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

10
11 In the Matter of:

12 JOSE SOLORIO,

13 Respondent.

FPPC Case No. 16/19767

14 STIPULATION, DECISION AND ORDER

15 **STIPULATION**

16 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
17 Respondent Jose Solorio hereby agree that this Stipulation will be submitted for consideration by the Fair
18 Political Practices Commission at its next regularly scheduled meeting.

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

22 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
23 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
24 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
25 appear personally at any administrative hearing held in this matter, to be represented by an attorney at
26 Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to
27 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
28 the hearing as a hearing officer, and to have the matter judicially reviewed.

1 It is further stipulated and agreed that Respondent violated the Political Reform Act as set forth in
2 Exhibit 1, which is a true and accurate summary of the facts in this matter—and which is incorporated by
3 reference as though fully set forth herein.

4 Respondent agrees to the issuance of the Decision and Order, which is attached hereto. Also,
5 Respondent agrees to the Commission imposing against him an administrative penalty in the amount of
6 \$3,500. Since this penalty is for a violation involving personal use of campaign funds, the penalty may
7 not be paid from campaign funds. One or more cashier's checks or money orders totaling this amount—
8 to be paid to the General Fund of the State of California—is/are submitted with this Stipulation as full
9 payment of the administrative penalty described above, and same shall be held by the State of California
10 until the Commission issues its Decision and Order regarding this matter. The parties agree that in the
11 event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen
12 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered
13 by Respondent in connection with this Stipulation shall be reimbursed to Respondent.

14 Respondent further stipulates and agrees that in the event the Commission rejects the Stipulation
15 and a full evidentiary hearing before the Commission becomes necessary, neither any member of the

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1 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this
2 Stipulation.

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5 Dated: _____
6 Galena West, Chief of Enforcement
Fair Political Practices Commission

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9 Dated: _____
10 Jose Solorio, Respondent

11 **DECISION AND ORDER**

12 The foregoing Stipulation of the parties “In the Matter of Jose Solorio,” FPPC Case No.
13 16/19767, including all attached exhibits, is hereby accepted as the final decision and order of the Fair
14 Political Practices Commission, effective upon execution below by the Chair.

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16 IT IS SO ORDERED.

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18 Dated: _____
19 Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Jose Solorio is a candidate for the Santa Ana City Council in the election held November 8, 2016. His candidate controlled committee is Solorio for City Council 2016. This case involves personal use of campaign funds (totaling approximately \$2,866) in violation of the Political Reform Act (the “Act”).¹ Solorio used the funds to pay part of the rent (for the months of August, September, and October 2016) for an apartment where he maintains that he lived and worked on his campaign.

SUMMARY OF THE LAW

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

When enacting the Political Reform Act, the people of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.² For this reason, the Act is to be construed liberally to accomplish its purposes.³

One purpose of the Act is to help distinguish campaign contributions from gifts by ensuring that campaign contributions may not be used for personal purposes. In this regard, the Act provides that all contributions deposited into a campaign account are deemed to be held in trust for expenses associated with the election of the candidate or for holding office.⁴ An additional purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁵

Restrictions Against Personal Use of Campaign Funds

With respect to the permissible use of campaign funds, an expenditure to seek office must be reasonably related to a political purpose. Expenditures which confer a substantial personal benefit (of more than \$200) must be directly related to a political, legislative, or governmental purpose.⁶

Campaign funds may not be used for payment or reimbursement for the lease of real property where the lessee is a candidate (or the legal title resides, in whole or in part, in a candidate).⁷

¹ The 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.

² Section 81001, subdivision (h).

³ Section 81003.

⁴ Section 89510, subdivision (b).

⁵ Section 81002, subdivision (f).

⁶ See Sections 89511, subdivision (b)(3); and 89512.

⁷ Section 89517, subdivision (a).

