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

10
11 In the Matter of:

12 SAN DIEGO COUNTY DEMOCRATIC
13 PARTY AND XAVIER R. MARTINEZ,

14 Respondents.
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FPPC Case No. 17/1356

STIPULATION, DECISION AND ORDER

16 INTRODUCTION

17 San Diego County Democratic Party (the “Committee”) is a political party committee. The
18 Committee’s treasurer at the time of the violations was Xavier R. Martinez (“Martinez”).

19 The Committee was the subject of a Franchise Tax Board (“FTB”) audit, which revealed that
20 Respondents committed numerous violations of the Political Reform Act (the “Act”),¹ including a
21 failure to timely file 24-hour contribution reports disclosing contributions made and received by the
22 Committee, as well as payments related to member communications; a failure to timely report payments
23 related to member communications on 24-hour reports that were filed; and an improper payment made
24 from the Committee’s restricted use bank account.

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28 ¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practice Commission are contained in §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

1 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. The violations in this case occurred in
3 2013 and 2014. For this reason, all legal references and discussions of law pertain to the Act’s provisions
4 as they existed at that time.

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

6 When enacting the Act, the people of California found and declared that previous laws regulating
7 political practices suffered from inadequate enforcement by state and local authorities.² For this reason,
8 the Act is to be construed liberally 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 Duty to File 24-Hour Contribution Reports

15 Each candidate or committee that makes or receives a late contribution must file a report within
16 24 hours of making or receiving the contribution.⁷ A “late contribution” includes a contribution
17 aggregating \$1,000 or more that is made to or received by a candidate, controlled committee, or primarily
18 formed committee within 90 days before the date of the election at which the pertinent candidate or
19 measure is to be voted on.⁸

20 Payments made by a political party for communications to a member who is registered as
21 expressing a preference for that party (“member communications”) that would otherwise qualify as
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25 ² Section 81001, subd. (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subd. (a).

28 ⁵ Sections 84200, *et seq.*

⁶ Section 81002, subd. (f).

⁷ Section 84203.

⁸ Section 82036.

1 contributions or expenditures shall be reported on 24-hour reports as if they were contributions or
2 expenditures.⁹

3 Use of Restricted Use Bank Account

4 The Act requires contributions made to committees for the purpose of making contributions to
5 state candidates, which are subject to contribution limits, to be kept in a separate account designated as
6 “all purpose.”¹⁰ These funds may be used for any legitimate purpose, including making contributions to
7 state candidates. Contributions a committee receives in excess of the contribution limits must be
8 deposited into a “restricted use” account.¹¹ Funds from the “restricted use” bank account may be used for
9 any legitimate purpose except to make contributions to candidates for elective state office, or to make
10 contributions to other committees for the purpose of making contributions to candidates for elective state
11 office.¹²

12 Joint and Several Liability of Committee and Treasurer

13 It is the duty of a committee treasurer to ensure that the committee complies with the campaign
14 reporting provisions of the Act.¹³ A treasurer may be held jointly and severally liable, along with the
15 committee, for violations committed by the committee.¹⁴

16 **SUMMARY OF THE FACTS**

17 A probable cause report was served in this case on Respondents on December 17, 2018 and
18 December 19, 2018, tolling the statute of limitations related to the violations contained herein.

19 The Committee qualified on July 1, 1974 and exists for the purpose of “provid[ing] political
20 activity for San Diego County area,” per its most recent statement of organization. In 2013 and 2014, the
21 Committee engaged in political activity in connection with various local and state races, raising
22 \$2,698,163 and spending \$2,834,094 during the audit period of January 1, 2013 through December 31,
23 2014.

25 ⁹ Section 85312.

26 ¹⁰ Regulation 18534, subd. (b).

27 ¹¹ Regulation 18534, subd. (c).

28 ¹² Regulation 18534, subd. (d).

¹³ Sections 81004, 84100, 84104, and 84213; Regulation 18427.

¹⁴ Sections 83116.5 and 91006.

The Committee supported David Alvarez as candidate for Mayor of San Diego in the November 19, 2013 Special Election and, later, a February 11, 2014 Runoff Special Election, spending approximately \$529,200 on the race. Alvarez placed second in the Special Election, advancing to the Runoff Election, but lost that contest, receiving approximately 47.1 percent of the vote.

