

1 GARY S. WINUK
Chief of Enforcement
2 MILAD DALJU
Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
Sacramento, CA 95814
Telephone: (916) 322-5660

5 Attorneys for Complainant
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
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11
12 In the Matter of) FPPC No. 11/057
13)
14 FERNANDO VASQUEZ, VASQUEZ FOR) STIPULATION, DECISION and
DOWNEY COUNCIL 2010, and JANE) ORDER
15 LEIDERMAN, TREASURER,)
16 Respondents.)

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18 Complainant, the Fair Political Practices Commission, and respondents Fernando Vasquez,
19 Vasquez for Downey Council 2010, and Jane Leiderman (collectively “Respondents”) agree that this
20 Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next
21 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 administrative hearing to
24 determine the liability of Respondents, pursuant to Section 83116 of the Government Code.

25 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
26 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
27 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
28 the right to personally appear at any administrative hearing held in this matter, to be represented by an

1 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the
2 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
3 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondents violated the Political Reform Act by: failing
5 to timely report eight monetary contributions of \$100 or more, totaling approximately \$1,600, received
6 between July 1, 2010, and September 30, 2010, by October 5, 2010, in violation of Government Code
7 Section 84211, subdivisions (a), (c), (e), and (f) (Count 1); and failing to timely report nine monetary
8 contributions of \$100 or more, totaling approximately \$6,096, received between October 1, 2010, and
9 October 16, 2010, by October 21, 2010, in violation of Government Code Section 84211, subdivisions
10 (a), (c), (e), and (f) (Count 2). All counts are described in Exhibit 1, which is attached hereto and
11 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of
12 the facts in this matter.

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1 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
2 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
3 of \$4,000. A cashier's check from Respondents in said amount, made payable to the "General Fund of
4 the State of California," is submitted with this Stipulation as full payment of the administrative penalty,
5 to be held by the State of California until the Commission issues its decision and order regarding this
6 matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall
7 become null and void, and within fifteen (15) business days after the Commission meeting at which the
8 Stipulation is rejected, all payments tendered by Respondents in connection with this Stipulation shall be
9 reimbursed to Respondents. Respondents further stipulate and agree that in the event the Commission
10 rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither
11 any member of the Commission, nor the Executive Director, shall be disqualified because of prior
12 consideration of this Stipulation.
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15 Dated: _____
16 Gary Winuk, Enforcement Chief,
17 On behalf of the
18 Fair Political Practices Commission

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20 Dated: _____
21 Fernando Vasquez, Respondent,
22 Individually and on behalf of
23 Vasquez for Downey Council 2010

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25 Dated: _____
26 Jane Leiderman, Respondent,
27 Individually and on behalf of
28 Vasquez for Downey Council 2010

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Vasquez for Downey Council 2010,
3 Fernando Vasquez, and Jane Leiderman, Treasurer” FPPC No. 11/057, including all attached exhibits, is
4 hereby accepted as the final decision and order of the Fair Political Practices Commission, effective
5 upon execution below by the Chair.

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7 **IT IS SO ORDERED.**

8 Dated: _____

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10 Ann Ravel, Chair
11 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent Vasquez for Downey Council 2010 (“Respondent Committee”) was the candidate controlled committee of Respondent Fernando Vasquez (“Respondent Vasquez”). Respondent Vasquez was a successful candidate for a Downey City Council seat in the November 2, 2010, election. Respondent Jane Leiderman (“Respondent Leiderman”) has been Respondent Committee’s treasurer since August 30, 2010.

This matter arose out of a sworn complaint submitted to the Fair Political Practices Commission’s (the “Commission”) Enforcement Division (“Enforcement Division”) alleging Respondent Committee, Respondent Vasquez, and Respondent Leiderman (collectively “Respondents”) failed to timely report contributions received by Respondent Committee. The subsequent investigation by the Enforcement Division revealed that Respondents failed to timely report several contributions received by Respondent Committee, as required by the Political Reform Act (the “Act”).¹

For the purposes of this Stipulation, Respondents’ violations of the Act are stated as follows:

COUNT 1: Respondents Vasquez for Downey Council 2010, Fernando Vasquez, and Jane Leiderman failed to timely report eight monetary contributions of \$100 or more, totaling approximately \$1,600, received between July 1, 2010, and September 30, 2010, by October 5, 2010, in violation of Government Code Section 84211, subdivisions (a), (c), (e), and (f).

