

1 GARY S. WINUK
Chief of Enforcement
2 DAVE BAINBRIDGE
Senior Commission Counsel
3 Fair Political Practices Commission
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant

7
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**

10
11 In the Matter of:

12 **JOE YEE, FRIENDS OF JOE YEE FOR**
13 **CITY COUNCIL 2012, and LYNDA**
14 **OTTO**

15 Respondents.

FPPC No. 12/820

16 **STIPULATION, DECISION, AND ORDER**

17 **STIPULATION**

18 Complainant, the Fair Political Practices Commission (Commission), and respondents Joe Yee,
19 Friends of Joe Yee for City Council 2012, and Lynda Otto (Respondents) hereby 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 by this
23 matter and to reach a final disposition without the necessity of holding an additional administrative
24 hearing to determine the liability of Respondents.

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

1 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
2 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
3 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 disclose contributions received in violation of Government Code section 84211, subdivisions
6 (a), (c), and (f), and failing to timely disclose the occupation and employer for contributors who made
7 cumulative contributions of \$100 or more in violation of Government Code section 84211, subdivision
8 (f), all as described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference as though
9 fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

10 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
11 Respondents also agree to the Commission imposing an administrative penalty in the total amount of
12 Seven Thousand Dollars (\$7,000). Respondents submitted with this Stipulation a cashier's check from
13 Respondents in said amount, made payable to the "General Fund of the State of California," as full
14 payment of the administrative penalty that shall be held by the State of California until the Commission
15 issues its Decision and Order regarding this matter. The parties agree that in the event the Commission
16 refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days
17 after the Commission meeting at which the Stipulation is rejected, all payments tendered by
18 Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents
19 further stipulate and agree that in the event the Commission rejects the Stipulation, and a full evidentiary
20 hearing before the Commission becomes necessary, neither any member of the Commission, nor the
21 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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25 Dated: _____

Gary S. Winuk, on behalf of the Enforcement Division
Fair Political Practices Commission

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Dated: _____
Joe Yee, individually, and on behalf of Friends of Joe
Yee for City Council 2012

Dated: _____
Lynda Otto, individually

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Joe Yee, Friends of Joe Yee for City
3 Council 2012, and Lynda Otto,” FPPC No. 12/820, including all attached exhibits, is hereby accepted as
4 the final decision and order of the Fair Political Practices Commission, effective upon execution below
5 by the Chair.

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7 IT IS SO ORDERED.

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9 Dated: _____

10 Sean Eskovitz, Vice Chair
11 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent Joe Yee (“Respondent Yee”) ran for a seat on the Sacramento City Council in 2012. Respondent Friends of Joe Yee for City Council 2012 (“Respondent Committee”) was his candidate-controlled recipient committee. Respondent Lynda Otto (“Respondent Otto”) was the treasurer for Respondent Committee.

The Political Reform Act (the “Act”)¹ requires candidates and committees to disclose all contributions received, including in kind contributions, on campaign statements. Candidates and committees also must disclose occupation and employer information for all individuals who contribute \$100 or more to their campaign.

Respondents violated the Act by failing to timely disclose receipt of in kind contributions in the form of reduced rent on commercial property, and failing to timely disclose contributor occupation and employer information for 60 contributors who made contributions of \$100 or more.

For purposes of this Stipulation, the proposed violations of the Act are as follows:

- COUNT 1: Respondents failed to timely disclose on Respondent Committee’s pre-election campaign statement for the July 1, 2012 through September 30, 2012 reporting period in kind contributions in the form of reduced rent for their campaign headquarters in violation of Section 84211, subdivisions (a), (c) and (f).
- COUNT 2: Respondents failed to timely disclose on Respondent Committee’s semi-annual campaign statement for the October 1, 2012 through December 31, 2012 reporting period in kind contributions in the form of reduced rent for their campaign headquarters in violation of Section 84211, subdivisions (a), (c) and (f).
- COUNT 3: Respondents failed to timely disclose on Respondent Committee’s campaign statements the occupation and employer for 23 contributors who made cumulative contributions of \$100 or more before the 2012 Primary Election in violation of Section 84211, subdivision (f).
- COUNT 4: Respondents failed to timely disclose on Respondent Committee’s campaign statements the occupation and employer for 37 contributors who

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.

made cumulative contributions of \$100 or more before the General Election in violation of Section 84211, subdivision (f).

