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

10  
11 In the Matter of:

12 CALIFORNIA SOCIETY OF ENROLLED  
13 AGENTS POLITICAL ACTION COMMITTEE,  
14 CAP PORTERFIELD and DON STACY,

15 Respondents.

FPPC No. 14/1361

STIPULATION, DECISION AND ORDER

16  
17 **STIPULATION**

18 Complainant the Enforcement Division of the Fair Political Practices Commission and  
19 Respondents California Society of Enrolled Agents Political Action Committee (“Committee”), Cap  
20 Porterfield and Don Stacy hereby agree that this Stipulation will be submitted for consideration by the  
21 Fair Political Practices Commission at its next regularly scheduled meeting.

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

26 The Committee, Porterfield and Stacy understand, and hereby knowingly and voluntarily waive,  
27 any and all procedural rights set forth in Government Code sections 83115.5, 11503 and 11523, and in  
28 California Code of Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not

1 limited to the right to appear personally at any administrative hearing held in this matter, to be  
2 represented by an attorney at their own expense, to confront and cross-examine all witnesses testifying at  
3 the hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge  
4 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

5 As described in Exhibit 1, it is further stipulated and agreed that California Society of Enrolled  
6 Agents Political Action Committee and Cap Porterfield failed to file a pre-election campaign statement  
7 for the reporting period January 1, 2012, through March 17, 2012, and California Society of Enrolled  
8 Agents Political Action Committee and Don Stacy failed to file a pre-election campaign statement for the  
9 reporting period July 1, 2012, through September 30, 2012, in violation of sections 84200.5 and 84200.7,  
10 subdivision (a)(1) and (b)(1) (1 Count). Exhibit 1, which is attached hereto and incorporated by reference  
11 as though fully set forth herein, is a true and accurate summary of the facts in this matter.

12 The Committee, Porterfield and Stacy agree to the issuance of the Decision and Order, which is  
13 attached hereto, and agree to the Commission imposing upon it an administrative penalty in the amount  
14 of \$2,500. A cashier's check or money order from the Committee, Porterfield and Stacy totaling said  
15 amount, made payable to the "General Fund of the State of California," is submitted with this Stipulation  
16 as full payment of the administrative penalty and shall be held by the State of California until the  
17 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the  
18 Commission refuses to accept this Stipulation, it will become null and void, and within fifteen (15)  
19 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered  
20 by the Committee, Porterfield and Stacy in connection with this Stipulation must be reimbursed to them.  
21 The Committee, Porterfield and Stacy further stipulate and agree that in the event the Commission rejects  
22 the Stipulation and a full evidentiary hearing before the Commission becomes necessary, neither any  
23 member of the Commission, nor the Executive Director, shall be disqualified because of prior  
24 consideration of this Stipulation.

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26 Dated: \_\_\_\_\_

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Galena West, Enforcement Chief,  
on behalf of the Fair Political Practices  
Commission

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

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Cap Porterfield, individually and on behalf of  
California Society of Enrolled Agents Political  
Action Committee, Respondents

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

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Don Stacy, individually and on behalf of  
California Society of Enrolled Agents Political  
Action Committee, Respondents

**DECISION AND ORDER**

The foregoing Stipulation of the parties “In the Matter of California Society of Enrolled Agents Political Action Committee, Cap Porterfield and Don Stacy,” FPPC No. 14/1361, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

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

\_\_\_\_\_  
Joann Remke, Chair  
Fair Political Practices Commission

## EXHIBIT 1

### INTRODUCTION

Respondent California Society of Enrolled Agents Political Action Committee (“Committee”) was a state general purpose committee sponsored by the California Society of Enrolled Agents. Respondent Cap Porterfield was the Committee treasurer from August 1, 2011, through August 2, 2012. Respondent Don Stacy was the Committee treasurer from August 3, 2012, through July 21, 2013.

This case is the result of a Franchise Tax Board (“FTB”) audit covering the period January 1, 2011, through December 31, 2012. During the audit period, the Committee received contributions totaling \$16,993 and made expenditures totaling \$42,083.

As a state general purpose committee under the Political Reform Act (the “Act”),<sup>1</sup> the Committee and treasurer had a duty to timely file a pre-election campaign statement if it made contributions or independent expenditures totaling five hundred dollars (\$500) or more, during the period covered by the pre-election statement. In this matter, the Committee and Porterfield failed to file a pre-election campaign statement for the reporting period January 1, 2012, through March 17, 2012, and the Committee and Stacy failed to file a pre-election campaign statement for the reporting period July 1, 2012, through September 30, 2012, in violation of the Act.

### SUMMARY OF THE LAW

The Act and its regulations are amended from time to time. The violations in this case occurred in 2012. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they existed at that time—unless otherwise noted.

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

#### **Duty to File Pre-Election Campaign Statements**

A “committee” is any person or combination of persons who directly or indirectly receives contributions totaling \$1,000 or more in a calendar year.<sup>2</sup> This type of committee is commonly known as a “recipient committee.” A “state general purpose committee” includes a committee to support or oppose candidates or measures voted on in a state election, or in more than one county.<sup>3</sup> Under the Act’s campaign reporting system, state general purpose committees

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<sup>1</sup> The Act is contained in Government Code sections 81000 through 91014. The Regulations of the Fair Political Practices Commission are contained in sections 18110 through 18997 of Title 2 of the California Code of Regulations.