COUNT 2: Respondents Vasquez for Downey Council 2010, Fernando Vasquez, and Jane Leiderman failed to timely report nine monetary contributions of \$100 or more, totaling approximately \$6,096, received between October 1, 2010, and October 16, 2010, by October 21, 2010, in violation of Government Code Section 84211, subdivisions (a), (c), (e), and (f).

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violations.

¹ The Political Reform 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.

Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the 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).)

Duty to File Pre-Election Campaign Statements

The Act includes within the definition of “committee” any person or combination of persons who receives contributions of \$1,000 or more during a calendar year. (Section 82013, subd. (a).) A controlled committee is a committee that is controlled directly or indirectly by a candidate. 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 of the committee. (Section 82016, subd. (a).) Committees are required to file two pre-election campaign statements before an election. (Section 84200.5.)

For all candidates being voted upon the first Tuesday after the first Monday in June or November of an even-numbered year, one pre-election campaign statement for the reporting period ending on September 30 must be filed no later than October 5.² (Sections 84200.5, subd. (a), 84200.7, subd. (b)(1).) Subsequently, another pre-election campaign statement for the reporting period ending 17 days before the election must be filed no later than 12 days before the election. (Sections 84200.5, subd. (a), 84200.7, subd. (b)(2).)

Required Reporting of Contributions Received

Section 84211, subdivisions (a), (c), and (d), require committees to disclose on each campaign statement: (1) the total amount of contributions received during the period covered by the campaign statement and the total cumulative amount of contributions received; (2) the total amount of contributions received during the period covered by the campaign statement from persons who have given a cumulative amount of one hundred dollars (\$100) or more; and (3) the total amount of contributions received from persons who gave the committee cumulative amounts of less than \$100 during the period covered by the statement.

² Under Regulation 18116, whenever the Act requires that a statement or report (other than late contribution reports required by Section 84203, late independent expenditure reports required by Section 84204, or notice by the contributor of a late in-kind contribution required by Section 84203.3) be filed prior to or not later than a specified date or during or within a specified period, and the deadline falls on a Saturday, Sunday or official state holiday, the filing deadline for such a statement or report shall be extended to the next regular business day.

A contribution is a payment of any kind made for political purposes for which full and adequate consideration is not made to the donor. (Sections 82015, subd. (a), and 82044; Regulation 18215, subd. (a).) A payment is made for a political purpose if, for instance, it is: (1) for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate; or (2) it is received by or made at the behest of a candidate or controlled committee. (See Regulation 18215, subds. (a)(1) and (2).)

Section 84211, subdivision (f), further requires that certain identifying information be provided for each person from whom a cumulative amount of contributions of \$100 or more has been received during the period covered by the campaign statement, including the following: (1) the person's full name; (2) his or her street address; (3) his or her occupation; (4) the name of his or her employer, or if self-employed, the name of the business; (5) the date and amount received for each contribution received during the period covered by the campaign statement and if the contribution is a loan, the interest rate for the loan; and (6) the cumulative amount of contributions.

Treasurer Liability

Under Section 81004, subdivision (b), Section 84100 and Regulation 18427, subdivision (a), 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. Pursuant to Sections 83116.5 and 91006, the treasurer of a committee may be held jointly and severally liable, along with the committee, for the committee's violations.

SUMMARY OF THE FACTS

On or about October 5, 2010, Respondents filed a pre-election campaign statement with the Downey City Clerk's Office ("DCCO") for the July 1, 2010, through September 30, 2010, reporting period.

On or about October 21, 2010, Respondents filed a pre-election campaign statement with the DCCO for the October 1, 2010, through October 16, 2010, reporting period.

On or about December 8, 2010, Respondents filed an amended pre-election campaign statement for the October 1, 2010, through October 16, 2010, reporting period, with the DCCO, in which they reported two contributions of \$100 or more received, totaling \$2,846, that were not reported on the original statement filed on October 21, 2010.

On or about the January 18, 2011, the Enforcement Division received a sworn complaint alleging that Respondents failed to report certain contributions they received for Respondent Vasques' 2010 campaign for the Downey City Council. On or about January 24, 2011, the Enforcement Division sent Respondents a copy of the sworn complaint with a letter that informed Respondents that the Enforcement Division had received the sworn complaint. On or about January 24, 2011, the Enforcement Division sent Respondent Leiderman a letter requesting Respondent Committee's financial records.

