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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

12 AMY BUBLAK, AMY BUBLAK FOR
13 CITY COUNCIL, and MILTON
RICHARDS,

14 Respondents.

FPPC No. 08/814

STIPULATION, DECISION AND ORDER

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16 **STIPULATION**

17 Complainant, the Fair Political Practices Commission, and Respondents Amy Bublak, Amy
18 Bublak for City Council, and Milton Richards, hereby agree that this Stipulation will be submitted for
19 consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

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

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

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

3 As described in Exhibit 1, it is further stipulated and agreed that Respondents committed two
4 violations of the Political Reform Act. Exhibit 1, which is attached hereto and incorporated by reference
5 as though fully set forth herein, is a true and accurate summary of the facts in this matter.

6 Respondents agree to the issuance of the Decision and Order, which is attached hereto. Also,
7 Respondents agree to the Commission imposing upon them an administrative penalty in the amount of
8 \$4,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General
9 Fund of the State of California—is/are submitted with this Stipulation as full payment of the
10 administrative penalty described above, and same shall be held by the State of California until the
11 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the
12 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)
13 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered
14 by Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents
15 further stipulate and agree that in the event the Commission rejects the Stipulation and a full evidentiary

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1 hearing before the Commission becomes necessary, neither any member of the Commission, nor the
2 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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5 Dated: _____

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

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8 Dated: _____

9 Amy Bublak, individually and on behalf of Amy Bublak
10 for City Council, Respondents

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12 Dated: _____

13 Milton Richards, Respondent

14 **DECISION AND ORDER**

15 The foregoing Stipulation of the parties “In the Matter of Amy Bublak, Amy Bublak for City
16 Council, and Milton Richards,” FPPC No. 08/814, including all attached exhibits, is hereby accepted as
17 the final decision and order of the Fair Political Practices Commission, effective upon execution below
18 by the Chair.

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20 IT IS SO ORDERED.

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22 Dated: _____

23 Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

In 2008, Respondent Amy Bublak was a non-incumbent candidate for the Turlock City Council. She won one of two seats that were up for election that year. Respondent Amy Bublak for City Council was her candidate controlled committee, and Respondent Milton Richards was the committee treasurer (as well as the husband of Respondent Amy Bublak).

This case arises from two administrative violations of the Political Reform Act (the “Act”)¹, which were carried out by the Respondents in 2008.²

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

Count 1: On or about August 12, 2008, Respondent Amy Bublak for City Council made a payment to Fogliani Strategies, a campaign consulting business owned by Carl Fogliani, in the amount of \$1,000. Respondents Amy Bublak, Amy Bublak for City Council, and Milton Richards were required to report this expenditure on a pre-election campaign statement for the period ending September 30, 2008. The required campaign statement was filed on or about October 6, 2008, but the foregoing payment was not disclosed. In this way, Respondents Amy Bublak, Amy Bublak for City Council, and Milton Richards violated the expenditure reporting requirements of Section 84211, subdivisions (b), (i), and (k).

Count 2: Between approximately July 1 and December 31, 2008, Carl Fogliani made four expenditures to subvendors on behalf of Respondents Amy Bublak and Amy Bublak for City Council, which totaled approximately \$23,518. Each expenditure was made by Mr. Fogliani in his capacity as agent and campaign consultant for Respondents Amy Bublak and Amy Bublak for City Council, and each expenditure was more than \$500. Respondents Amy Bublak, Amy Bublak for

¹ The 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 (“FPPC”) 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.

² In addition to the counts that are set forth in this stipulation, this case involved concealment of the source of a series of political robocalls. However, Respondents Amy Bublak, Amy Bublak for City Council, and Milton Richards are not being charged in connection with these robocalls because Respondent Amy Bublak maintains that she instructed her campaign consultant, Carl Fogliani, not to do robocalls, and Respondents have agreed to pay a fine and settle as to other counts, which are set forth in this stipulation. There will be no further prosecution of Respondents Amy Bublak, Amy Bublak for City Council, and Milton Richards regarding the robocalls.

