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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

12 KENNETH HUGHEY, HUGHEY 4
13 JUDGE 2012, and HARBOR
FINANCIAL SERVICES, INC.,

14 Respondents.

FPPC Case Nos. 14/601 and 14/1318

STIPULATION, DECISION AND ORDER

15
16 **STIPULATION**

17 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
18 Respondents Kenneth Hughey, Hughey 4 Judge 2012, and Harbor Financial Services, Inc. hereby agree
19 that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its
20 next regularly scheduled meeting.

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

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

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

3 As described in Exhibit 1, it is further stipulated and agreed that Respondents committed two
4 violations of the Political Reform Act. Exhibit 1, which is attached hereto and incorporated by reference
5 as though fully set forth herein, is a true and accurate summary of the facts in this matter.

6 Respondents agree to the issuance of the Decision and Order, which is attached hereto. Also,
7 Respondents agree to the Commission imposing against them an administrative penalty in the total
8 amount of \$6,500, of which Respondents Kenneth Hughey and Hughey 4 Judge 2012 are jointly and
9 severally liable for \$4,500, and Respondent Harbor Financial Services, Inc. is liable for the remaining
10 \$2,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General
11 Fund of the State of California—is/are submitted with this Stipulation as full payment of the
12 administrative penalty described above, and same shall be held by the State of California until the
13 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the
14 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen business
15 days after the Commission meeting at which the Stipulation is rejected, all payments tendered by
16 Respondents in connection with this Stipulation shall be reimbursed to Respondents.

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1 Respondents further stipulate and agree that in the event the Commission rejects the Stipulation
2 and a full evidentiary hearing before the Commission becomes necessary, neither any member of the
3 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this
4 Stipulation.

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6 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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10 Dated: _____

Kenneth Hughey, individually and on behalf of Hughey
4 Judge 2012, Respondents

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14 Dated: _____

C.D. Michel, attorney and authorized representative for
Harbor Financial Services, Inc., Respondent

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17 **DECISION AND ORDER**

18 The foregoing Stipulation of the parties “In the Matter of Kenneth Hughey, Hughey 4 Judge
19 2012, and Harbor Financial Services, Inc.,” FPPC Case Nos. 14/601 and 14/1318, including all attached
20 exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission,
21 effective upon execution below by the Chair.

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23 IT IS SO ORDERED.

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25 Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

This matter arose from an audit performed by the Political Reform Audit Program of the Franchise Tax Board.

In 2012, Kenneth Hughey was an unsuccessful candidate for Los Angeles County Superior Court Judge. His controlled committee was Hughey 4 Judge 2012.

As discussed in more detail below, Harbor Financial Services, Inc. (a Wyoming corporation, primarily in the real estate investment business) qualified as a major donor committee in support of Hughey's candidacy.

This case involves two violations of the Political Reform Act (the "Act")¹ for failure to report the true source of a campaign contribution and failure to file a major donor campaign statement.

SUMMARY OF THE LAW

All legal references and discussions of law pertain to the Act's provisions as they existed at the time of the violations in this case (2012).

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

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.² To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited.³ Along these lines, the Act includes a comprehensive campaign reporting system.⁴ Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced."⁵

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¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to this code. 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 this source.

² Section 81001, subdivision (h).

³ Section 81002, subdivision (a).

⁴ Sections 84200, et seq.

⁵ Section 81002, subdivision (f).

Definition of Controlled Committee

The Act defines a “committee” to include any person (or combination of persons) who receives contributions totaling \$1,000 or more in a calendar year.⁶ This type of committee commonly is referred to as a “recipient committee.” A recipient committee that is controlled directly or indirectly by a candidate, or which acts jointly with a candidate in connection with the making of expenditures, is a “controlled committee.”⁷ 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 or decisions of the committee.⁸

Definition of Major Donor Committee

The Act provides that any person who directly or indirectly makes contributions of \$10,000 or more during a calendar year is a major donor committee.⁹ Such a committee is subject to certain filing requirements.

