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8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

9 **STATE OF CALIFORNIA**

10 In the Matter of ) FPPC No. 12/230  
11 )  
12 )  
13 RANCHO BERNARDO DEMOCRATIC ) DEFAULT DECISION AND ORDER  
14 CLUB, and PAT JONES, TREASURER, )  
15 Respondents. ) (Gov. Code §§ 11506 and 11520)  
16 )

17 Complainant, the Fair Political Practices Commission, hereby submits this Default Decision and  
18 Order for consideration at its next regularly scheduled meeting.

19 Pursuant to the California Administrative Procedure Act,<sup>1</sup> Respondents Rancho Bernardo  
20 Democratic Club and Pat Jones have been served with all of the documents necessary to conduct an  
21 administrative hearing regarding the above-captioned matter, including the following:

- 22 1. An Order Finding Probable Cause;
- 23 2. An Accusation;
- 24 3. A Notice of Defense (Two Copies);

25  
26 <sup>1</sup>The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections  
27 11370 through 11529 of the Government Code.

1 4. A Statement to Respondent; and

2 5. Copies of Sections 11506 through 11508 of the Government Code.

3 Government Code Section 11506 provides that failure of a respondent to file a Notice of Defense  
4 within 15 days after being served with an Accusation shall constitute a waiver of respondent's right to a  
5 hearing on the merits of the Accusation. The Statement to Respondent, served on Respondents Rancho  
6 Bernardo Democratic Club and Pat Jones, explicitly stated that a Notice of Defense must be filed in  
7 order to request a hearing. Respondents Rancho Bernardo Democratic Club and Pat Jones failed to file a  
8 Notice of Defense within fifteen days of being served with the Accusation.

9 Government Code Section 11520 provides that, if the respondent fails to file a Notice of  
10 Defense, the Commission may take action, by way of a default, based upon the respondents' express  
11 admissions or upon other evidence, and that affidavits may be used as evidence without any notice to the  
12 respondent.

13 Respondents Rancho Bernardo Democratic Club and Pat Jones violated the Political Reform Act  
14 as described in Exhibit 1, and accompanying declarations, which are attached hereto and incorporated by  
15 reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the law and  
16 evidence in this matter. This Default Decision and Order is submitted to the Commission to obtain a  
17 final disposition of this matter.

18  
19 Dated: \_\_\_\_\_

\_\_\_\_\_  
Gary S. Winuk, Chief of Enforcement  
Fair Political Practices Commission

**ORDER**

The Commission issues this Default Decision and Order and imposes an administrative penalty of \$7,500 upon Respondents Rancho Bernardo Democratic Club and Pat Jones, payable to the “General Fund of the State of California.”

IT IS SO ORDERED, effective upon execution below by the Chair of the Fair Political Practices Commission at Sacramento, California.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Ann Ravel, Chair

Fair Political Practices Commission

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## EXHIBIT 1

### INTRODUCTION

Respondents are Rancho Bernardo Democratic Club (“Respondent Committee”), a county general purpose committee, and Pat Jones (“Respondent Jones”), who was, at all relevant times, Respondent Committee’s treasurer.

This matter arose out of referrals received by the Fair Political Practices Commission’s Enforcement Division (the “Enforcement Division”) from the San Diego County Registrar of Voters alleging Respondent Jones and Respondent Committee (collectively, “Respondents”) failed to file campaign statements required by the Political Reform Act (the “Act”).<sup>1</sup> The subsequent investigation by the Enforcement Division revealed that Respondents failed to file three required semiannual statements.

For the purposes of this Default Decision and Order, Respondents’ violations of the Act are stated as follows:

**COUNT 1:** Respondent Rancho Bernardo Democratic Club, a county general purpose committee, and its treasurer Respondent Pat Jones failed to file a semiannual statement for the July 1 through December 31, 2011, reporting period, in violation of Government Code section 84200, subdivision (a).

**COUNT 2:** Respondent Rancho Bernardo Democratic Club, a county general purpose committee, and its treasurer Respondent Pat Jones failed to file a semiannual statement for the January 1 through June 30, 2012, reporting period, in violation of Government Code section 84200, subdivision (a).

**COUNT 3:** Respondent Rancho Bernardo Democratic Club, a county general purpose committee, and its treasurer Respondent Pat Jones failed to file a semiannual statement for the July 1 through December 31, 2012, reporting period, in violation of Government Code section 84200, subdivision (a).