City Council, and Milton Richards were required to report subvendor information for these expenditures on campaign statements for the periods ending September 30, October 18, and/or December 31, 2008. The required campaign statements were filed on or about October 6, 2008, October 23, 2008, and February 2, 2009, respectively, but the required subvendor information was not disclosed. In this way, Respondents Amy Bublak, Amy Bublak for City Council, and Milton Richards violated the subvendor reporting requirements of Sections 84211, subdivision (k), and 84303.

SUMMARY OF THE LAW

All legal references and discussions of law pertain to the Act's provisions as they existed in 2008 at the time of the violations described above.

Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the Political Reform 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 promote transparency by ensuring 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).) Along these lines, the Act includes a comprehensive campaign reporting system. (Sections 84200, et seq.)

Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced." (Section 81002, subd. (f).)

Definition of Controlled Committee

Section 82013, subdivision (a), defines a "committee" to include any person or combination of persons who receives contributions totaling \$1,000 or more in a calendar year. This type of committee commonly is referred to as a "recipient committee." Under Section 82016, a recipient committee that is controlled directly or indirectly by a candidate, or which acts jointly with a candidate in connection with the making of expenditures, is a "controlled committee." 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 or decisions of the committee. (Section 82016, subd. (a).)

Required Filing of Campaign Statements

At the core of the Act's campaign reporting system is the requirement set forth in Sections 84200, et seq. that committees, including candidate controlled committees, must file campaign statements and reports for certain reporting periods and by certain deadlines.

Required Reporting of Contributions, Expenditures and Subvendor Information

Campaign statements must include information about the making of contributions and expenditures, including information about payments to subvendors.

In this regard, Section 84211, subdivision (b), requires reporting of “[t]he total amount of expenditures [including contributions] made during the period covered by the campaign statement and the total cumulative amount of expenditures made.” Also, Section 84211, subdivision (i), requires reporting of the total amount of expenditures (including contributions) made during the period covered by the campaign statement to persons who have received \$100 or more. Additionally, Section 84211, subdivision (k), requires that certain identifying information be provided for each person to whom an expenditure of \$100 or more has been made during the period covered by the campaign statement, including the following: (1) the person’s full name; (2) his or her street address; (3) the amount of each expenditure; (4) a brief description of the consideration for which each expenditure was made; and (5) in the case of an expenditure which is a contribution to a candidate, elected officer, or committee, the date of the contribution, the cumulative amount of contributions made to that recipient, the full name of the recipient, and the office and district/jurisdiction for which he or she seeks nomination or election.

Also, no expenditure of \$500 or more may be made (other than for overhead or normal operating expenses) by an agent or independent contractor on behalf of, or for the benefit of, any candidate or committee unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee. (Section 84303.) This type of information commonly is referred to as “subvendor information.” Specifically, the following subvendor information must be reported: (1) the subvendor’s full name; (2) his or her street address; (3) the amount of each expenditure; and (4) a brief description of the consideration for which each expenditure was made. (Section 84211, subs. (k)(1)-(4) and (6).)

Treasurer Liability

Under Sections 81004, 84100, 84213, and Regulation 18427, it is the duty of a candidate *and* the treasurer of his or her controlled committee to ensure that the committee complies with the Act.

Joint and Several Liability

If two or more persons are responsible for any violation of the Act, they are jointly and severally liable. (Section 91006.) For example, if a candidate and her treasurer are responsible for a violation of the Act, they are jointly and severally liable for the violation, along with the committee.

SUMMARY OF THE FACTS

As stated above, in 2008, Respondent Amy Bublak was a non-incumbent candidate for the Turlock City Council. She won one of two seats that were up for election that year.

Respondent Amy Bublak for City Council was her candidate controlled committee, and Respondent Milton Richards was the committee treasurer (as well as the husband of Respondent Amy Bublak).

Count 1

Failure to Report Payment to Fogliani Strategies

On or about August 12, 2008, Respondent Amy Bublak for City Council made a payment to Fogliani Strategies, a campaign consulting business owned by Carl Fogliani, in the amount of \$1,000.

