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3 **FAIR POLITICAL PRACTICES COMMISSION**
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
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12 In the Matter of) FPPC No. 12/949
13 LEAGUE OF PLACER COUNTY)
14 TAXPAYERS and MICHAEL MUSOLINO,) STIPULATION, DECISION and
TREASURER) ORDER
15 Respondents.)
16)
17)

18 Complainant, the Fair Political Practices Commission, and Respondents the League of Placer
19 County Taxpayers; Michael Musolino, Treasurer, agree that this Stipulation will be submitted for
20 consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of the Respondent, pursuant to Section 83116 of the Government Code.

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

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that League of Placer County Taxpayers and Michael
4 Musolino, Treasurer, violated the Political Reform Act by (1) failing to timely file a first second-election
5 campaign statement by October 25, 2012, for the reporting period October 1, 2012 through October 20,
6 2012, in violation of Sections 84200.5, subdivision (b), and 84200.7 of the Government Code (1 count),
7 and (2) failing to timely file a late contribution report disclosing a contribution received, in violation of
8 Sections 84203, subdivision (a) and 84605, subdivision (a)(2), of the Government Code (1 count).
9 These counts are described in Exhibit 1, which is attached hereto and incorporated by reference as
10 though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

11 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
12 Respondent also agrees to the Commission imposing upon them an administrative penalty in the amount
13 of Four Thousand Five Hundred Dollars (\$4,500). A cashier's check from Respondents in said amount,
14 made payable to the "General Fund of the State of California," is submitted with this Stipulation as full
15 payment of the administrative penalty, to be held by the State of California until the Commission issues
16 its decision and order regarding this matter. The parties agree that in the event the Commission refuses
17 to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
18 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in
19 connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and
20 agree that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
21 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
22 shall be disqualified because of prior consideration of this Stipulation.

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25 Dated: _____

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

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Dated: _____

Respondents Michael Musolino, Individually
and on behalf of League of Placer County Taxpayers

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of the League of Placer County Taxpayers
3 and Michael Musolino, Treasurer” FPPC No. 12/949, including all attached exhibits, is hereby accepted
4 as the final decision and order of the Fair Political Practices Commission, effective upon execution
5 below by the Chair.

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7 **IT IS SO ORDERED.**

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9 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Committee “League of Placer County Taxpayers” (“Committee”) qualified as a primarily formed ballot measure committee under the Political Reform Act (the “Act”).¹ The Committee filed a statement of organization on October 4, 2012. The Committee supported the election of two candidates; Bonnie Gore and Carol Garcia, and opposed a third; Phil Ozenick, all of whom were on the ballot in the City of Roseville for the November 6, 2012 election as city council candidates. All of the Committee’s expenditures were in connection with these three candidates. Carol Garcia was reelected; Bonnie Gore won a seat on the council, while Phil Ozenick was defeated. Respondent Michael Musolino was the treasurer for the Committee at all times relevant. Respondents violated the Act by failing to comply with campaign reporting provisions.

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

COUNT 1: Respondents League of Placer County Taxpayers and Michael Musolino failed to file a second pre-election campaign statement by October 25, 2012, for the reporting period October 1, 2012 through October 20, 2012, in violation of Government Code Sections 84200.5, subdivision (b), and 84200.7.

COUNT 2: Respondents League of Placer County Taxpayers and Michael Musolino failed to timely file a late contribution report disclosing the receipt of a \$10,000 contribution from the Committee for Home ownership, Sponsored by North State Building Industry Association during the late contribution reporting period before the November 6, 2012 General Election, due on or about October 27, 2012, in violation of Sections 84203, subdivision (a) and 84605, subdivision (a)(2), of the Government Code.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act, therefore, establishes a campaign reporting system designed to accomplish this purpose of disclosure.

Section 82013, subdivision (a), defines a “committee” to include any person who receives contributions totaling \$1,000 or more in a calendar year. This type of committee is commonly known as a “recipient committee.” Section 82047, subdivision (b) defines a “primarily formed committee” as a committee which is formed or exists primarily to support a single measure.

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.

Under the Act's campaign reporting system, primarily formed committees are required to file specified campaign statements and reports disclosing contributions received and expenditures made.

Duty to File Pre-election Campaign Statements

Under the Act's campaign reporting system; primarily formed committees are required to file periodic campaign statements and reports disclosing their financial activities. Section 84215, subdivision (d), in relevant part, requires all city primarily formed committees to file the committee's campaign statements with the clerk of the city.

For an election held in June or November of an even-numbered year, city primarily formed committees are required to file two pre-election campaign statements according to a specified schedule. (Sections 84200.5, subdivision (b), and 84200.7, subdivision (b).)

Respondents did not trigger filing obligations for the first pre-election campaign statement for the reporting period January 1, 2012 through September 30, 2012, as they did not raise contributions or make expenditures of \$1,000 or more in this time period, and had not yet filed a statement of organization.

Respondents failed to file the second pre-election campaign statement for the reporting period October 1, 2012 through October 20, 2012, by the October 25, 2012, due date. Thus, there was no information whatsoever regarding the funding received or expenditures made by the committee available to the public prior to the date of the election.