SUMMARY OF THE LAW

Disclosing Campaign Contributions and Contributors

Candidates and committees are required to file semi-annual campaign statements by July 31 for the January 1 through June 30 reporting period, and January 31 for the July 1 through December 31 reporting period. (Section 84200.) Candidates and committees also must file two pre-election campaign statements before the primary and general elections. (Section 84200.5)

Candidates and committees must provide information regarding the amounts and sources of campaign contributions and expenditures on campaign statements. Specifically, Section 84211, subdivision (a) requires candidates and committees to disclose the total amount of contributions received during the period covered by the statement. A “contribution” includes any goods or services discounted from fair market value, unless the discount is given in the regular course of business to the public. (Regulation 18215(b)(3).) Such contributions are known as “in kind” contributions. Free or reduced rent on real property is one form of an in kind contribution that a candidate and committee must disclose as a contribution on campaign statements. Section 84211, subdivision (c) requires candidates and committees to disclose the total amount of contributions received from persons who have given \$100 or more during the period covered by the statement.

Further, for persons who contributed \$100 or more in a single election, Section 84211, subdivision (f) requires candidates and committees to disclose the name, address, occupation, employer name, date of contribution, amount of contribution, and cumulative amount of contributions on the committee’s campaign statement. If a candidate or committee does not have on file the name, address, occupation, and employer of a contributor as required by Section 84211, subdivision (f), it must return the contribution within 60 days of receipt. (Section 85700.) If a candidate or committee obtains a contributor’s occupation and employer information after the campaign statement is filed, Regulation §18570, subdivision (e) requires the candidate or committee to amend the campaign statement on which the contribution was reported within 70 days of the closing date of the reporting period.

Treasurer Liability

Section 84100 provides that 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 and the candidate, for any reporting violations committed by the committee.

SUMMARY OF THE FACTS

Respondent Yee ran for a councilmember position on the Sacramento City Council in 2012. He qualified for the General Election in the Primary Election but lost in the General Election by 173 votes, or 0.76%.

Unreported Contributions – Reduced Rent

Respondent Committee rented a commercial property at 1809 S Street, #99 in Sacramento (the “Property”) from August 1, 2012 through November 15, 2012 to use as a campaign headquarters. The Property is in a commercial development that includes a grocery store, restaurants, and various other shops. The Property is owned by Roseville Investment Company, LLC (“Roseville”), an entity owned and controlled by Petrovich Development Company (“Petrovich”).² Petrovich developed the Property and now manages it.

Respondent Committee’s pre-election campaign statements for the July 1, 2012 through September 30, 2012 reporting period, and October 1, 2012 through October 20, 2012, did not reflect any payment of rent for the Property by Respondents. Nor did the statements indicate rent for the Property was an accrued expense of Respondent Committee, or that Respondents received the use of the Property as a contribution. Respondents’ possession and use of the Property was not reflected at all on the two pre-election campaign statements.

On October 29, 2012, the Enforcement Division of the Fair Political Practices Commission (“Commission”) received a complaint alleging Respondents violated the Act by failing to either (a) disclose payment of rent for the Property as a campaign expenditure; or (b) report the use of the Property as an in kind contribution on its pre-election campaign statements. On October 30, 2012, the Enforcement Division sent a letter, along with a copy of the complaint, to Respondent Yee indicating it had received the complaint and offering him an opportunity to respond. Respondent Yee replied in a letter from his attorney dated November 8, 2012 that he had agreed to pay \$400 per month to rent the Property from August 1 through November 15. He provided a copy of an invoice from Roseville dated November 2, 2012 indicating that Respondents owed \$1,400. He also provided a copy of a check dated November 2, 2012 drawn from Respondent Committee’s bank account and paid to Roseville in the amount of \$1,400. Roseville/Petrovich provided the invoice to Respondent Committee upon Respondent Yee’s request after he received notice from the Enforcement Division of the complaint filed against him.

Enforcement Division staff determined that the fair market value of the Property at the time Respondent Committee rented it was approximately \$1,000 per month based on information provided by Roseville/Petrovich during the investigation in this case. Respondents rented the Property for \$400 per month. The difference between the fair market value, as determined by the Enforcement Division, and the rental rate resulted in in kind contributions of \$600 per month by

² Roseville Investment Company, LLC was created by Petrovich to hold title to the Property. Persons acting on behalf of Roseville Investment Company, LLC are employees of Petrovich and for practical purposes there is no distinction between the two entities.

