105. Respondents failed to file a semiannual statement with the City Clerk by July 31, 2014,
20 for the January 1 through June 30, 2014, reporting period.

21 106. As of the date of this Accusation, Respondents have not filed a semiannual statement
22 with the City Clerk for the January 1 through June 30, 2014, reporting period.

23 **MITIGATIVE OR EXCULPATORY INFORMATION**

24 107. Complainant incorporates paragraphs 1 - 106 of this Accusation, as though completely
25 set forth herein.

1 (2) the presence or absence of any intention to conceal, deceive or mislead; (3) whether the violation
2 was deliberate, negligent or inadvertent; (4) whether the violator demonstrated good faith by consulting
3 the Commission staff or any other government agency in a manner not constituting a complete defense
4 under Government Code Section 83114(b); (5) whether the violation was isolated or part of a pattern
5 and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
6 (6) whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide
7 full disclosure.

8 117. That the Commission grant such other and further relief as it deems just and proper.

9
10
11 Dated: _____

12 12/3/14

13 [redacted]
14 _____

15 Gary S. Winuk
16 Chief of Enforcement
17 Fair Political Practices Commission
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FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

STATEMENT TO RESPONDENTS

[Government Code section 11505, subdivision (b)]

RYAN EMBREE and EMBREE FOR CITY COUNCIL

FPPC Case No. 12/097

Enclosed is an Accusation, which was filed with the Fair Political Practices Commission (the "FPPC") and which is hereby served upon you, along with two copies of a Notice of Defense and Government Code sections 11506 through 11508.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to the FPPC within 15 days after the Accusation was served on you, the FPPC may proceed upon the Accusation without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled Notice of Defense, or by delivering or mailing a notice of defense as provided by Section 11506 of the Government Code to the Commission Assistant at the FPPC.

You may, but need not, be represented by counsel at any or all stages of these proceedings.

If you desire a list of the names and addresses of witnesses against you, or an opportunity to inspect and copy the items mentioned in Section 11507.6 of the Government Code that are in the possession, custody, or control of this agency, or if you wish to discuss the possibility of resolving this matter without a formal hearing, you may contact Milad Dalju, Commission Counsel in the Enforcement Division at the FPPC.

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify the FPPC or, if an administrative law judge has been assigned to the hearing, the Office of Administrative Hearings, within 10 working days after you discover the good cause. Failure to give notice within 10 days will deprive you of a postponement.

After a hearing, the FPPC will consider the following factors in determining whether to assess a penalty (Title 2, California Code of Regulations, Section 18361.5, subdivision (d).):

1. The seriousness of the violation;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violator demonstrated good faith by consulting Commission staff or any other government agency in a manner not constituting a complete defense under Government Code Section 83114, subdivision (b);
5. Whether the violation was isolated or part of a pattern;
6. Whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
7. Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

GROUNDS FOR NOTICE OF DEFENSE

- 1) I request a hearing;
- 2) I object to the Accusation upon the ground that it does not state acts or omissions upon which the agency may proceed;
- 3) I object to the form of the Accusation on the ground that it is so indefinite or uncertain that I cannot identify the transaction that is the subject of the Accusation or prepare my defense;
- 4) I admit the Accusation in whole or in part (check box "a" or "b");
 - a) I admit the Accusation in whole.
 - b) I admit the Accusation in part as indicated below:

- 5) I wish to present new matter by way of defense;
- 6) I object to the accusation upon the ground that, under the circumstances, compliance with the requirements of a regulation of the Fair Political Practices Commission would result in a material violation of another regulation enacted by another department affecting substantive rights.

Dated: _____

Ryan Embree,
Individually and on behalf of
Embree for City Council

Print Name

Mailing Address

City, State, Zip



Before the Fair Political Practices Commission

State of California

In the Matter of)	NOTICE OF DEFENSE
)	(Pursuant to Gov. Code § 11506)
)	
RYAN EMBREE, and)	FPPC Case No. 14/097
EMBREE FOR CITY COUNCIL)	
)	
)	
)	
)	
)	
<u>Respondents.</u>)	

RYAN EMBREE and EMBREE FOR CITY COUNCIL, the respondents named in the above entitled proceeding, hereby acknowledge receipt of the Accusation, a copy of the Statement to Respondents, a copy of Government Code sections 11506 through 11508, and two copies of a *NOTICE OF DEFENSE*.

Pursuant to Government Code section 11506, subdivision (a), you may file this *NOTICE OF DEFENSE* requesting a hearing on the grounds listed below. Failure to file this *NOTICE OF DEFENSE* shall constitute a waiver of your right to a hearing. If you waive your right to a hearing, you may file a statement of mitigation by separate letter that will be considered by the Commission in assessing any penalties for the violations alleged in the Accusation.