<sup>2</sup> Section 82013, subd. (a).

<sup>3</sup> Section 82027.5, subd. (b).

are required to file specified campaign statements and reports disclosing contributions received and expenditures made by certain deadlines.

Under the Act's campaign reporting system, state general purpose committees are required to file periodic campaign statements disclosing their financial activities. In an even numbered year in which the statewide direct primary election is held on the first Tuesday after the first Monday in June, state general purpose committees must file applicable pre-election statements if the committee makes contributions or independent expenditures totaling five hundred dollars (\$500) or more, during the period covered by the pre-election statement.<sup>4</sup> In connection with the June election, for the reporting period ending March 17, the pre-election statement must be filed no later than March 22.<sup>5</sup> In connection with the November election, for the reporting period ending September 30, the pre-election statement must be filed no later than October 5.<sup>6</sup>

### **Treasurer Liability**

Every committee must have a treasurer.<sup>7</sup> A committee's treasurer has the duty to ensure compliance with all requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds.<sup>8</sup> The treasurer of a committee may be held jointly and severally liable, along with the committee, for the committee's violations.<sup>9</sup>

### **SUMMARY OF THE FACTS**

This case is the result of an FTB audit for the period January 1, 2011, through December 31, 2012. The Committee was sponsored by the California Society of Enrolled Agents. Porterfield was the Committee treasurer from August 1, 2011, through August 2, 2012. Stacy was the Committee treasurer from August 3, 2012, through July 21, 2013.

The Committee and Porterfield were required to file a pre-election campaign statement if the Committee made contribution totaling \$500 or more during a period covered by the pre-election reporting period. The pre-election reporting period was January 1, 2012, through March 17, 2012.

On February 22, 2012, the Committee made a monetary contribution to Diane Harkey for State Assembly in connection with the June 5, 2012 election, in the amount of \$1,500, triggering the pre-election filing for the reporting period January 1, 2012, through March 17, 2012. Additionally, during this reporting period, on March 14, 2012, the Committee made a monetary contribution to Fiona Ma for Board of Equalization in the amount of \$2,000. These contributions were reported on the semi-annual campaign statement filed after the relevant election.

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<sup>4</sup> Section 84200.5, subd. (e).

<sup>5</sup> Section 84200.7, subd. (a)(1).

<sup>6</sup> Section 84200.7, subd. (b)(1).

<sup>7</sup> Section 84100.

<sup>8</sup> Sections 81004, subd. (b), 84100 and Regulation 18427, subd. (a).

<sup>9</sup> Sections 83116.5, 91006 and Regulation 18316.6.

Further, the Committee and Stacy were required to file a pre-election campaign statement if the Committee made a contribution totaling \$500 or more during a period covered by the pre-election reporting period. The pre-election reporting period was July 1, 2012, through September 30, 2012.

On September 12, 2012, the Committee made a monetary contribution to Mimi Walters for State Senator in connection with the November 6, 2012 election, in the amount of \$2,500, triggering the pre-election filing for the reporting period July 1, 2012, through September 30, 2012. Further, on September 12, 2012, the Committee made a monetary contribution to Jim Nielsen for State Senator in the amount of \$1,500. These contributions were reported on the semi-annual campaign statement filed after the relevant election.

## VIOLATION

### Count 1: Failure to File Pre-Election Campaign Statements

The Committee and Porterfield failed to file a pre-election campaign statement for the reporting period January 1, 2012, through March 17, 2012, and the Committee and Stacy failed to file a pre-election campaign statement for the reporting period July 1, 2012, through September 30, 2012, in violation of sections 84200.5 and 84200.7, subdivision (a)(1) and (b)(1).

## CONCLUSION

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

In determining the appropriate penalty for a particular violation of the Act, the Commission 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 Commission considers the facts and circumstances of the violation in the context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): (1) the seriousness of the violations; (2) the presence or lack of intent to conceal, deceive or mislead; (3) whether the violation was deliberate, negligent, or inadvertent; (4) whether the respondents demonstrated good faith in consulting with Commission staff; (5) whether there was a pattern of violations; and (6) whether, upon learning of the violation, the Respondent voluntarily filed an amendment to provide full disclosure.

The Commission also considers penalties in prior cases involving similar violations. A recent similar case where the respondents failed to file two pre-election campaign statements which were charged in one count include:

*In the Matter of San Mateo County Democratic Central Committee and Xavier Martinez;* FPPC No. 15/79. Respondents failed to file both pre-election campaign statements by the due dates of March 22 and May 24, respectively. This included contributions received totaling approximately \$3,940 and expenditures made totaling approximately \$8,670 for the first pre-election reporting period, and contributions received totaling approximately \$68,225, and expenditures made totaling

approximately \$4,249 for the second pre-election reporting period. On April 16, 2015 the Commission approved a penalty of \$2,500 for the count.

In this matter, all of the relevant contributions made were reported prior to the election on the recipient's campaign statements. The Committee reported these contributions on their semi-annual campaign statements, after the relevant elections. Additionally, the Committee had a limited amount of campaign activity during the relevant pre-election reporting periods. As such, imposition of a \$2,500 administrative penalty is recommended.

#### **PROPOSED PENALTY**

After considering the factors of Regulation 18361.5, a prior similar case, and other relevant factors, a penalty of \$2,500 is recommended.