Roseville/Petrovich to Respondent Committee. The parties' written lease does not specify when the rent was due so the law presumes it came due at the end of each month. That means Respondents received \$1,200 in contributions for the reduced rent from Roseville/Petrovic for the July 1 through September 30 reporting period, and \$900 in contributions for the October 21 through December 31 reporting period.

In total, Respondents disclosed receiving \$120,751.74 in contributions for the General Election. By providing Respondents with rental space \$600 per month below fair market value, Roseville/Petrovic made the equivalent of \$2,100 in contributions to Respondents for the General Election that Respondents did not disclose. These undisclosed contributions equated to approximately 2% of Respondents contributions for the General Election. The City of Sacramento has a campaign contribution limit for City Council elections of \$1,500 per election.

As a condition of resolving this case, Respondents filed amended pre-election and semi-annual campaign statements that disclose receipt of the in kind contributions from Roseville/Petrovich.

Occupation and Employer Information

Respondents campaign statements for 2012 failed to timely disclose the occupation and employer for 60 contributors who made cumulative contributions of \$100. For each of these contributions, Respondents' campaign statements indicated that the occupation and/or employer information was "unknown." For eight of those persons, Respondent Committee had the occupation and employer information in its files but failed to disclose the information on a campaign statement.

The table below details the number of persons who made cumulative contributions of \$100 or more for which Respondents did not provide occupation and employer information as compared to the total number of contributions and total amount of campaign contributions for each campaign statement reporting period:

| Filing Period | Type of Statement | Contributions of \$100 or more w/out Occupation and Employer Information | Total Amount of Contributions w/out Occupation and Employer Information | Total Contributions of \$100 or more | Total amount of Contributions of \$100 or more |
|-----------------------|--------------------------|---|--|---|---|
| 1/1/2012 – 3/17/2012 | Pre-election | 5 | \$2,175 | 61 | \$21,224 |
| 3/18/2012 – 5/19/2012 | Pre-election | 15 | \$3,300 | 96 | \$30,425 |
| 5/20/2012 – 6/30/2012 | Semi-annual | 3 | \$1,250 | 25 | \$8,200 |
| 7/1/2012 – 9/30/2012 | Pre-election | 11 | \$1,350 | 120 | \$57,749 |

| | | | | | |
|----------------------------|------------------|-----------|-----------------|------------|------------------|
| 10/1/2012 – 10/20/2012 | Pre- election | 18 | \$2,350 | 98 | \$27,259 |
| 10/21/2012 – 12/31/2012 | Semi- annual | 8 | \$1,100 | 33 | \$22,150 |
| Total: | | 60 | \$11,525 | 433 | \$167,007 |

As a condition of resolving this case, Respondents filed amended campaign statements providing the occupation and employer information they failed to disclose previously.

COUNT 1

Failure to Timely Disclose In Kind Contributions

Respondents failed to timely disclose on Respondent Committee’s pre-election campaign statement for the July 1, 2012 through September 30, 2012 reporting period in kind contributions totaling \$1,200 in the form of reduced rent during the campaign in violation of Section 84211, subdivisions (a), (c) and (f).

COUNT 2

Failure to Timely Disclose In Kind Contributions

Respondents failed to timely disclose on Respondent Committee’s semi-annual campaign statement for the October 21, 2012 through December 31, 2012 reporting period in kind contributions totaling \$900 in the form of reduced rent during the campaign in violation of Section 84211, subdivisions (a), (c) and (f).

COUNT 3

Failure to Timely Disclose Occupation and Employer Information

Respondents failed to timely disclose on Respondent Committee’s campaign statements the occupation and employer for 23 contributors who made cumulative contributions of \$100 or more before the 2012 Primary Election in violation of Section 84211, subdivision (f).

COUNT 4

Failure to Timely Disclose Occupation and Employer Information

Respondents failed to timely disclose on Respondent Committee’s campaign statements the occupation and employer for 37 contributors who made cumulative contributions of \$100 or more before the General Election in violation of Section 84211, subdivision (f).

CONCLUSION

This matter consists of four counts of violating the Act, which carries a maximum administrative penalty of five thousand dollars (\$5,000) per count for a total penalty of \$20,000.

