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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

9 In the Matter of:

10 DOLORES MARQUEZ FOR SCHOOL
11 BOARD 2016, DOLORES MARQUEZ
FOR SANTA CLARA COUNTY BOARD
12 OF EDUCATION 2014, DOLORES
MARQUEZ, AND ANJELICA
13 FRAUSTO,

14 Respondents.

FPPC Case No. 2017/00106

STIPULATION, DECISION AND ORDER

15
16 **INTRODUCTION**

17 Respondent Dolores Marquez (“Marquez”) is a current member of the Alum Rock Union
18 Elementary School District. She was elected to her current office in 2012 and was re-elected in 2016. Her
19 term expires in 2020. Dolores Marquez for School Board 2016 (“2016 Committee”) was her candidate-
20 controlled committee for her re-election campaign in the November 8, 2016 General Election. In 2014,
21 Marquez ran unsuccessfully for the office of Board Member for the Santa Clara County Board of
22 Education. Dolores Marquez for Santa Clara County Board of Education 2014 (“2014 Committee”) was
23 her candidate-controlled committee for the November 4, 2014 General Election. For both committees,
24 Anjelica Frausto (“Frausto”) served as the treasurer.
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1 The Respondents committed numerous violations of the Political Reform Act¹ (“Act”), including
2 improper use of surplus funds, acceptance of a cashier’s check, and failure to fully adhere to campaign
3 disclosure requirements.

4 SUMMARY OF THE LAW

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

6 When enacting the Political Reform Act, the people of California found and declared that previous
7 laws regulating political practices suffered from inadequate enforcement by state and local authorities.²
8 Thus, it was decreed that the Act “should be liberally construed to accomplish its purposes.”³

9 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in
10 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
11 practices are inhibited.⁴ Along these lines, the Act includes a comprehensive campaign reporting system.⁵
12 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be
13 “vigorously enforced.”⁶

14 **Surplus Funds**

15 The Act defines surplus funds as funds remaining in a campaign account 90 days after a triggering
16 event, including when the candidate leaves the elective office or following the postelection reporting period
17 after the defeat for elective office.⁷ Surplus campaign funds must be reported and may be used only for the
18 following purposes: the payment of outstanding campaign debts or elected officer's expenses, the
19 repayment of contributions, donations to any bona fide charitable, educational, civic, religious, or similar
20 tax-exempt, nonprofit organization, contributions to a political party committee, contributions to support
21 or oppose any candidate for federal office, any candidate for elective office in a state other than California,
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24 ¹ The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections
25 81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission
are to this source.

26 ² Section 81001, subdivision (h).

27 ³ Section 81003.

28 ⁴ Section 81002, subdivision (a).

⁵ Sections 84200, *et seq.*

⁶ Section 81002, subdivision (f).

⁷ Section 89519, subdivision (a).

1 or any ballot measure, the payment for professional services reasonably required by the committee to assist
2 in the performance of its administrative functions.⁸

3 **Prohibition Against Receiving Cash and Cash Equivalents of \$100 or More**

4 No contribution of \$100 or more may be received in cash.⁹ No contribution of \$100 or more, other
5 than an in-kind contribution, may be made unless in the form of a written instrument containing the name
6 of the donor and the name of the payee and drawn from the account of the donor or intermediary.¹⁰ A
7 cashier's check or money order is a written instrument that is not drawn from the account of the remitter,
8 but rather, the remitter pays the bank or a 3rd party to issue funds, guaranteed by the bank or 3rd party.¹¹
9 ADD a sentence here regarding the recordkeeping requirements that support sourcing cash equivalents
10 used. Committees, candidates, and treasurers must maintain detailed accounts, records, bills, and receipts
11 necessary to prepare and substantiate campaign statements.¹² For loans received, the committee must
12 maintain detailed information about the source of the loan and the original source documents to reflect the
13 indebtedness.¹³

14 **Campaign Reporting**

15 The Act provides that each campaign statement must contain certain information about the
16 campaign's financial activity, including total contributions, total expenditures, and identifying information
17 about sources of contributions and recipients of expenditures.¹⁴

18 Campaign contributions include payments, forgiveness of a loan, payment of a loan by a third party,
19 or an enforceable promise to make a payment, including non-monetary or in-kind contributions.¹⁵ For
20 contributions of \$100 or more, including loans, the statement must include the name, street address,
21 occupation, employer, and amount received from each source.¹⁶ For loans, the statement must include the
22 original date and amount of each loan, the due date and interest rate of the loan, the cumulative payment
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24 ⁸ Section 89519, subdivision (b).

25 ⁹ Section 84300, subdivision (a).

26 ¹⁰ Section 84300, subdivision (c).

27 ¹¹ See, e.g., Cal. U. Com. Code, Sections 3103, subdivisions (a)(2), (3), and (11), and 3104, subdivisions (f) and (g)

28 ¹² Section 84104.

¹³ Regulation 18401, subdivision (a)(7).

¹⁴ Section 84211.

¹⁵ Section 82015.

¹⁶ Section 84211, subdivision (f).

