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7
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**
10

11 In the Matter of:

FPPC No. 14/109

12
13 John R. Munn, Jr., Munn for Assembly
2012, and Manuel A. Carbahal, Treasurer

STIPULATION, DECISION, and
ORDER

14 Respondents.
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17 **STIPULATION**

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
19 Respondents John R. Munn, Jr., Munn for Assembly 2012, and Manuel A. Carbahal, Treasurer, hereby
20 agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission
21 at its next 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
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1 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
2 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
3 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
4 the hearing as a hearing officer, and to have the matter judicially reviewed.

5 It is further stipulated and agreed that Respondents violated the Political Reform Act by failing
6 to timely file election cycle reports in connection with the 2012 primary and general elections, in
7 violation of Section 85309, subdivision (a), of the Government Code (1 count); and by failing to timely
8 file late contribution reports in connection with the 2012 general election, in violation of Section 84203,
9 subdivisions (a) and (b), of the Government Code (1 count). All counts are described in Exhibit 1,
10 which is attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a
11 true and accurate summary of the facts in this matter.

12 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
13 Respondents also agree to the Commission imposing an administrative penalty in the total amount of
14 Three Thousand Five Hundred Dollars (\$3,500). A cashier's check from Respondents in said amount,
15 made payable to the "General Fund of the State of California," is submitted with this Stipulation as full
16 payment of the administrative penalty, and shall be held by the State of California until the Commission
17 issues its Decision and Order regarding this matter. The parties agree that in the event the Commission
18 refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days
19 after the Commission meeting at which the Stipulation is rejected, all payments tendered by
20 Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents
21 further stipulate and agree that in the event the Commission rejects the Stipulation, and a full evidentiary
22 hearing before the Commission becomes necessary, neither any member of the Commission, nor the
23 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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

Dated: _____
John R. Munn, Jr., individually, and on behalf of Munn
for Assembly 2012

Dated: _____
Manuel A. Carbahal, individually, and on behalf of
Munn for Assembly 2012

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of John R. Munn, Jr., Munn for Assembly
3 2012, and Manuel A. Carbahal, Treasurer” FPPC No. 14/109, including all attached exhibits, is hereby
4 accepted as the final decision and order of the Fair Political Practices Commission, effective upon
5 execution below by the Chair.

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7 IT IS SO ORDERED.

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9 Dated: _____

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11 Joann Remke, Chair
12 Fair Political Practices Commission
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EXHIBIT 1
INTRODUCTION

Respondent John R. Munn, Jr. (“Respondent Munn”), was an unsuccessful candidate for the California Assembly’s Fourth District in the 2012 general election. Respondent Munn for Assembly 2012 (“Respondent Committee”) was Respondent Munn’s controlled committee. At all times relevant to this case, Manuel A. Carbahal (“Respondent Treasurer”) served as Respondent Committee’s treasurer. Respondent Committee was terminated following the 2012 general election on June 30, 2013.

Under the Political Reform Act (the “Act”)¹, controlled committees are required to file a number of campaign statements and reports disclosing their financial activity. Respondents violated the Act by failing to file required election cycle and late contribution reports in connection with Respondent Munn’s 2012 campaign.

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

COUNT 1: Respondents John R. Munn, Jr., Munn for Assembly 2012, and Manuel Carbahal, Treasurer, failed to timely file election cycle reports in connection with contributions received during the 90-day election cycle periods preceding the 2012 primary and general elections, in violation of Government Code Section 85309, subdivision (a).

COUNT 2: Respondents John R. Munn, Jr., Munn for Assembly 2012, and Manuel Carbahal, Treasurer, failed to timely file late contribution reports in connection with late contributions received prior to the 2012 general election, in violation of Government Code Section 84203, subdivisions (a) and (b).

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 violations.

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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 18109 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.

1 committee must disclose the late contribution in a late contribution report within 24 hours of making or
2 receiving the contribution.