All relevant evidence in possession of the Enforcement Division is included in the attached Certification of Records (“Certification”) filed herewith at Exhibit A, A–1 through A–21, and incorporated herein by reference.

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<sup>1</sup> 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.

## **SUMMARY OF THE LAW**

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that the contributions and expenditures affecting election campaigns are fully and truthfully disclosed to the public, so that voters may be better informed, and improper practices may be inhibited. The following reflects the Act as it was in effect at the time of the relevant violations.

### **Duty to File Campaign Statements**

The Act requires committees to file campaign statements at specified times, disclosing information regarding contributions received and expenditures made by the committee. County general purpose committees must file all required campaign statements with the election official of the county. (Section 84215, subd. (c).) A county general purpose committee is a committee that supports or opposes candidates or measures voted on in only one county, or in more than one jurisdiction within a county. (Section 82027.5, subd. (c).)

### **Duty to File Semiannual Statements**

Committees are required to file semiannual statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31. (Section 84200, subd. (a).) All filing obligations continue until the committee is terminated by filing a statement of termination with the Secretary of State and with the local filing officer receiving the committee's original campaign statements. (Section 84214; Regulation 18404.)

### **Treasurer Liability**

Under Sections 81004, subdivision (b), 84100, and Regulation 18427, subdivision (a), it is the duty of a committee's treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. A committee's treasurer may be held jointly and severally liable with the committee for any reporting violations committed by the committee under Sections 83116.5 and 91006.

## **SUMMARY OF THE EVIDENCE AND FACTUAL HISTORY**

Respondent Committee has been a county general purpose committee since January 20, 2004, and Respondent Jones has been Respondent Committee's treasurer at all relevant times.

On February 14, and March 8, 2012, the San Diego County Registrar of Voters issued Respondents written notices warning that Respondents had failed to timely file a semiannual statement for the July 1 through December 31, 2011, reporting period. (Certification, Exhibit A-1.) On April 12, 2012, the Enforcement Division received a referral from the San Diego County Registrar of Voters for Respondents' failure to file a semiannual statement for the July 1 through December 31, 2011 reporting period. (Certification, Exhibit A-2.)

On July 31, 2012, the Enforcement Division sent Respondents a settlement communication which offered to resolve this matter with a \$200.00 fine and the filing of the delinquent statement. (Certification, Exhibit A-3.)

On August 23 and September 5, 2012, the San Diego County Registrar of Voters issued Respondents another set of written notices warning that Respondents had failed to timely file a semiannual statement for the January 1 through June 30, 2012 reporting period. (Certification, Exhibit A-4.) On October 5, 2012, the Enforcement Division received a second referral from the San Diego County Registrar of Voters regarding Respondents' additional failure to file. (Certification, Exhibit A-5.)

On October 1, 2012, the Enforcement Division sent Respondents a second settlement communication which, again, offered to resolve this matter – this time with a \$400.00 fine and the filing of the delinquent statements. (Certification, Exhibit A-6.)

On or around January 29, 2013 the Enforcement Division received a \$200.00 stipulation payment from the Respondent, but did not receive a signed stipulation. In response, that same day, the Enforcement Division E-mailed the Respondent providing instructions for returning the stipulation and filing the outstanding forms. (Certification, Exhibit A-7.) The Enforcement Division also called the respondent on January 31, 2013 to discuss the same.

Respondent returned a signed stipulation on or around February 4, 2013. (Certification, Exhibit A-8.) Respondent did not file any of the outstanding forms. The Enforcement Division contacted the Respondent again, to encourage filing the outstanding forms, obtain compliance, and offer administrative termination. Respondent refused termination and never filed the outstanding forms.

On February 13 and February 27, 2013, the San Diego County Registrar of Voters issued Respondents a third set of written notices warning that Respondents had failed to timely file a semiannual statement, this time for the July 1 through December 31, 2012, reporting period. (Certification, Exhibit A-9.) On April 2, 2013, the Enforcement Division received a third referral from the San Diego County Registrar of Voters for Respondents' latest failure to file a semiannual statement. (Certification, Exhibit A-10.)

On March 19, 2013, the Enforcement Division contacted Respondent Jones via telephone and advised her that she had failed to file semiannual statements, and requested that she file the delinquent statements.

