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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

12 ARLIE RICASA, ARLIE RICASA 2008,
13 and KINDE DURKEE,

14 Respondents.

FPPC No. 10/808

STIPULATION, DECISION AND ORDER

15 **STIPULATION**

16 Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission,
17 and Respondents Arlie Ricasa, Kinde Durkee, and Arlie Ricasa 2008 hereby agree that this stipulation
18 will be submitted for consideration by the Fair Political Practices Commission at its next regularly
19 scheduled meeting.

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

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

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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 Arlie Ricasa, Kinde
4 Durkee, and Arlie Ricasa 2008 violated the Political Reform Act by failing to report a loan received in
5 the amount of \$18,000, in violation of Government Code section 84211, subdivision (g) (1 count).
6 Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein, is a
7 true and accurate summary of the facts in this matter.

8 Respondents agree to the issuance of the Decision and Order, which is attached hereto, and
9 Respondents agree to the Commission imposing upon them an administrative penalty in the amount of
10 \$2,000. A cashier's check or money order from one or more Respondents totaling said amount, made
11 payable to the "General Fund of the State of California," is/are submitted with this Stipulation as full
12 payment of the administrative penalty and shall be held by the State of California until the Commission
13 issues its Decision and Order regarding this matter. The parties agree that in the event the Commission
14 refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days
15 after the Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents
16 in connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate
17 and agree that in the event the Commission rejects the Stipulation and a full evidentiary hearing before

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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.

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4 Dated: _____

Roman G. Porter, Executive Director
Fair Political Practices Commission

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7 Dated: _____

Arlie Ricasa, Individually and on Behalf of Arlie
Ricasa 2008, Respondents

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10 Dated: _____

Kinde Durkee, Respondent

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12 **DECISION AND ORDER**

13 The foregoing Stipulation of the parties “In the Matter of Arlie Ricasa, Arlie Ricasa 2008, and
14 Kinde Durkee,” FPPC No. 10/808, including all attached exhibits, is hereby accepted as the final decision
15 and order of the Fair Political Practices Commission, effective upon execution below by the Chairman.

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17 IT IS SO ORDERED.

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19 Dated: _____

Chair, Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Arlie Ricasa (“Respondent Ricasa”) currently serves as a member of the Sweetwater Union High School District Board. In 2006 and 2008, Respondent Ricasa was an unsuccessful candidate for California State Assembly, 78th District.

Respondent Arlie Ricasa 2008 (“Respondent Committee”) was Respondent Ricasa’s candidate controlled committee established for her candidacy for the 2008 Assembly election.

At all relevant times, Respondent Committee was controlled by Respondent Ricasa, and Respondent Kinde Durkee (“Respondent Durkee”) was treasurer of Respondent Committee.

Under the Political Reform Act (the “Act”)¹, information about certain types of loans must be reported by candidates and committees.

For purposes of this Stipulation, Respondents’ violation of the Act is set forth as follows:

COUNT 1: Respondents Arlie Ricasa, Kinde Durkee, and Arlie Ricasa 2008 failed to disclose an \$18,000 loan received from Durkee & Associates, LLC on the semi-annual campaign statement filed for Respondent Arlie Ricasa 2008 for the reporting period May 18, 2008, through June 30, 2008, due by July 31, 2008, in violation of Section 84211, subdivision (g).

SUMMARY OF THE LAW

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. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited. (Section 81002, subd. (a).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.” (Section 81002, subd. (f).)

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.

Definition of Controlled Committee

Section 82013, subdivision (a), defines a “committee” to include any person or combination of persons who receive contributions totaling \$1,000 or more in a calendar year. This type of committee is commonly referred to as a “recipient committee.” Under Section 82016, a recipient committee which 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.” 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. (Section 82016, subd. (a).)

Duty to Disclose Information Regarding Loans

On each campaign statement filed by a candidate or committee, Section 84211, subdivision (g), requires the reporting of the following information about any lender to the candidate or committee if the cumulative amount of loans received from the lender is \$100 or more, and the loans are outstanding during the reporting period covered by the campaign statement: (1) the lender’s full name; (2) the lender’s street address; (3) the lender’s occupation; (4) the name of the lender’s employer, or if self-employed, the name of the lender’s business; (5) the original date and amount of the loan; (6) the due date and interest rate of the loan; (7) the cumulative payment made at the end of the reporting period; (8) the balance outstanding at the end of the reporting period; and (9) the cumulative amount of contributions received from the lender.

