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3 **FAIR POLITICAL PRACTICES COMMISSION**
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10

11
12 In the Matter of) FPPC No. 12/965
13)
14) STIPULATION, DECISION and
15 FRIENDS OF ROSALINDA AVITIA FOR)
TULARE LOCAL HEALTHCARE DISTRICT)
16 AREA 2 DIRECTOR, ROSALINDA AVITIA,)
and ROBERT MONTION, TREASURER,)
Respondents.)

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18 Complainant, the Fair Political Practices Commission, and respondents Friends of Rosalinda
19 Avitia for Tulare Local Healthcare District Area 2 Director, Rosalinda Avitia, and Robert Montion
20 (collectively "Respondents") agree that this Stipulation will be submitted for consideration by the Fair
21 Political Practices Commission at its next 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 twelve contributions of \$100 or more, totaling \$2,600, received during the July 1
6 through September 30, 2012, and the October 1 through October 20, 2012, reporting periods, in
7 violation of Government Code sections 84211, subdivision (a), (c), (e), and (f) (2 counts). All counts are
8 described in Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth
9 herein. Exhibit 1 is a true and accurate summary of 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 \$3,500. 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 Chief of Enforcement, 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 Rosalinda Avitia, Respondent,
22 Individually and on behalf of
23 Friends of Rosalinda Avitia for Tulare Local Healthcare District
24 Area 2 Director

25 Dated: _____
26 Robert Montion, Respondent,
27 Individually and on behalf of
28 Friends of Rosalinda Avitia for Tulare Local Healthcare District
Area 2 Director

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Friends of Rosalinda Avitia for Tulare
3 Local Healthcare District Area 2 Director, Rosalinda Avitia, and Robert Montion, Treasurer” FPPC No.
4 12/965, including all attached exhibits, is hereby accepted as the final decision and order of the Fair
5 Political Practices Commission, effective upon execution below by the Chair.

6
7 IT IS SO ORDERED.

8
9 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Rosalinda Avitia (“Respondent Avitia”) was a successful candidate for the Tulare Regional Medical Center Board of Directors (the “Board”) in the November 6, 2012, general election, and Respondent Friends of Rosalinda Avitia for Tulare Local Healthcare District Area 2 Director (“Respondent Committee”) was her candidate controlled committee. Respondent Robert Montion (“Respondent Montion”) was Respondent Committee’s treasurer at all relevant times.

This matter arose out of a sworn complaint submitted to the Fair Political Practices Commission’s (the “Commission”) Enforcement Division (“Enforcement Division”) alleging Respondent Avitia, Respondent Committee and Respondent Montion (collectively “Respondents”) failed to properly disclose contributions Respondent Committee received. The ensuing investigation by the Enforcement Division revealed that Respondents failed to report \$2,600 in contributions received by Respondent Committee, in violation of 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 Rosalinda Avitia, Friends of Rosalinda Avitia for Tulare Local Healthcare District Area 2 Director, and Robert Montion failed to report nine contributions of \$100 or more, totaling \$2,200, received between July 1 and September 30, 2012, by the October 5, 2012, deadline, in violation of Government Code section 84211, subdivisions (a), (c), (e), and (f).

COUNT 2: Respondents Rosalinda Avitia, Friends of Rosalinda Avitia for Tulare Local Healthcare District Area 2 Director, and Robert Montion failed to report three contributions of \$100 or more, totaling \$400, received between October 1 and October 20, 2012, by the October 25, 2012, deadline, 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 violation.

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.

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.

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 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 preelection statements before an election and two semiannual statements each year. (Section 84200.5.)

For the period ending September 30, a preelection statement must be filed no later than October 5.² (Section 84200.7, subd. (b)(1).) Subsequently, another preelection statement for the reporting period ending 17 days before the November election must be filed no later than 12 days before the election. (Section 84200.7, subd. (b)(2).)