The Committee supported Carol Kim for San Diego City Council, District 6 in the June 3, 2014 Primary and November 4, 2014 General Elections, spending a total of \$238,432 on the candidate. Kim advanced to the General Election, but was defeated, receiving approximately 46.7 percent of the vote. The Committee also supported Sarah Boot for San Diego City Council, District 2 in the June 3, 2014 Primary Election, spending a total of \$37,758 on the candidate. Boot lost the Primary Election, receiving approximately 38.4 percent of the vote.

Further, the Committee supported Stephen Padilla for Chula Vista City Council in the June 3, 2014 Primary Election. Padilla advanced to the November 4, 2014 General Election, where he lost by two votes.

In 2013 and 2014, the Committee made payments in conjunction with member communications supporting the aforementioned candidates. However, the Committee failed to timely file 24-hour contribution reports for the following payments for member communications:

| Statement/ Report Type | Payment Date | Due Date | Date Filed | Amount of Payment | Supported Candidate |
|-----------------------------------|-------------------------|---------------------|-----------------------|------------------------------|--------------------------------|
| 24-Hour Contribution | 12/19/13 | 12/20/13 | N/A | \$800 | David Alvarez |
| 24-Hour Contribution | 12/19/13 | 12/20/13 | N/A | \$1,200 | David Alvarez |
| 24-Hour Contribution | 12/19/13 | 12/20/13 | N/A | \$1,500 | David Alvarez |
| 24-Hour Contribution | 12/19/13 | 12/20/13 | N/A | \$1,600 | David Alvarez |
| 24-Hour Contribution | 12/19/13 | 12/20/13 | N/A | \$2,688 | David Alvarez |
| 24-Hour Contribution | 12/19/13 | 12/20/13 | N/A | \$4,000 | David Alvarez |

| | | | | | |
|----------------------|----------|----------|----------|--------------------|-----------------|
| 24-Hour Contribution | 12/19/13 | 12/20/13 | N/A | \$12,960 | David Alvarez |
| 24-Hour Contribution | 12/19/13 | 12/20/13 | N/A | \$2,000 | David Alvarez |
| 24-Hour Contribution | 12/19/13 | 12/20/13 | N/A | \$2,000 | David Alvarez |
| 24-Hour Contribution | 2/5/14 | 2/6/14 | N/A | \$2,077.50 | David Alvarez |
| 24-Hour Contribution | 2/7/14 | 2/10/14 | N/A | \$10,499.44 | David Alvarez |
| 24-Hour Contribution | 4/1/14 | 4/2/14 | N/A | \$2,250 | Carol Kim |
| 24-Hour Contribution | 5/21/14 | 5/22/14 | N/A | \$3,125 | Stephen Padilla |
| 24-Hour Contribution | 10/24/14 | 10/27/14 | 11/13/14 | \$3,550 | Carol Kim |
| TOTAL: | | | | \$50,249.94 | |

All of the above-referenced payments, with the exception of the payment made on October 24, 2014, were reported on campaign statements filed prior to the pertinent elections. However, the payments made on February 5, 2014; February 7, 2014; April 1, 2014; and May 21, 2014 were not identified as supporting the respective candidates on the campaign statements.

The Committee also underreported certain payments related to member communications in support of David Alvarez on 24-hour contribution reports. On a 24-hour report filed on January 15, 2014, the Committee failed to timely report payments amounting to \$1,400. On a 24-hour report filed on January 16, 2014, the Committee failed to timely report payments amounting to \$1,000. On a 24-hour report filed on February 1, 2014, the Committee failed to timely report payments amounting to \$18,994. Finally, on a 24-hour report filed on February 5, 2014, the Committee failed to timely report payments amounting to \$14,309.