1 made or received to date, the outstanding balance at the end of the reporting period, and the cumulative
2 amount of contributions.¹⁷

3 Campaign expenditures include monetary payments, forgiveness of a loan, payment of a loan by a
4 third party, or an enforceable promise to make a payment (also known as an accrued expense.)¹⁸ For
5 expenditures of \$100 or more, the statement must include the name of the payee, the street address, the
6 amount of each expenditure, and a brief description of each expenditure.¹⁹ An accrued expense must be
7 reported as of the date on which the goods or services are received and must be reported on subsequent
8 statements until the debt is paid or forgiven.²⁰

9 **Joint and Several Liability of Committee, Candidate, and Treasurer**

10 It is the duty of a committee treasurer and the candidate to ensure that the committee complies with
11 the Act's campaign reporting.²¹ A treasurer and candidate may be held jointly and severally liable with the
12 committee for violations committed by the committee.²²

13 **SUMMARY OF THE FACTS**

14 2014 Committee

15 Marquez was unsuccessful in her 2014 campaign for the Santa Clara County Board of Education.
16 The 2014 Committee reported a total of \$10,425 in contributions and made a reported total of \$2,126 in
17 expenditures. The remaining funds became surplus on March 31, 2015, the 90th day after the post-election
18 reporting period. The 2014 Committee remained open and paid various expenditures, including the annual
19 fee to the Secretary of State and bank fees. On August 8, 2016, the remaining cash balance, totaling
20 approximately \$5,021 was transferred to the 2016 Committee. Contributions to a California state or local
21 election is a prohibited use of surplus funds.

22 In addition, the bank records revealed additional reporting violations of the Act including that the
23 2014 Committee failed to report about \$1,128 in expenditures and did not report the transfer of surplus
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27 ¹⁷ Section 84211, subdivision (g).

¹⁸ Section 82025.

¹⁹ Section 84211, subdivision (k).

²⁰ Regulation 18421.6.

²¹ Sections 81004, 84100, 84104, and Regulation 18427.

²² Sections 83116.5 and 91006.

1 funds on the termination campaign statement. These errors, in the interest of a settlement, will not be
2 pursued as separate violations but will be considered as aggravating factors.

3 2016 Committee

4 Marquez was successful in her 2016 re-election campaign to the Alum Rock Union Elementary
5 School District. She is currently in office and will be up for re-election in 2020. The Committee reported
6 a total of \$18,522 in contributions and made a reported total of \$11,858 in expenditures.

7 The 2016 Committee received and deposited a \$5,000 cashier's check on October 4, 2016. This
8 contribution was reported as a loan from the candidate, Marquez. The loan constitutes about 26% of the
9 2016 Committee's reported contributions. The form of tender, a cashier's check, is not permissible for
10 contributions over \$100. Marquez and the Committee failed to produce any documentation to substantiate
11 the source of this money.

12 The 2016 Committee also failed to report about 9% of contributions and 19% of expenditures. The
13 following chart details these transactions.

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Contributor	Amount	Check Dated	Deposited
SMT Property Services	\$500	09/30/16	10/13/16
IBEW 332 Education Fund	\$500	09/28/16	10/13/16
Plumbers, Steamfitters & Refrigeration Fitters Local 383 Small Contributor Committee	\$500	09/21/16	10/13/16
Sprinkler Fitters and Apprentices Local 483	\$250	10/14/16	01/03/17
Payee	Amount	Check Dated	
Secretary of State	\$50	08/03/16	
Registrar of Voters (Filing Fee)	\$2,060	08/11/16	
Charles Carrillo (memo: Banners & T-shirts for campaign)	\$220	10/18/16	

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22 **VIOLATIONS**

23 **2014 Committee**

24 **Count 1**

25 Prohibited Use of Surplus Funds

26 The 2014 Committee, Marquez, and Frausto transferred \$5,022 funds, as a contribution, to the 2016
27 Committee after the funds had become surplus, in violation of Government Code Section 89519.
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1 **2016 Committee**

2 **Count 2**

3 **Prohibited Acceptance of an Over \$100 Cash Equivalent Contribution**

4 The 2016 Committee, Marquez, and Frausto accepted and deposited a \$5,000 cashier's check, in
5 violation of Government Code Section 84300, subdivision (c).

6 **Count 3**

7 **Non-reporting of Contributions and Expenditures**

8 The 2016 Committee, Marquez, and Frausto failed to report contributions totaling \$1,750 and
9 failed to report expenditures totaling \$2,330 on campaign disclosure statements, in violation of
10 Government Code Section 84211, subdivisions (f) and (k).

11 **PROPOSED PENALTY**

12 This matter consists of three counts. The maximum penalty that may be imposed is \$5,000 per
13 count. Thus, the maximum penalty that may be imposed is \$15,000.²³

14 In determining the appropriate penalty for a particular violation of the Act, the Commission
15 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission
16 considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention
17 to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d)
18 whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were
19 filed to provide full disclosure; and (f) whether the violator has a prior record of violations.²⁴

20 Here, the actions of the Committee appear to be the result of negligence, but there is no evidence
21 of deliberate omission or attempts to conceal. The Committee, Marquez, and Frausto have prior
22 enforcement history. The Commission approved a penalty in April 21, 2016 for \$400 after Marquez and
23 the 2014 Committee admitted to the untimely filing of two semiannual campaign statements for the
24 reporting periods in 2015 (FPPC Case No. 15/1340). Additionally, the Commission considers penalties in
25 prior cases with comparable violations.