Required Reporting of Contributions Received

Section 84211, subdivisions (a), (c), and (e), 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 \$100 or more, and; (3) the balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement.

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, subs. (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.

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.

Treasurer and Candidate Liability

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

SUMMARY OF THE FACTS

On October 9, 2012, Respondents filed a campaign statement for the July 1 through September 30, 2012, reporting period, but failed to include nine contributions of \$100 or more, totaling \$2,200, that Respondent Committee received during that reporting period. Respondents did not report four of those contributions, totaling \$1,600, until January 31, 2013, after Respondent Avitia won the pertinent election and took office. Respondents did not report the remaining five contributions, totaling \$600, until August 2013.

On October 25, 2012, Respondent filed a campaign statement for the October 1 through October 20, 2012, reporting period, but failed to include three contributions of \$100 or more, totaling \$400, that Respondent Committee received during that reporting period. Respondents did not report those three contributions until January 31, 2013, after Respondent Avitia won the pertinent election and took office.

As of December 31, 2012, Respondent Committee received a total of \$6,647.99 in contributions and made a total of \$5,938.09 in expenditures. Of the total contributions received, \$3,796 was received in contributions of \$100 or more, and \$3,400 in contributions of \$100 or more were required to be reported prior to the pertinent election. Of the \$3,600 in contributions of \$100 or more that were required to be reported prior to the election, twelve contributions of \$100 or more, totaling \$2,600, were not reported until after the pertinent election.

Accordingly, Respondents committed the following violation of the Act:

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

Respondents failed to report nine contributions of \$100 or more, totaling \$2,200, received between July 1 and September 30, 2012, by the October 5, 2012, deadline, in violation of Government Code section 84211, subdivisions (a), (c), (e), and (f).

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

Respondents failed to report three monetary contributions of \$100 or more, totaling \$400, received between October 1 and October 20, 2012, by the October 25, 2012, deadline, 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 is a serious violation of the Act because it deprives the public of important information about a candidate's contributors and financial activities. In this matter, Respondents failed to timely report twelve contributions received by Respondent Committee. Additionally all twelve contributions were required to be reported prior to the election, but Respondents did not report any of them until after Respondent Avitia won the pertinent election and took office. Also, the contributions accounted for approximately 77% total amount of contributions of \$100 or more that Respondents were required to report prior to the pertinent election.

However, Respondents have no history of violating the Act, cooperated in the Enforcement Division's investigation, and agreed to an early settlement of this matter. Additionally, Respondents' campaign involved a relatively low amount of money, this was Respondent Avitia's first time running for public office, and Respondent Montion is not a professional treasurer.

Recent fines imposed on a local committee for failing to report contributions on a campaign statement include:

In the Matter of Colton Police Officers PAC, FPPC No 10/1062: In December 2012, the Commission imposed a \$2,500 penalty on a city general purpose committee for failing to timely report contributions of \$100 or more, totaling approximately \$25,000, on a preelection statement. The respondents had no history of violating the Act, cooperated in the Enforcement Division's investigation, and agreed to an early settlement of the matter.

In the Matter of Fernando Vasquez, Vasquez for Downey Council 2010, and Jane Leiderman, Treasurer, FPPC No. 11/057: In March 2012, the Commission fined a successful local candidate, his committee, and his professional treasurer \$2,000 per count for failing to timely report contributions, totaling approximately \$1,600 and \$6,096, on two preelection statements. The respondents cooperated with the Enforcement Division's investigation and agreed to an early settlement of the matter.

Based on the aforementioned facts, imposition of an administrative penalty in the amount of \$2,000 for Count 1 and \$1,500 for Count 2 is recommended. These are in the mid-range of penalties recommended for violations of Section 84211. The recommended fine for Count 2 is lower than the recommended fine for Count 1 because the total amount of contributions not timely reported in Count 2 was significantly lower than in Count 1 and the aforementioned comparables.

PROPOSED PENALTY

Accordingly, the imposition of a total administrative penalty of \$3,500 is recommended.