If you wish to file a *NOTICE OF DEFENSE*, please check **all** applicable grounds for the *NOTICE OF DEFENSE*, complete the remainder of the form, and mail to the Commission within 15 days of receipt of the Accusation.

GROUNDNS FOR NOTICE OF DEFENSE

- 1) I request a hearing;
- 2) I object to the Accusation upon the ground that it does not state acts or omissions upon which the agency may proceed;
- 3) I object to the form of the Accusation on the ground that it is so indefinite or uncertain that I cannot identify the transaction that is the subject of the Accusation or prepare my defense;
- 4) I admit the Accusation in whole or in part (check box "a" or "b");
 - a) I admit the Accusation in whole.
 - b) I admit the Accusation in part as indicated below:

- 5) I wish to present new matter by way of defense;
- 6) I object to the accusation upon the ground that, under the circumstances, compliance with the requirements of a regulation of the Fair Political Practices Commission would result in a material violation of another regulation enacted by another department affecting substantive rights.

Dated: _____

Ryan Embree,
Individually and on behalf of
Embree for City Council

Print Name

Mailing Address

City, State, Zip

California Government Code sections 11506 through 11508

§ 11506. Filing of notice of defense or notice of participation; Contents; Right to hearing on the merits

(a) Within 15 days after service of the accusation or District Statement of Reduction in Force the respondent may file with the agency a notice of defense, or, as applicable, notice of participation, in which the respondent may:

(1) Request a hearing.

(2) Object to the accusation or District Statement of Reduction in Force upon the ground that it does not state acts or omissions upon which the agency may proceed.

(3) Object to the form of the accusation or District Statement of Reduction in Force on the ground that it is so indefinite or uncertain that the respondent cannot identify the transaction or prepare a defense.

(4) Admit the accusation or District Statement of Reduction in Force in whole or in part.

(5) Present new matter by way of defense.

(6) Object to the accusation or District Statement of Reduction in Force upon the ground that, under the circumstances, compliance with the requirements of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights.

(b) Within the time specified the respondent may file one or more notices of defense, or, as applicable, notices of participation, upon any or all of these grounds but all of these notices shall be filed within that period unless the agency in its discretion authorizes the filing of a later notice.

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense or notice of participation, and the notice shall be deemed a specific denial of all parts of the accusation or District Statement of Reduction in Force not expressly admitted. Failure to file a notice of defense or notice of participation shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in paragraph (3) of subdivision (a), all objections to the form of the accusation or District Statement of Reduction in Force shall be deemed waived.

(d) The notice of defense or notice of participation shall be in writing signed by or on behalf of the respondent and shall state the respondent's mailing address. It need not be verified or follow any particular form.

(e) As used in this section, "file," "files," "filed," or "filing" means "delivered or mailed" to the agency as provided in Section 11505.

HISTORY: Added Stats 1945 ch 867 § 1. Amended Stats 1963 ch 931 § 1; Stats 1982 ch 606 § 1; Stats 1986 ch 951 § 20; Stats 1995 ch 938 § 29 (SB 523), operative July 1, 1997; Stats 2013 ch 90 § 5 (SB 546), effective January 1, 2014.

§ 11507. Amended or supplemental accusation or District Statement of Reduction in Force; Objections

At any time before the matter is submitted for decision, the agency may file or permit the filing of, an amended or supplemental accusation or District Statement of Reduction in Force. All parties shall be notified of the filing. If the amended or supplemental accusation or District Statement of Reduction in Force presents new charges the agency shall afford the respondent a reasonable opportunity to prepare his or her defense thereto, but he or she shall not be entitled to file a further pleading unless the agency in its discretion so orders. Any new charges shall be deemed controverted, and any objections to the amended or supplemental accusation or District Statement of Reduction in Force may be made orally and shall be noted in the record.

HISTORY: Added Stats 1945 ch 867 § 1. Amended Stats 2013 ch 90 § 6 (SB 546), effective January 1, 2014.

§ 11507.3. Consolidated proceedings; Separate hearings

(a) When proceedings that involve a common question of law or fact are pending, the administrative law judge on the judge's own motion or on motion of a party may order a joint hearing of any or all the matters at issue in the proceedings. The administrative law judge may order all the proceedings consolidated and may make orders concerning the procedure that may tend to avoid unnecessary costs or delay.