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²³ See Section 83116, subdivision (c).

²⁴ Regulation 18361.5, subdivision (d).

1 For Count 1, a comparable case involving prohibited use of surplus funds is *In the Matter of*
2 *Geraldine “Gerri” Guzman, Friends to Elect Gerri Guzman for School Board, and Charlotte Trujillo,*
3 FPPC No. 13/134 (The Commission approved a stipulation April 21, 2016) Respondents spent
4 approximately \$3,000 of surplus funds improperly, primarily payments for gas and meals. The Commission
5 approved a penalty of \$2,500 for the violation. Though Marquez spent more of her surplus funds, she did
6 so in one transfer, compared to the 24 instances in *Guzman*. For this reason, a penalty of \$2,500 is
7 recommended.

8 For Count 2, a comparable case involving the prohibited acceptance and use of cash and cash
9 equivalents is *In the Matter of Luis Castro, Committee to Elect Luis Castro for Calexico City Council*
10 *Member 2012, and Ana Castro,* FPPC No. 13/1200. (The Commission approved a stipulation October 20,
11 2016). The Committee accepted an excess of \$5,800 in contributions and made payments in excess of
12 \$4,700 in the form of cash. The Commission approved a penalty of \$2,500 for the violation. In *Castro*,
13 there was a pattern of using cash for multiple transactions, making it difficult to audit the activities of the
14 committee. In contrast, the case here involves one transaction, a large loan that comprises approximately
15 26% of the entire contributions for the 2016 campaign. The loan is purportedly from Marquez but was not
16 drawn from an account in Marquez’s name and no documentation was provided to substantiate this claim.
17 Under these circumstances, a penalty of \$2,500 is recommended.

18 For Count 3, a comparable case involving non-reporting of campaign activity is *In the Matter of*
19 *Quality Education in Support of Recall Lorona Orosco, Lopez; Sara Rodriguez; Harpreet Purewal; Frank*
20 *Hoyt; and John Hoyt,* FPPC No. 16/414 (The Commission approved a stipulation August 16, 2018).
21 Respondents failed to report nonmonetary contributions totaling approximately \$2,604 or about 15% of
22 the total contributions for the committee. The Commission approved a penalty of \$2,000 for the violation.
23 Here, the amount that was not reported by Respondents comprised about 9% of the contributions and about
24 19% of the expenditures. This is similar to the comparable case. Therefore, a penalty of \$2,000 is
25 recommended.

26 After considering the factors listed in Regulation 18361.5 and penalties in prior similar cases, a
27 penalty of \$7,000 is recommended.

1 **CONCLUSION**

2 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
3 Respondents, Dolores Marquez for School Board 2016, Dolores Marquez for Santa Clara County Board
4 of Education 2014, Dolores Marquez, and Anjelica Frausto, hereby agree as follows:

5 1. Respondents violated the Act as described in the foregoing pages, which are a true and
6 accurate summary of the facts in this matter.

7 2. This stipulation will be submitted for consideration by the Fair Political Practices
8 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

9 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
10 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
11 liability of Respondents pursuant to Section 83116.

12 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all
13 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
14 This includes, but is not limited to the right to appear personally at any administrative hearing held in this
15 matter, to be represented by an attorney at Respondents’ own expense, to confront and cross-examine all
16 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
17 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
18 reviewed.

19 5. Respondents agree to the issuance of the decision and order set forth below. Also,
20 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
21 \$7,000. One or more cashier’s checks or money orders totaling said amount—to be paid to the General
22 Fund of the State of California—is/are submitted with this stipulation as full payment of the administrative
23 penalty described above, and same shall be held by the State of California until the Commission issues its
24 decision and order regarding this matter.

25 6. If the Commission declines to approve this stipulation—then this stipulation shall become
26 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
27 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to
28 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing before

1 the Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
2 shall be disqualified because of prior consideration of this Stipulation.

3 7. The parties to this agreement may execute their respective signature pages separately. A
4 copy of any party's executed signature page, including a hardcopy of a signature page transmitted via fax
5 or as a PDF email attachment, is as effective and binding as the original.

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7 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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10 Dated: _____

Dolores Marquez, individually and on behalf of Dolores
Marquez for School Board 2016 and Dolores Marquez for
Santa Clara County Board of Education 2014

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14 Dated: _____

Anjelica Frausto, individually and on behalf of Dolores
Marquez for School Board 2016 and Dolores Marquez for
Santa Clara County Board of Education 2014

1 The foregoing stipulation of the parties “In the Matter of Dolores Marquez for School Board 2016,
2 Dolores Marquez for Santa Clara County Board of Education 2014, Dolores Marquez, and Anjelica
3 Frausto,” FPPC Case No. 17/0106 is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

_____ Alice T. Germond, Chair
Fair Political Practices Commission