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1 The Committee further failed to timely file 24-hour contribution reports for the following
 2 contributions made and received by the Committee:

| Statement/ Report Type | Contribution Date | Due Date | Date Filed | Amount of Contribution | Contributor/ Recipient |
|---------------------------------------|----------------------|-------------|---------------|---------------------------|---|
| 24-Hour Contribution (made) | 3/14/14 | 3/17/14 | N/A | \$10,000 | Sarah Boot for City Council 2014 |
| 24-Hour Contribution (received) | 1/22/14 | 1/23/14 | N/A | \$1,000 | Mark Leno |
| 24-Hour Contribution (received) | 1/29/14 | 1/30/14 | N/A | \$2,500 | Candace Carroll |
| 24-Hour Contribution (received) | 4/17/14 | 4/18/14 | N/A | \$1,500 | Dr. Weber for Assembly 2014 |
| 24-Hour Contribution (received) | 5/7/14 | 5/8/14 | N/A | \$1,000 | Robert Gleason |
| 24-Hour Contribution (received) | 5/15/14 | 5/16/14 | N/A | \$1,000 | Michael Gelfand |
| 24-Hour Contribution (received) | 12/3/14 | 12/4/14 | 12/9/14 | \$5,000 | Chula Vista Fire Fighters Political Action Committee |
| 24-Hour Contribution (received) | 12/3/14 | 12/4/14 | 12/9/14 | \$5,000 | Chula Vista Police Relief Association |
| 24-Hour Contribution (received) | 12/4/14 | 12/5/14 | 12/9/14 | \$2,500 | San Diego County Building Trades Council Family Housing Corporation No. 1 |
| 24-Hour Contribution (received) | 12/4/14 | 12/5/14 | 12/9/14 | \$2,500 | San Diego County Building Trades Council Family Housing Corporation No. 2 |
| TOTAL: | | | | \$32,000 | |

1 Of the six late contributions that were never reported on a 24-hour contribution report, all but the
2 contributions received on May 7, 2014 and May 15, 2014 were reported on campaign statements filed
3 prior to the pertinent elections. The four late contributions that were reported on 24-hour reports, albeit
4 late, were reported on the date of the pertinent election, the December 9, 2014 Special Election.

5 The Committee improperly made a contribution to a state candidate out of the Committee's
6 restricted use bank account. On October 27, 2014, the Committee made a contribution in the amount of
7 \$2,500 to Padilla for Secretary of State 2014, the controlled committee of Alex Padilla, candidate for
8 California Secretary of State in the November 4, 2014 General Election, out of its restricted use bank
9 account, instead of its all purpose account. The contribution was timely reported on the pertinent
10 campaign statement.

11 VIOLATIONS

12 Count 1: Failure to Timely Disclose Payments for Member Communications on 24-Hour Reports

13 The Committee and Martinez failed to timely disclose \$85,952.94 in payments made for member
14 communications between December 19, 2013 and October 24, 2014 on 24-hour contribution reports, in
15 violation of Section 85312.

16 Count 2: Failure to Timely File 24-Hour Contribution Reports

17 The Committee and Martinez failed to timely file 24-hour contribution reports for \$32,000 in late
18 contributions made or received between March 14, 2014 and December 4, 2014, in violation of Sections
19 84203.

20 Count 3: Improper Payment Made From Restricted Use Bank Account

21 The Committee and Martinez improperly made a \$2,500 contribution to a state candidate out of
22 the Committee's restricted use bank account, in violation of Section 85303 and Regulation 18534,
23 subdivision (d).

24 PROPOSED PENALTY

25 This matter consists of three counts. The maximum penalty that may be imposed is \$5,000 per
26 count. Thus, the maximum penalty that may be imposed is \$15,000.¹⁵

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¹⁵ Section 83116, subd. (c).

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

8 In this case, the Enforcement Division found no evidence that Respondents intended to conceal,
9 deceive, or mislead the public. However, as detailed below, Respondents have a prior history of
10 violations, evidencing a pattern of disregard for the Act.

11 The Commission also considers penalties in prior cases involving similar violations. Recent
12 similar cases involving a failure to timely file 24-hour contribution reports include the following:

13 • *In the Matter of San Joaquin County Democratic Central Committee and Dyane Burgos*; FPPC
14 No. 16/082. Respondents, a political party committee and its treasurer, failed to file 24-hour contribution
15 reports for two late contributions amounting to \$33,000, in violation of Section 84203. In June 2017, the
16 Commission approved a penalty of \$2,000 on one count.

17 As to Counts 1 and 2, Respondents are deserving of per count penalties higher than that approved
18 in the comparable case given the higher amount of financial activity that went undisclosed on 24-hour
19 contribution reports.