Respondents failed to take advantage of any of the Enforcement Division's settlement offers and the Enforcement Division decided to pursue an administrative action for Respondents' three violations of the Act, as follows:

## Counts 1 – 3

### **Failure to File Semiannual Statements**

As a county general purpose committee and its treasurer, Respondents Rancho Bernardo Democratic Club and Pat Jones had a duty to file three semiannual statements from July 1, 2011 through December 31, 2012. Respondents failed to timely file a semiannual statement by the January 31, 2012, July 31, 2012, or January 31, 2013 deadlines, in violation of Government Code section 84200, subdivision (a).

### **PROCEDURAL REQUIREMENTS AND HISTORY**

#### **A. Initiation of the Administrative Action**

Section 91000.5 provides that “[t]he service of the probable cause hearing notice, as required by Section 83115.5, upon the person alleged to have violated this title shall constitute the commencement of the administrative action.” (Section 91000.5, subd. (a).)

Section 83115.5 prohibits a finding of probable cause by the Commission unless the person alleged to have violated the Act is 1) notified of the violation by service of process or registered mail with return receipt requested; 2) provided with a summary of the evidence; and 3) informed of his right to be present in person and represented by counsel at any proceeding of the Commission held for the purpose of considering whether probable cause exists for believing the person violated the Act. Additionally, Section 83115.5 states that the required notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office.

Section 91000.5 provides that no administrative action pursuant to Chapter 3 of the Act, alleging a violation of any of the provisions of Act, shall be commenced more than five years after the date on which the violation occurred.

In accordance with Sections 83115.5 and 91000.5, the Enforcement Division initiated the administrative action against Respondents by issuing a Report in Support of a Finding of Probable Cause (the “Report”) dated April 24, 2013 (Certification, Exhibit A-11.) The Report was sent to Respondents by certified mail, return receipt requested.<sup>2</sup> The Report was served on Respondents on April 27, 2013. (Certification, Exhibit A-12.) Therefore, the administrative action against Respondents commenced on April 27, 2013, and the five year statute of limitations was effectively tolled on this date.

The packet served on Respondents contained a cover letter, selected statutes and regulations relevant to probable cause proceedings, and a fact sheet describing Probable Cause Proceedings advising that Respondents had 21 days in which to request a probable cause

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<sup>2</sup> Where any communication is required by law to be mailed by registered mail to or by the state, or any officer or agency thereof, the mailing of such communication by certified mail is sufficient compliance with the requirements of the law. (Section 8311.)



conference and/or to file a written response to the Report, as required by Section 83115.5. (Certification, Exhibit A-13.) Respondents neither requested a probable cause conference nor submitted a written response to the Report.

**B. Ex Parte Request for a Finding of Probable Cause**

Since Respondents failed to request a probable cause conference or submit a written response to the Report by the statutory deadline, the Enforcement Division submitted an Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation be Prepared and Served (the “Ex Parte Request”) to General Counsel Zackery P. Morazzini on May 23, 2013. (Certification, Exhibit A-14.) Respondents were sent a cover letter, dated May 23, 2013 (Certification, Exhibit A-15) and a copy of the Ex Parte Request.

On May 30, 2013, General Counsel Zackery P. Morazzini issued a Finding of Probable Cause and Order to Prepare and Serve an Accusation. (Certification, Exhibit A-16.)

**C. The Issuance and Service of the Accusation**

When the Fair Political Practices Commission (the “Commission”) determines that there is probable cause for believing that the Act has been violated, it may hold a hearing to determine if a violation has occurred. (Section 83116.) Notice of the hearing, and the hearing itself, must be conducted in accordance with the Administrative Procedure Act (the “APA”).<sup>3</sup> (Section 83116.) A hearing to determine whether the Act has been violated is initiated by the filing of an accusation, which shall be a concise written statement of the charges specifying the statutes and rules which the respondent is alleged to have violated. (Section 11503.)

Section 11505, subdivision (a) requires that, upon the filing of the accusation, the agency shall 1) serve a copy thereof on the respondent as provided in Section 11505, subdivision (c); 2) include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506; 3) include (i) a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (ii) copies of Sections 11507.5, 11507.6, and 11507.7. Subdivision (b) sets forth the language required in the accompanying statement to the respondent; and subdivision (c) provides that the Accusation and accompanying information may be sent to the respondent by any means selected by the agency, but that no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent has been served personally or by registered mail as set forth in Section 11505.