SUMMARY OF THE FACTS

Jose Solorio is a candidate for the Santa Ana City Council, Ward 3, in the election held November 8, 2016. His candidate controlled committee is Solorio for City Council 2016. Solorio serves as his own treasurer for the committee.

Previously, Solorio served as a member of the Santa Ana City Council until he became a California State Assemblyman in 2006.

On three different occasions, Solorio used campaign funds totaling approximately \$2,866 to pay part of the rent for the months of August, September, and October 2016 for an apartment where he maintains that he lived and worked on his campaign. The apartment was leased to Solorio and two of his family members pursuant to a written rental agreement. The campaign funds came from an account established for the Solorio for City Council 2016 committee. Solorio reported these expenditures on campaign statements as office expenses—and the property management company, Far West Management Company, was reported as the payee.

By using campaign funds in this way, Solorio received a substantial personal benefit for expenditures that were unrelated to a political, legislative, or governmental purpose.

In October 2016, after this matter gained media attention, Solorio reimbursed all committee funds that he used for the apartment, and he reported this reimbursement on a campaign statement filed for the period ending October 22, 2016.

Solorio maintains that he mistakenly believed this was a permissible use of campaign funds—based on advice of counsel—because he used the apartment for campaign purposes in addition to his residence.

VIOLATION

Count 1: Personal Use of Campaign Funds

In using campaign funds as described above, Solorio violated Section 89517—which provides that campaign funds may not be used for payment or reimbursement for the lease of real property where the lessee is a candidate.

PROPOSED PENALTY

This matter consists of one count. The maximum penalty that may be imposed is \$5,000.⁸

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

⁸ See Section 83116, subdivision (c).

was deliberate, negligent or inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior record of violations.⁹ Additionally, the Commission considers penalties in prior cases with comparable violations.

Regarding Count 1, the Act requires campaign contributions to be held in trust for expenses associated with seeking or holding office. This is an important restriction, which helps to distinguish campaign contributions from gifts. When a public official makes personal use of campaign funds, it erodes public confidence in the political process by creating the appearance that lawful campaign contributions are personal gifts to the public official.

In the Matter of Kenneth G. Mann; FPPC Case No. 14/596 (approved Mar. 19, 2015), the Commission considered a case where a city councilman—who was seeking re-election—made personal use of campaign funds totaling \$5,000. Prior to any contact from Enforcement, the councilman repaid the funds to his committee (about two months after he used them). However, he failed to report his initial, personal use of the funds, as well as his repayment of the funds, on the appropriate campaign statement. It was noted that the councilman’s misuse of campaign funds was not part of a larger pattern of misconduct. For settlement purposes, one count was charged for personal use of campaign funds. The campaign reporting violations, which served to conceal the misuse of the funds, were noted in the stipulation, but for settlement purposes, they were not charged as additional counts. The Commission imposed a penalty in the amount of \$3,500.

The current case involves less in the way of misused funds (\$2,866 versus \$5,000 in *Mann*). Also, in the current case, it is mitigating that Solorio’s use of the campaign funds—and his reimbursement of the funds to his committee—properly were reported on campaign statements. This was not the case in *Mann*.

However, this mitigating information is offset by other, aggravating factors. For example, the *Mann* case only involved a single instance of misused funds—compared to three separate occasions when Solorio misused campaign funds in the current case. (For settlement purposes, these are being charged as a single count.) Also, although Solorio and Mann both had prior experience serving as city councilmen—based on Solorio’s prior years of service as a California State Assemblyman, there was greater reason for him to be familiar with the Act’s rules regarding the use of campaign funds.

Under these circumstances, a penalty in the amount of \$3,500 is recommended.

A higher penalty is not being sought because Solorio cooperated with the Enforcement Division and agreed to an early settlement before the election. Also, he does not have a history of prior, similar violations of the Act.

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⁹ Regulation 18361.5, subdivision (d).

CONCLUSION

For the foregoing reasons, an agreed upon penalty in the amount of \$3,500 is recommended for Count 1.