(b) The administrative law judge on the judge's own motion or on motion of a party, in furtherance of convenience or to avoid prejudice or when separate hearings will be conducive to expedition and economy, may order a separate hearing of any issue, including an issue raised in the notice of defense or notice of participation, or of any number of issues.

HISTORY: Added Stats 1995 ch 938 § 30 (SB 523), operative July 1, 1997. Amended Stats 2013 ch 90 § 7 (SB 546), effective January 1, 2014.

§ 11507.5. Exclusivity of discovery provisions

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

HISTORY: Added Stats 1968 ch 808 § 3.

§ 11507.6. Request for discovery

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

HISTORY: Added Stats 1968 ch 808 § 4. Amended Stats 1985 ch 1328 § 5; Stats 1995 ch 938 § 31 (SB 523), operative July 1, 1997.

§ 11507.7. Motion to compel discovery; Order

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of *Section 915 of the Evidence Code* and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

HISTORY: Added Stats 1968 ch 808 § 5. Amended Stats 1971 ch 1303 § 8; Stats 1980 ch 548 § 2; Stats 1995 ch 938 § 32 (SB 523), operative July 1, 1997.

§ 11508. Time and place of hearing

(a) The agency shall consult the office, and subject to the availability of its staff, shall determine the time and place of the hearing. The hearing shall be held at a hearing facility maintained by the office in Sacramento, Oakland, Los Angeles, or San Diego and shall be held at the facility that is closest to the location where the transaction occurred or the respondent resides.

(b) Notwithstanding subdivision (a), the hearing may be held at either of the following places:

(1) A place selected by the agency that is closer to the location where the transaction occurred or the respondent resides.

(2) A place within the state selected by agreement of the parties.

(c) The respondent may move for, and the administrative law judge has discretion to grant or deny, a change in the place of the hearing. A motion for a change in the place of the hearing shall be made within 10 days after service of the notice of hearing on the respondent.

Unless good cause is identified in writing by the administrative law judge, hearings shall be held in a facility maintained by the office.

HISTORY: Added Stats 1945 ch 867 § 1. Amended Stats 1963 ch 710 § 1; Stats 1967 ch 17 § 39; Stats 1987 ch 50 § 1; Stats 1995 ch 938 § 33 (SB 523), operative July 1, 1997; Stats 2005 ch 674 § 22 (SB 231), effective January 1, 2006.

EXHIBIT A-7



FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

January 21, 2015

FIRST CLASS U.S. MAIL

[redacted]

NOTICE OF INTENT TO ENTER DEFAULT DECISION AND ORDER

Re: In the Matter of Ryan Embree and Embree for City Council; FPPC No. 12/097

Dear Mr. Embree:

Enclosed please find a courtesy copy of the Default Decision and Order, and accompanying Exhibit and attachments, in the above matter. The Fair Political Practices Commission ("Commission") will consider these papers at its public meeting on February 19, 2015, and decide whether to impose an administrative penalty in the amount of \$30,500 or more against you.

You were previously served a Report in Support of a Finding of Probable Cause, commonly known as a probable cause report, advising you of your right to request a probable cause conference or submit a written response to the probable cause report. You did not request a probable cause conference, nor did you submit anything in writing for the Commission's General Counsel to consider in his determination of probable cause.

Following the issuance of a Report in Support of a Finding of Probable Cause, the Commission's General Counsel found probable cause that you committed seventeen violations of the Political Reform Act. Thereafter, the Commission issued an Accusation against you on the same violations. The Accusation was personally served on you on January 2, 2015. Under the law, you have therefore received adequate notice of these proceedings and the action filed against you. Under the Administrative Procedure Act, you were required to file a Notice of Defense within 15 days after service of the Accusation. You failed to file the Notice of Defense form within that time. As such, your right to an administrative hearing on this matter has been forfeited, and you are in a default position.

At its public meeting on February 19, 2015, the Commission may impose an administrative penalty against you in the amount of \$30,500. However, the Commission may impose up to a maximum penalty of \$5,000 against you for each violation, for a total administrative penalty of \$85,000.

Following the issuance of the default order and imposition of the administrative penalty, we will commence legal proceedings to collect this fine, which may include converting the Commission's order to a court judgment. Please be advised that administrative penalties for violations of the Political Reform Act cannot be discharged in bankruptcy proceedings.

This letter is your last opportunity to resolve this matter informally by way of a stipulated settlement, before the default proceedings are commenced. If we do not reach a resolution, the enclosed documents will be placed on the Commission's agenda for the February 19, 2015, meeting. Please contact me immediately at (916) 327-6357 if you wish to enter into a negotiated settlement.

Sincerely,

[redacted]

Milad Dalju
Commission Counsel
Enforcement Division

Enclosures