Duty to File Late Contribution Reports

A "late contribution" is a contribution which totals in the aggregate one thousand dollars (\$1,000) or more that is made to or received by a candidate, a controlled committee, or a committee formed or existing primarily to support or oppose a candidate or measure before an election, but after the closing date of the last campaign statement that is required to be filed before the election. (Section 82036.) Each candidate or committee that makes or receives a late contribution shall report the late contribution to each office with which the candidate or committee is required to file its next campaign statement pursuant to Section 84215 within 24 hours of making or receiving the contribution. (Section 84203.) For an election held in June or November of an even-numbered year, the late contribution period covers the last 16 days before the election. (Sections 82036, subdivision (a), and 84200.7, subdivision (b).)

Liability of Committee Treasurers

As provided in Section 84100, every committee shall have a treasurer. Under Section 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. Under Sections 83116.5 and 91006, a committee's treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee.

SUMMARY OF THE FACTS

Respondent Committee "League of Placer County Taxpayers" filed a statement of organization on October 4, 2012. No other campaign statements were filed until December 4, 2012, approximately one month after the election. The Committee supported two candidates and opposed a third, all of whom were on the ballot in the City of Roseville for the November 6, 2012 election as city council candidates. All of the Committee's expenditures were for mailers in support of Bonnie Gore and Carol Garcia and opposition of Phil Ozenick. Carol Garcia was reelected; Bonnie Gore won a seat on the council, while Phil Ozenick was defeated. Respondent Michael Musolino was the treasurer for the Committee. The committee reported a total of \$30,000 in contributions received and a total of \$29,936.48 in expenditures. This case was opened as the result of a complaint alleging the failure to file campaign statements.

COUNT 1

Failure to File a Second Pre-Election Campaign Statement

In connection with an election held on November 6, 2012, Respondents has a duty to file the second pre-election campaign statement for the reporting period October 1, 2012 through October 20, 2011, by the October 25, 2012, due date. No pre-election statements were filed prior to the election.

By failing to timely file a second pre-election statement; Respondents violated Sections 84200.5, subdivision (b), and 84200.7.

COUNT 2

Failure to Timely File Late Contribution Reports

In connection with an election held on November 6, 2012, Respondents were also required to file late contribution reports within 24 hours of receiving or making contributions of \$1,000 or more during the late reporting period, October 21, 2012 through November 5, 2012. Respondents failed to timely file one late contribution report for that election for a contribution *received* of \$1,000 or more.

In this case, Respondents received a late contribution of \$10,000 from the Committee for Home Ownership of the North State Building Industry on October 26, 2012.

By failing to disclose the late contributions in properly filed late contribution reports both on paper and electronically, Respondents violated Sections 84203, subdivision (a).

CONCLUSION

This matter consists of two counts, which carries a maximum possible administrative penalty of Five Thousand Dollars (\$5,000) per count, for a total of Ten Thousand Dollars (\$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. The Enforcement Division also considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6), which include: 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 upon learning of the violation the Respondent voluntarily filed amendment to provide full disclosure. Additionally, liability under the Act is governed in significant part by the provisions of Section 91001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

The typical administrative penalty for failing to timely file a pre-election campaign statement has been in the middle of the penalty range, depending on the circumstances.

Other similar cases regarding a failure to file pre-election statements that have been recently approved by the Commission include:

In the Matter of Brian Goldberg, FPPC No. 09/639 had a similar fact pattern; the failure to file a second pre-election campaign statement by a candidate for a local school board. Respondent cooperated fully with filing obligations. The commission approved settlement of this case, with a \$2,500 penalty for this violation, on October 14, 2010.

In the Matter of Alvina Sheeley and Alvina Sheeley for Election F-SUSD Governing Board 2011, FPPC No. 11/1124, had a similar fact pattern; both of the required pre-election statements were not filed until after the election. The commission approved settlement of this case in August 16, 2012, and the agreed upon penalty for each of these violations was \$2,500 per count.

The typical administrative penalty for failing to timely file a late contribution reports has been in the middle of the penalty range, depending on the circumstances.

Another similar case regarding a failure to file a late contribution report for a contribution received that has been recently approved by the Commission includes:

In the Matter of the Monterey County Republican Central Committee and Chris Steinbruner, FPPC No. 08/761. In this matter, Respondents Monterey County Republican Central Committee and Chris Steinbruner failed to timely file late contribution reports disclosing a contribution received in the amount of \$20,000, in violation of Sections 84203, subdivision (a) and 84605, subdivision (a)(2), of the Government Code. A \$2,000 penalty for this count was approved by the Commission on October 13, 2011.

The public harm inherent in this type of violation, where pertinent information is not disclosed by the committee, is that the public is deprived of a means to discover the identity of

contributors, the amounts contributed, and the nature of the committee's campaign expenses. In this case, Respondents failed to timely file required campaign reports, which were due before the election. Respondents' violations of the Act were deliberate at worst and negligent at best. Respondents have no prior enforcement history.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the Respondent's pattern of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Two Thousand Five Hundred Dollars (\$2,500) for Count One, and Two Thousand Dollars (\$2,000) for Count Two, for a total of Four Thousand Five Hundred Dollars (\$4,500) is recommended.

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