Required Filing of Campaign Statements

At the core of the Act’s campaign reporting system is the requirement that committees, including candidate controlled committees and major donor committees, must file campaign statements and reports for certain reporting periods and by certain deadlines.¹⁰

For example, in connection with the election held June 5, 2012, major donor committees were required to file semi-annual campaign statements for the reporting period from January 1 through June 30, 2012 by the deadline of July 31, 2012.¹¹

Required Reporting of Contributions and Expenditures, Including Loans

A loan received by a candidate or committee is a contribution unless the loan is received from a commercial lending institution in the ordinary course of business, or it is clear from the surrounding circumstances that it is not made for political purposes.¹²

Campaign statements are required to disclose certain information about receipts and expenditures, including the following information about the making and receipt of contributions and loans:¹³

⁶ Section 82013, subdivision (a).

⁷ Section 82016.

⁸ Section 82016, subdivision (a).

⁹ Section 82013, subdivision (c).

¹⁰ Sections 84200, et seq.

¹¹ Section 84200, subdivision (b).

¹² Section 84216.

¹³ Sections 84211, subdivisions (a), (b), (c), (f), (g), (i), (k); and 84216.

- ❖ the total amount of contributions received during the period covered by the campaign statement, including loans, and the total cumulative amount of contributions received;
- ❖ the total amount of contributions received during the period from persons who gave a cumulative amount of \$100 or more, including loans—along with the following additional information about each such contributor:
 - the contributor’s full name;
 - his or her street address;
 - his or her occupation;
 - the name of his or her employer, or if self-employed, the name of the business;
 - the date and amount received for each contribution received during the period, and if the contribution is a loan, the interest rate for the loan;
 - the cumulative amount of contributions;
- ❖ the total amount of expenditures made during the period, including contributions/loans, and the total cumulative amount of expenditures made;
- ❖ the total amount of expenditures made during the period to persons who received \$100 or more, including contributions/loans—along with the following information about each recipient of such expenditures:
 - the recipient’s full name;
 - his or her street address;
 - the amount of each expenditure;
 - a brief description of the consideration for which each expenditure was made;
 - in the case of an expenditure which is a contribution to a candidate, elected officer, or committee, the date of the contribution, the cumulative amount of contributions made to that recipient, the full name of the recipient, and the office and district/jurisdiction for which he or she seeks nomination or election;
- ❖ if the cumulative amount of loans received from or made to a person is \$100 or more and a loan has been received from or made to a person during the period, or is outstanding during the period, the following additional information must be reported for each such person/loan:
 - the person’s full name;
 - his or her street address;
 - his or her occupation;
 - the name of his or her employer, or if self-employed, the name of the business;
 - the original date and amount of each loan;
 - the due date and interest rate of the loan;
 - the cumulative payment made or received, to date, at the end of the period;

- the balance outstanding at the end of the period; and
- the cumulative amount of contributions.

Joint and Several Liability

When two or more persons are responsible for a violation of the Act, they may be held jointly and severally liable.¹⁴

SUMMARY OF THE FACTS

Hughey is a highly decorated military veteran and aerospace engineer—who later became a Los Angeles criminal prosecutor (from about 1998 to 2011). As a prosecutor, he had trials before Superior Court Judge John D. Lord.

Lord also has a military background. He has been a superior court judge since approximately 1991. He maintains that he never had to campaign for his judicial office—nor has he managed the campaigns of others.

In 2012, Los Angeles County Superior Court Judge James Otto was an incumbent candidate seeking re-election. Hughey was critical of Otto's mis-management of the courts in multiple respects. In part because Hughey disagreed with Otto's handling of a personnel matter involving Lord, Hughey decided to run as a candidate against Otto. Hughey's controlled committee for this purpose was Hughey 4 Judge 2012. This was Hughey's first time running for a political office.

To help with the campaign, Lord made arrangements for Hughey to receive a loan in the amount of \$50,000 for political purposes; the loan was in the form of a cashier's check dated March 1, 2012 from Harbor Financial Services, Inc. (HFS).