20 Comparable cases involving requirements related to use of bank accounts include the following:

21 • *In the Matter of California Democratic Party and Katherine Moret*; FPPC No. 16/19635.
22 Respondents, a state general purpose committee and its treasurer, failed to identify the committee bank
23 accounts as “all purpose,” failed to notify a recipient of contributions from which account the funds
24 derived, and deposited contributions into the wrong account, in violation of Section 85303 and
25 Regulation 18534, subdivisions (b), (c), and (f). In May 2017, the Commission approved a penalty of
26 \$3,500 on one count.

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¹⁶ Regulation 18361.5, subd. (d).

1 As to Count 3, a penalty similar to that approved in the comparable case is warranted given the
2 similar nature of the violations. In both the comparable and the current case, the violations arose from a
3 failure to follow the requirements related to use of bank accounts under Regulation 18534; therefore, the
4 public harm involved is similar.

5 In aggravation of Count 3, Respondents also made an untimely transfer of a \$34,000 contribution
6 from the Committee's restricted use bank account to its all purpose bank account; however, in the interest
7 of settlement, this additional violation is not being charged herein.

8 In aggravation of all counts, Respondents committed additional violations of the Act, including a
9 failure to timely file additional 24-hour contribution reports, which were filed only a few days late; and a
10 failure to provide timely notice to potential major donors. In the interest of settlement, these additional
11 violations are not being charged herein.

12 In further aggravation, Respondents were previously named in another enforcement action. In
13 May 2017, the Commission approved a total penalty of \$6,000 against the Committee and Martinez for
14 three counts of failing to timely file 24-hour contribution reports (*In the Matter of San Diego County*
15 *Democratic Party and Xavier Martinez*, FPPC No. 15/1374). Although, at the time Respondents
16 committed the violations in the current case, they were not yet put on notice by the FTB or Enforcement
17 Division that they would be held liable for the violations at issue in FPPC No. 15/1374, the prior
18 violations exhibit a pattern of violating the Act.

19 In mitigation, the Committee contends that it relied on the services of a professional treasurer to
20 properly file all required campaign statements and reports, and provided all necessary documentation to
21 the treasurer. After the Committee discovered its violations, it implemented new compliance procedures.
22 The Committee has also retained a new treasurer. A subsequent audit of the Committee, for the period of
23 January 1, 2015 to December 31, 2016, found that the Committee's statements and/or reports filed were
24 substantially accurate and complete.

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Based on the foregoing, the following penalties are recommended:

| Count | Violation | Proposed Penalty |
|---------------|--|------------------|
| 1 | Failure to Timely Disclose Payments for Member Communications on 24-Hour Reports | \$3,000 |
| 2 | Failure to Timely File 24-Hour Contribution Reports | \$2,500 |
| 3 | Improper Payment Made From Restricted Use Bank Account | \$3,500 |
| TOTAL: | | \$9,000 |

CONCLUSION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondents, San Diego County Democratic Party and Xavier R. Martinez, hereby agree as follows:

1. Respondents violated the Act as described in the foregoing pages, which are a true and accurate summary of the facts in this matter.
2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose of reaching a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondents pursuant to Section 83116.
4. Respondents have consulted with their attorney, Nicholas Sanders, The Sutton Law Firm, and understand, and hereby knowingly and voluntarily waive, all procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not limited to, the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially reviewed.
5. Respondents agree to the issuance of the decision and order set forth below. Also, Respondents agree to the Commission imposing against them an administrative penalty in the amount of \$9,000. One or more payments totaling this amount, to be paid to the General Fund of the State of

1 California, is/are submitted with this stipulation as full payment of the administrative penalty described
2 above, and they will be held by the State of California until the Commission issues its decision and order
3 regarding this matter.

4 6. If the Commission declines to approve this stipulation—then this stipulation shall become
5 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
6 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to
7 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing
8 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
9 Director, shall be disqualified because of prior consideration of this Stipulation.

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

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14 Dated: _____
15 Galena West, Chief of Enforcement
16 Fair Political Practices Commission

17 Dated: _____
18 Xavier R. Martinez, individually and on behalf of
19 San Diego County Democratic Party
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1 The foregoing stipulation of the parties “In the Matter of San Diego County Democratic Party and Xavier
2 R. Martinez,” FPPC Case No. 17/1356 is hereby accepted as the final decision and order of the Fair
3 Political Practices Commission, effective upon execution below by the Chair.

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5 IT IS SO ORDERED.

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7 Dated: _____
8 Richard C. Miadich, Chair
9 Fair Political Practices Commission