Joint and Several Liability of Candidate and Treasurer

Under Sections 81004, 84100, 84213, and Regulation 18427, it is the duty of a candidate and the treasurer of his or her controlled committee to ensure that the committee complies with the Act. A candidate and the treasurer of his or her controlled committee may be held jointly and severally liable, along with the committee, for violations committed by the committee. (See Sections 83116.5 and 91006.)

SUMMARY OF THE FACTS

Respondent Ricasa was a candidate for Assembly, 78th District, in the June 2008 Primary Election. Respondent Committee was Respondent Ricasa’s candidate controlled committee for this election. Respondent Durkee was the treasurer of Respondent Committee.

Count 1: Failure to Disclose a Loan

During the last week of May 2008, Respondent Committee’s bank account became over-drawn and had a negative balance through June 29, 2008. On June 30, 2008, a check in the amount of \$18,000 written on a bank account of Durkee & Associates, LLC and signed by Respondent Durkee was deposited into the bank account of Respondent Committee to bring the balance of the account into a positive state.

The \$18,000 owed to Durkee & Associates, LLC was not reported as a loan on the semi-annual campaign statement filed for the reporting period May 18 through June 30, 2008, due by July 31, 2008. Instead, the \$18,000 was reported on the semi-annual statement as a miscellaneous increase to cash received from Durkee & Associates, LLC and was described as an “Adjustment.”

According to Respondent Durkee, the loan was made by Durkee & Associates, LLC due to the demand of Respondent Committee’s bank. The bank had informed Respondent Durkee that all Durkee & Associates, LLC’s accounts at the bank, including the accounts of all of Durkee & Associates, LLC’s clients, would be closed if Respondent Committee’s overdrawn account was not corrected. This led Respondent Durkee to conclude that the bank held her jointly responsible with Respondent Committee for the overdraft amount.

In February 2010, Respondents filed an amendment to the semi-annual campaign statement for the reporting period May 18 through June 30, 2008, to report the \$18,000 owed to Durkee & Associates, LLC as an accrued expense.

By failing to disclose the amount owed to Durkee & Associates, LLC as a loan by the due date of the semi-annual campaign statement for the period ending June 30, 2008, Respondents violated Section 84211, subdivision (g).

CONCLUSION

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

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division 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 Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether the Respondent, upon learning of the violations, voluntarily filed appropriate amendments to provide full disclosure.

Factors in Aggravation

Respondent Durkee has been a professional campaign treasurer for many years for numerous committees and has been the subject of previous Fair Political Practices Commission enforcement matters. Respondent Durkee was well aware of the requirements for disclosing committee debt and was well aware Respondent Committee owed her firm money. Respondent Durkee signed the check payable to Respondent Committee and made requests of Respondent Ricasa for funds to repay the amount to Durkee & Associates, LLC prior to the July 31, 2008, filing deadline for the semi-annual campaign statement in question.

At the very least, Respondent Ricasa should have been aware of the debt owed to Durkee & Associates, LLC prior to the July 31, 2008 filing deadline by Respondent Durkee's requests for funds to repay Durkee & Associates, LLC.

Although the transaction was disclosed as an adjustment based upon Respondent Durkee's belief that she was jointly liable for the overdraft, Respondents failed in three campaign statements for reporting periods after June 30, 2008, to correctly characterize the transaction as an outstanding debt.

Factors in Mitigation

Respondents cooperated with the Enforcement Division of the Fair Political Practices Commission in all phases of the audit and by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held.

Respondents amended the campaign statement in question—voluntarily and prior to this matter arising as an enforcement action—to show Respondent Committee owed money to Durkee & Associates, LLC.

Respondent Durkee advanced the money in question only in order to cover the account in anticipation that Respondent Committee would immediately provide funds to cover the advance, but Respondent Committee failed to do so.

Penalty

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of an agreed upon penalty of \$2,000.