Respondents Amy Bublak, Amy Bublak for City Council, and Milton Richards were required to report this expenditure on a pre-election campaign statement for the period ending September 30, 2008. The required campaign statement was filed on or about October 6, 2008, but the foregoing payment to Mr. Fogliani was not disclosed.

In this way, Respondents Amy Bublak, Amy Bublak for City Council, and Milton Richards violated the expenditure reporting requirements of Section 84211, subdivisions (b), (i), and (k).

Count 2

Failure to Report Required Subvendor Information

Between approximately July 1 and December 31, 2008, Carl Fogliani made four expenditures to subvendors on behalf of Respondents Amy Bublak and Amy Bublak for City Council, which totaled approximately \$23,518. Each expenditure was made by Mr. Fogliani in his capacity as agent and campaign consultant for Respondents Amy Bublak and Amy Bublak for City Council, and each expenditure was more than \$500. The expenditures are itemized in the following chart:

Invoice Date	RE:	Listed Subvendor	Amount
8/11/08	4 by 8 Signs and yard signs	PrimeSigns	\$4,358.33
9/25/08	Ground	Ty Apolinar	\$2,600.00
10/14/08	Mailer	Tony Sicliani	\$6,884.31
11/1/08	Final Mailer	Tony Sicliani	\$9,675.38
Total:			\$23,518.02

Respondents Amy Bublak, Amy Bublak for City Council, and Milton Richards were required to report subvendor information for these expenditures on campaign statements for the periods ending September 30, October 18, and/or December 31, 2008. The required campaign statements were filed on or about October 6, 2008, October 23, 2008, and February 2, 2009, respectively, but the required subvendor information was not disclosed.

In this way, Respondents Amy Bublak, Amy Bublak for City Council, and Milton Richards violated the subvendor reporting requirements of Sections 84211, subdivision (k), and 84303.

CONCLUSION

This matter consists of two counts. The maximum penalty that may be imposed per count is \$5,000. Thus, the maximum penalty that may be imposed is \$10,000. (See Section 83116, subd. (c).)

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 the context of the following factors set forth in Regulation 18361.5, subdivision (d)(1) through (6):

- (1) The seriousness of the violation;
- (2) The presence or absence of any intention to conceal, deceive or mislead;
- (3) Whether the violation was deliberate, negligent or inadvertent;
- (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);
- (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
- (6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Regarding Count 1, the public harm inherent in campaign reporting violations is that the public is deprived of important information such as the amounts expended by the campaign, the identities of the recipients of such expenditures, and the reasons for such expenditures. A recent stipulation involving the expenditure reporting requirements of Section 84211 imposed a penalty in the mid-range. (See *In the Matter of Kathleen DeRosa and Committee to Elect Kathleen DeRosa for Mayor*, FPPC No 12/867, approved Apr. 17, 2014 [\$2,500 penalty imposed for failure to report expenditures and accrued expenses].)

In this case, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$2,000 for Count 1 is justified. A higher penalty is not being sought because Respondents do not have a history of violating the Act. Also, the unreported payment was in the

relatively small amount of \$1,000, which comprised less than three percent of reported expenditures for Respondent Amy Bublak for City Council that year. Additionally, many other payments to Fogliani Strategies were properly reported that year.

Regarding Count 2, a recent stipulation involving failure to report required information about payments to subvendors imposed a penalty in the mid-range. (See *In the Matter of Brown for Governor 2010 - Sponsored by the San Diego and Imperial Counties Labor Council: El Cambio Empieza El Martes to Support Jerry and Xavier Martinez*, FPPC No. 13/87, approved Apr. 17, 2014 [\$2,000 penalty for failure to disclose subvendor information].)

In this case, the amount of unreported payments to subvendors was significant, comprising approximately 66% of reported expenditures for the year.

Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$2,000 for Count 2 is justified. A higher penalty is not being sought because Respondents do not have a history of violating the Act.

PROPOSED PENALTY

Based on the facts of this case, including the factors discussed above, an agreed upon penalty of \$4,000 is recommended.

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