On June 12, 2013, the Chief of the Enforcement Division, Gary S. Winuk, issued an Accusation against Respondents in this matter, and prepared, in accordance with Section 11505, a packet of documents for Respondent consisting of a Statement to Respondent, two copies of a Notice of Defense Form, and copies of Government Code Sections 11506 through 11508.

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<sup>3</sup> The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections 11370 through 11529 of the Government Code.

(Certification, Exhibit A-17.) The Accusation and accompanying information were personally served on Respondent on June 24, 2013. (Certification, Exhibit A-18 & A-19.)

The Statement to Respondent, included with the Accusation packet, notified Respondents of their rights under the APA to file a Notice of Defense with the Commission in which they could request a hearing on the merits, object to the Accusation's form or substance or to the adverse effects of complying with the Accusation, admit the Accusation in whole or in part, or to present new matter by way of a defense. The Statement further warned that, unless a Notice of Defense was filed within 15 days of service of the Accusation, they would be deemed to have waived the right to a hearing.

Respondents did not file a Notice of Defense within the statutory time period, which ended on July 15, 2013.

**D. Default Proceedings Under the Administrative Procedure Act**

The APA provides that a respondent's failure to file a Notice of Defense within 15 days after service of an Accusation constitutes a waiver of the respondent's right to a hearing. (Section 11506, subd. (c).) Moreover, when a respondent fails to file a Notice of Defense, the Commission may take action based on the respondent's express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the respondent. (Section 11520, subd. (a).)

Where a respondent has failed to timely file a Notice of Defense pursuant to Section 11506, and the Enforcement Division pursues a default judgment from the Commission pursuant to Section 11520, the Enforcement Division shall send notice, a copy of the proposed Default Decision and Order, and a copy of the proposed Exhibit in Support of a Default Decision and Order, by first class mail, to the respondents against whom the default judgment has been entered at least 15 calendar days before the Commission hearing at which the default is scheduled to be heard. (Cal. Code Regs. tit. 2, § 18361.11.)

On August 8, 2013, Commission Counsel Milad Dalju sent a letter to Respondents advising that this matter would be submitted for a Default Decision and Order at the Commission's public meeting scheduled for August 22, 2013. (Certification, Exhibit A-19.) A copy of the Default Decision and Order, and this Exhibit 1, was included with the letter.

**CONCLUSION**

This matter concerns three violations of the Act, which carry a maximum administrative penalty of \$5,000 per count, for a total maximum administrative penalty of \$15,000.

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 violation;

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.

In this matter, Respondents failed to file semiannual statements for three consecutive reporting periods. However, Respondents also failed to timely file a semiannual statement for the January 1 through June 30, 2011, reporting period, and were consequently issued a warning letter by the Enforcement Division on December 2, 2011. (Certification, Exhibit A-20.) With that, Respondents were on notice and should have been aware of their filing obligations under the Act. And, further, the public was deprived of important information about Respondent Committee's contributors and financial activities for four consecutive reporting periods. Respondents have therefore demonstrated a pattern of violating the Act.

In mitigation, however, Respondents have been inactive, the dollar amount on the last filed statement is relatively low, and Respondents initially attempted to work with the Enforcement Division to fulfill their obligations. Notwithstanding these mitigating circumstances, Respondents never fulfilled their filing obligations despite having received multiple opportunities to do so.

Recent penalties approved by the Commission concerning violations of section 84200, subdivision (a), include:

- *In the Matter of Sergio Casanova and Alhambra Firefighter's PAC* (Default), FPPC No. 10/521. This case involved three counts of violating Section 84200, subdivision (a). A penalty of \$2,500 per count was approved by the Commission on September 22, 2011. Respondent Sergio Casanova had been sent a warning letter by the Enforcement Division in the past for failing to file a semiannual statement.
- *In the Matter of Elizabeth Todd-Gallardo* (Default), FPPC No. 07/544. This case involved three counts of violating Section 84200, subdivision (a). A penalty of \$2,500 per count was approved by the Commission on May 13, 2010. Respondents had been sent a warning letter by the Enforcement Division in the past for failing to file semiannual statements.

Because Respondents' actions were similar, imposition of an administrative penalty in the amount of \$2,500 per count is recommended. This is in the mid range of possible penalties, but below the maximum penalty recommended for violations of Section 84200, subdivision (a).

### **PROPOSED PENALTY**

After consideration of the factors of Regulation 18361.5, and consideration of penalties of prior enforcement actions, the imposition of a total penalty of \$7,500 is recommended.

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