3 **Treasurer and Candidate Liability**

4 Section 84100 provides that every committee shall have a treasurer. Under Section 84100 and
5 Regulation §18427, subdivision (a), it is the duty of a committee’s treasurer to ensure that the committee
6 complies with all of the requirements of the Act concerning the receipt and expenditure of funds and the
7 reporting of such funds. Under Sections 83116.5 and 91006, a committee’s treasurer may be held jointly
8 and severally liable, along with the committee and the candidate, for any reporting violations committed
9 by the committee.

10 **SUMMARY OF THE FACTS**

11 Respondent John R. Munn (“Respondent Munn”) was an unsuccessful candidate for the
12 California Assembly’s Fourth District in the 2012 general election. Respondent Munn had also
13 unsuccessfully ran for Assembly in the 2000, 2002, and 2004 general elections. Respondent Munn for
14 Assembly 2012 (“Respondent Committee”) was Respondent Munn’s controlled committee. Respondent
15 Committee was formed on or about December 19, 2011. At all times relevant to this matter, Manuel A.
16 Carbahal (“Respondent Treasurer”) served as Respondent Committee’s treasurer. Respondent
17 Committee was terminated following the 2012 general election on June 30, 2013.

18 This matter arose from a California Franchise Tax Board (“FTB”) audit for the period from
19 January 1, 2011 through December 31, 2012. During that time period, Respondent Committee reported
20 receiving \$132,885 in contributions and making \$135,755 in expenditures. Respondent Committee
21 exceeded the \$25,000 threshold for online/electronic filing on or about March 17, 2012.

22 **Election Cycle Reports**

23 Respondents failed to timely file election cycle reports for four contributions of \$1,000 or more
24 received during the election cycle periods preceding the June 5, 2012 primary election and the
25 November 6, 2012 general election. The contributions received prior to the primary election totaled
26 \$18,000 with \$1,000 provided by a supporter of Respondent Munn on April 3, 2012, and \$17,000
27 provided by Respondent Munn as a loan to Respondent Committee on May 2, 2012. Respondent
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1 Committee filed election cycle reports disclosing the two contributions on July 24, 2012 – a combined
 2 194 days late. The contributions received during the election cycle period preceding the general election
 3 totaled \$6,000 with Respondent Munn providing two separate contributions of \$3,000 on October 15
 4 and 16, 2012, respectively. Both contributions were in the form of loans to Respondent Committee. The
 5 table below further describes Respondents’ failure to file required election cycle reports:

Statement Type	Filing Deadline	Date Filed	Contribution Amount	Source of Contribution
Election Cycle Report	4/4/12	7/24/12	\$1,000	Steve Alexander
Election Cycle Report	5/2/12	7/24/12	\$17,000	Respondent Munn
Election Cycle Report	10/16/12	Not Filed	\$3,000	Respondent Munn
Election Cycle Report	10/17/12	Not Filed	\$3,000	Respondent Munn

Late Contribution Reports

15 Respondent Committee failed to report loans of \$3,000 and \$9,500 provided by Respondent
 16 Munn to his own controlled committee, Respondent Committee, on October 22 and 26, 2012,
 17 respectively. The table below further describes Respondents’ failure to file required late contribution
 18 reports:

Statement Type	Filing Deadline	Date Filed	Contribution Amount	Source of Contribution
Late Contribution Report	10/23/12	Not Filed	\$3,000	Respondent Munn
Late Contribution Report	10/27/12	Not Filed	\$9,500	Respondent Munn

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1 **COUNT 1**

2 **Failure to Timely File Election Cycle Reports**

3 Under Section 85309, subdivision (a), Respondents were required to file election cycle reports
4 disclosing any contributions received of \$1,000 or more during the election cycle periods preceding the
5 2012 primary or general elections.

6 On or about March 17, 2012, Respondent Committee met the \$25,000 online/electronic filing
7 threshold pursuant to Section 84605, subdivision (a), requiring that Respondent Committee file election
8 cycle reports for all contributions received by Respondent Committee of \$1,000 or more during the 90-
9 day election cycle preceding an election. After meeting the \$25,000 threshold, Respondents received
10 four separate contributions of \$1,000 or more during the election cycles preceding the 2012 primary and
11 general elections. As a result, Respondents had a duty to file election cycle reports within 24 hours of
12 receiving each contribution. Respondents failed to timely disclose the four contributions on election
13 cycle reports, in violation of Government Code Section 85309, subdivision (a).