HFS is a Wyoming corporation, primarily in the real estate investment business. Lord maintains that HFS was owned and controlled by his brother, but his brother had not resided in the United States for many years. Lord has power of attorney to conduct some of the affairs of HFS. This includes signature authority for the Wells Fargo HFS bank account.

On or about March 1, 2012, Lord went to Wells Fargo, used his signature authorization for the HFS bank account, took funds from the account totaling \$50,000, used the funds to purchase the above-described cashier's check—and Lord personally gave the check to Hughey. The loan was for political purposes, but the check was made payable to Hughey, personally—not to his campaign.

Hughey signed a promissory note for the loan amount. The note listed HFS as the lender and included no interest for the first three months, but called for a variable interest rate after that ("Prime Rate (as listed by WSJ) . . . plus Two (2%) percent")—payable on an amortized monthly basis over a three-year period beginning July 1, 2012.

¹⁴ Sections 83116.5 and 91006.

Hughey accepted the cashier's check that Lord gave to him, deposited it into his business account on or about March 1, 2012—and that same day, Hughey wrote a check for the same amount (\$50,000) from the same account to his campaign account.

On a pre-election campaign statement filed for the period ending March 17, 2012, Hughey and his committee reported receipt of the funds as a personal loan from Hughey to the committee. No mention was made of HFS. (Also, subsequent campaign statements reported the loan as outstanding and listed Hughey as the lender.)

The election was held on June 5, 2012. Hughey lost (with approximately 30.04% of the vote) to Otto (who garnered approximately 69.96% of the vote).

Between approximately June 29 and September 1, 2012, Hughey used personal funds to make three repayments on the loan, totaling approximately \$42,702. Later in 2012, Lord told Hughey to forget about the outstanding loan balance (more than \$7,000, plus interest) because Lord thought that most of the loan had been paid back. Although Lord maintains that he asked his brother for permission before using HFS funds to make the loan to Hughey, Lord admits that he forgave the outstanding loan balance without consulting his brother.

VIOLATIONS

Count 1: Failure to File Major Donor Campaign Statement

The loan from HFS to Hughey was a campaign contribution because it was made for political purposes.¹⁵ In making the loan, which totaled \$50,000, HFS qualified as a major donor committee. As such, it was required to file a major donor semi-annual campaign statement (Form 461) for the reporting period of January 1 through June 30, 2012 by the deadline of July 31, 2012. However, it failed to do so.

In this way, HFS violated Section 84200, subdivision (b).

Count 2: Failure to Report the True Source of a Campaign Contribution

The loan from HFS comprised roughly one-third of reported receipts for Hughey's committee for the first half of 2012.

On or about March 22, 2012, Hughey caused a pre-election campaign statement on behalf of Hughey 4 Judge 2012 to be filed. The loan was disclosed on the filing. However, instead of reporting that the true source of the loan was HFS, the loan was disclosed as a personal loan from Hughey to his own committee. No mention was made of HFS or Lord.

In this way, Hughey and his committee violated Sections 84211, subdivisions (f) and (g), and 84216—which require truthful reporting of information about the sources of contributions received.

¹⁵ Section 84216.

PROPOSED PENALTY

This matter consists of two counts. The maximum penalty that may be imposed per count is \$5,000—for a total of \$10,000.¹⁶

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d) whether the violation was isolated or part of a pattern; and (e) whether the violator has a prior record of violations.¹⁷ Additionally, the Commission considers penalties in prior cases with similar violations.

The public harm inherent in campaign reporting violations is that the public is deprived of important, time-sensitive information regarding contributions and expenditures made in support of a candidate. The harm is even greater when the public is deprived of information that was required to be disclosed prior to an election because this has the potential to affect how votes are cast.