In determining the appropriate penalty for a particular violation of the Act, the Commission 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 Commission considers the facts and circumstances of the violation in the 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 conceal, deceive or mislead; whether the violation was deliberate, negligent, or inadvertent; whether the Respondents demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

Comparable Cases for Counts 1 and 2:

Recent similar cases where the respondents failed to disclose contributions received on campaign statements include:

- *In the Matter of Fernando Vasquez, Vasquez for Downey Council 2010, and Jane Leiderman*, FPPC No. 11/057. Respondents failed to timely disclose campaign contributions received over two campaign reporting periods. On their first pre-election statement they failed to disclose eight contributions totaling \$1,600. On their second pre-election they failed to timely disclose nine contributions totaling \$6,096. On March 15, 2012, the Commission approved a stipulation in which respondents admitted to two counts for failure to report contributions and agreed to pay a penalty of \$2,000 per count.
- *In the Matter of Rosalinda Avitia, Friends of Rosalinda Avitia for Tulare Local Healthcare District Area 2 Director, and Robert Montion*, FPPC No. 12/965. Respondents failed to timely disclose campaign contributions over two campaign reporting periods. On their first pre-election statement, they failed to timely disclose nine contributions totaling \$2,200. On their second pre-election statement, they failed to timely disclose three contributions totaling \$400. The contributions that were not timely reported represented approximately 39% of all contributions respondents received during the campaign. On September 19, 2013, the Commission approved a stipulation in which respondents admitted to two counts for failure to report contributions and agreed to pay a penalty of \$2,000 for the first count (first pre-election statement) and \$1,500 for the second count (second pre-election statement).

The total amounts of the undisclosed contributions in the comparable cases above are similar to the amount in Respondents' case. While the undisclosed contributions from Roseville/Petrovich were only about 2% of the total amount of contributions received by Respondents prior to the General Election, the contributions from Roseville/Petrovich did exceed local campaign contribution limits.

Comparable Cases for Counts 3 and 4 :

Recent similar cases where the respondents failed to include the occupation and employer for contributors on their campaigns reports include:

- *In the Matter of Mike Briggs, Briggs for Assembly, and Sharon Nisbett*, FPPC No. 05/771. Respondents failed to provide occupation and employer information for 17 persons who contributed \$100 or more, over four reporting periods. These contributions totaled \$5,450, which was approximately 5% of the total contributions

received by the committee. On December 10, 2009, the Commission approved a default judgment and order with four counts of violating Section 84211, subdivision (f) and with a fine of \$2,000 per count for a total fine of \$8,000.

- *In the Matter of Mike Stoker, Stoker for Assembly 2010, and Trent Benedetti*, FPPC 12/090. Respondents failed to timely disclose the occupation and employer information for persons who contributed \$100 or more on a total of 23 contributions over four reporting periods. The total amount of these contributions was \$4,783, which was approximately 1% of the total amount of all contributions received by the committee. On December 13, 2012, the Commission approved a stipulation in which respondents admitted to two counts for failure to timely report occupation and employer information and agreed to pay a penalty of \$1,000 per count.

Respondents failed to disclose occupation and employer information for 60 contributions that totaled \$11,525. Respondents reported receiving \$189,866.74 in total contributions in 2012, of which \$167,007 came from cumulative contributions of \$100 or more. That means Respondents did not properly disclose the occupation and/or employer information on approximately 6% of the total amount of contributions received by Respondent Committee, and 7% of the total amount of cumulative contributions of \$100 or more. The total amount of the contributions not adequately disclosed by Respondents is more than twice the amount than either of the comparable cases. Also, the amount of the inadequately disclosed contributions as a percentage of the total contributions is significantly higher than the *In the Matter of Mike Stoker, et. al.* case but similar to the percentage in *In the Matter of Mike Briggs, et. al.* However, *In the Matter of Mike Briggs, et. al.* was a default decision, which justifies a higher fine because the respondents did not agree to a settlement.

Overall, Respondents' violations denied the public important information about the source of campaign contributions. The contributions by Roseville/Petrovich, a local developer, could have been relevant to voters prior to the election. Similarly, the occupation and employer of various contributors could have influenced the decision of voters. But Respondents did not make that information available to the public until after the election. In mitigation, Respondents agreed to enter into this stipulation and to pay the proposed penalty prior to the initiation of an administrative proceeding. Also, Respondents' failure to disclose the employer and occupation of contributors were largely the result of inexperience and were not motivated by an intent to deceive or withhold information from voters.

PROPOSED PENALTY

After considering the factors listed in Regulation §18361.5, prior penalties for similar violations, and other relevant factors, the recommended penalty is \$2,000 per count for Counts 1 and 2, and \$1,500 per count for Counts 3 and 4. The total recommended penalty is \$7,000.

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