On or about January 31, 2011, Respondents filed a second amended pre-election campaign statement for the October 1, 2010, through October 16, 2010, reporting period, with the DCCO, in which they reported seven contributions of \$100 or more received, totaling \$3,250, that were not reported on the original statement filed on October 21, 2010, or on the first amended statement filed on December 8, 2010.

On or about January 31, 2011, Respondents filed an amended pre-election campaign statement for the July 1, 2010, through September 30, 2010, reporting period, with the DCCO, in which they reported eight contributions of \$100 received, totaling \$1,600, during the reporting period that were not reported on the original statement filed on October 5, 2010.

Accordingly, Respondents committed two violations of the Act, as follows:

Count 1

Failure to Timely Report Contributions Received of \$100 or More

Respondents Vasquez for Downey Council 2010, Fernando Vasquez, and Jane Leiderman failed to timely report eight monetary contributions of \$100 or more, totaling approximately \$1,600, received between July 1, 2010, and September 30, 2010, by October 5, 2010, in violation of Government Code Section 84211, subdivisions (a), (c), (e), and (f).

Count 2

Failure to Timely Report Contributions Received of \$100 or More

Respondents Vasquez for Downey Council 2010, Fernando Vasquez, and Jane Leiderman failed to timely report nine monetary contributions of \$100 or more, totaling approximately \$6,096, received between October 1, 2010, and October 16, 2010, by October 21, 2010, in violation of Government Code Section 84211, subdivisions (a), (c), (e), and (f).

CONCLUSION

This matter consists of two counts of violating the Act, which carry a maximum administrative penalty of \$5,000 per count for a total of \$10,000.

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(s) demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the respondent voluntarily filed amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

The failure to timely report contributions received by a campaign is a serious violation of the Act because it deprives the public of important information about a candidate's contributors. In this matter, Respondents failed to timely report several contributions Respondent Committee received, that should have been reported prior to the election, until after he had won the election.

Respondent Leiderman is and was at all times relevant to this matter a professional treasurer, and therefore was, or should have been, aware of her duties and requirements under the Act.

Respondent Leiderman has also demonstrated a pattern of violating the Act. In 2010, she violated the Act by improperly using campaign funds and failing to file campaign statements. (See *Mike Gatto, Mike Gatto for Seembly 2010-Special Primary, Mike Gatto for Assembly 2010, and Jane Leiderman*; FPPC No. 10/129, Warning Letter dated April 21, 2011.) In that same year, but as the treasurer for a different committee, she failed to timely report a late contribution. (See *Alan S. Lowenthal, Alan Lowenthal for Lt. Governor 2010, and Jane Leiderman, Treasurer*; FPPC No. 11/691, Warning Letter dated September 12, 2011.)

The facts of this case show a pattern of violations that, taken as a whole, resulted in a significant lack of disclosure of Respondents' financial activities related to the campaign for a Downey City Council seat in the November 2, 2010, election.

However, prior to being contacted by the Commission, but after winning the pertinent election, Respondents amended their pre-election campaign statement to report some of the unreported contributions. Respondents also cooperated with the Enforcement Division's investigation into this matter. At the commencement of the Enforcement Division's investigation, Respondents submitted a written statement acknowledging the issues present in this matter and the steps Respondents had undertaken to cure any reporting errors. Additionally, Respondents offered banking and other committee records sought by the Enforcement Division, and freely submitted to interviews conducted by the Enforcement Division.

The Commission recently imposed a \$2,000 penalty on an unsuccessful city council candidate for the failure to report six contributions of \$100 or more on a pre-election campaign statement. (See *In the Matter of Ralph Widmar, Ralph Widmar for City Council Committee, and Henry Ruhnke*, FPPC No. 08/247, approved August 12, 2010.)

Based on the aforementioned facts, imposition of an administrative penalty in the amount of \$2,000 per count for Counts 1 and 2 is recommended. This is in the mid-range of penalties recommended for violations of Section 84211.

After consideration of the factors of Regulation 18361.5, and consideration of penalties in prior enforcement actions, the imposition of a \$4,000 penalty on Respondents is recommended.

* * * * *