This case is very similar to a recent settlement that the Commission approved. See *In the Matter of Tara Flanagan, Tara Flanagan for Superior Court Judge 2012, and Carol Pranka* (FPPC Case No. 14/600, approved Dec. 17, 2015). In that case, a penalty in the amount of \$1,500 was imposed against a major donor who made loans totaling \$25,000 to a candidate for Alameda County Superior Court judge—because the donor failed to file the required major donor campaign statement (Form 461). An additional penalty in the amount of \$4,500 was imposed because the candidate accepted the loans, deposited them into personal accounts, and the candidate used those funds to contribute the same amount of money to her own campaign—but when the candidate reported the loans on her campaign statement, she reported the loan as a personal loan from herself to her own committee. No mention was made of the true donor's identity.

In the current case, and in the *Flanagan* case, the false/incomplete reporting occurred on a campaign statement that was filed before the election. Both cases involved substantial loan amounts, which totaled roughly 23% of reported receipts for Flanagan's committee for 2012 and one-third of reported receipts for Hughey's committee for the first half of 2012.

Also, as in the current case, the *Flanagan* case involved use of a cashier's check to make a contribution—in violation of Section 84300, subdivision (c). (In *Flanagan*, in the interest of settlement, this was not charged as a separate count; rather, it was noted as an aggravating factor, and it is reasonable to do the same for purposes of the current case.)

Additionally, in each case, the manner of repayment of the loan balance tended to further conceal identification of the true lender. Under normal circumstances, the repayments would

¹⁶ See Section 83116, subdivision (c).

¹⁷ Regulation 18361.5, subdivision (d).

have been made directly from the committee account to the true lender, and campaign filings would have reflected the identity of the true lender as the payee. Instead of doing this, however, repayments were made from personal accounts in each case; so the true lenders never appeared as payees on campaign statements.

There are some notable differences between the current case and the *Flanagan* case. For example, in the *Flanagan* case, the lender was a layperson, but in the current case, Lord—who was acting for HFS—had been a Superior Court judge for many years. He should have known about the major donor filing requirement that was imposed by the law. However, the Act does place a burden upon candidates and committees to remind contributors of large sums of money of the potential need to file major donor campaign statements.¹⁸ This means that Hughey had a duty to send a major donor notification letter to HFS, but Hughey failed to do so. Instead of charging this as a separate count, it is being noted as a mitigating factor for HFS for settlement purposes—and as an aggravating factor for Hughey.

Another difference between the two cases is that whereas Flanagan won her election, Hughey lost. (Also, the lender in the *Flanagan* case served as the campaign treasurer. For this reason, the lender was jointly and severally liable for both the failure to file the major donor campaign statement and for the false reporting charge. In the current case, HFS was not serving as Hughey’s treasurer.)

In the *Flanagan* case, failure to file the major donor statement resulted in a penalty in the amount of \$1,500. In the current case, a higher penalty in the amount of \$2,000 is recommended for Count 1 because Lord, who was acting for HFS, was a judge—not a layperson—which means HFS/Lord had less reason to be unfamiliar with the law. As for Count 2 (failure to report the true source of a campaign contribution), the same penalty is recommended as was imposed in the *Flanagan* case: \$4,500. (In both cases, the candidate was an attorney who should have been familiar with the law.)

A higher penalty is not being sought because Hughey and HFS cooperated with the Enforcement Division by providing all requested documents and information, taking steps to correct their filing deficiencies, and by agreeing to an early settlement of this matter. Also, they do not have a history of prior violations of the Act. Additionally, they maintain they were under the mistaken impression that the loan to Hughey could be treated as Hughey’s personal funds—which Hughey thereafter could contribute to his own committee, without reporting HFS as the source of funds. This mistaken belief is consistent with the fact that Hughey and Lord lacked experience dealing with the Act’s campaign filing requirements.

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¹⁸ Section 84105.

CONCLUSION

For the foregoing reasons, the following agreed upon penalty is recommended:

Count	Violation	Respondents	Penalty
1	Failure to File Major Donor Campaign Statement	Harbor Financial Services, Inc.	\$2,000
2	Failure to Report the True Source of a Campaign Contribution	Kenneth Hughey Hughey 4 Judge 2012	\$4,500
TOTAL:			\$6,500