14 **COUNT 2**

15 **Failure to Timely File Late Contribution Reports**

16 Under Section 84203, subdivisions (a) and (b), Respondents were required to file late
17 contribution reports disclosing any contribution cumulating \$1,000 or more during the late contribution
18 reporting period. The late contribution reporting period for the November 6, 2012 general election was
19 October 21, 2012, through November 5, 2012.

20 Respondents received contributions of \$3,000 and \$9,500 during the late contribution period
21 specified above on the dates of October 22 and 26, 2012, respectively. As a result, Respondents had a
22 duty to file late contribution reports within 24 hours of receiving each late contribution. Respondents
23 failed to timely file late contribution reports for either of the late contributions, in violation of Section
24 84203, subdivisions (a) and (b).

25 **CONCLUSION**

26 This matter consists of two counts of violating the Act, which carries a maximum administrative
27 penalty of five thousand dollars (\$5,000) per count.

1 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
2 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
3 emphasis on serving the purposes and intent of the Act. The Enforcement Division also considers the
4 facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5,
5 subdivision (d)(1)-(6), which include: the seriousness of the violations; the presence or lack of intent to
6 deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the
7 Respondent demonstrated good faith in consulting with Commission staff; whether there was a pattern
8 of violations; and whether upon learning of the violation the Respondent voluntarily filed amendment to
9 provide full disclosure.

10 A central purpose of the Act is to ensure receipts and expenditures in election campaigns are
11 fully and truthfully disclosed. (Section 81002, subdivision (a).) Here, Respondents failed to file
12 numerous reports disclosing contributions his campaign received in the months leading up to 2012
13 primary and general elections. As a result of Respondents' inadequate reporting during his campaign,
14 voters were denied important information before the election as to who supported Respondent
15 Committee financially.

16 COUNT 1

17 Penalties for failure to timely file election cycle reports typically fall in the middle to low ranges
18 for fines. Here, Respondent failed to disclose four contributions received during the 90-day election
19 cycle periods preceding the 2012 primary and general elections on timely filed election cycle reports.
20 The contributions totaled \$24,000. In aggravation, Respondent Munn is an experienced candidate who
21 has run for California Assembly on three previous occasions. Given his prior experience, he knew or at
22 least should have known of his committee's duty to file election cycle reports.

23 In mitigation, Respondent Munn was the source of over 97% of the contributions giving rise to
24 this violation. In further mitigation, Respondent has no prior history of violating the Act and this was
25 Respondent Treasurer's first time acting as a campaign treasurer.

26 The only recent case dealing with this type of violation is *In the Matter of League of California*
27 *Cities CitiPAC, and Dan Harrison* (FPPC No. 12/727). In that case, respondent committee committed
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1 various reporting violations including failing to file election cycle reports for 24 contributions received
2 during the 90-day election cycle period. On February 28, 2013, the Commission approved a \$2,000 fine
3 for respondent committee's failure to file.

4 Based on the aforementioned facts, imposition of an administrative penalty in the amount of
5 \$2,000 for Count 1 is recommended.

6 COUNT 2

7 Penalties for failure to timely file late contribution reports typically fall in the middle to low
8 ranges for fines. Here, Respondents failed to report receipt of two loans for \$3,000 and \$9,500
9 considered late contributions under the Act. As noted above, Respondent Munn is an experienced
10 candidate and at the very least should have known of his duty to timely report the late contributions.

11 In mitigation, Respondent Munn was the source of the late contributions received by Respondent
12 committee. In further mitigation, Respondent has no prior history of violating the Act and this was
13 Respondent Treasurer's first time acting as a campaign treasurer.

14 Recent comparable cases include *In the Matter of the League of Placer County Taxpayers and*
15 *Michael Musolino, Treasurer* (FPPC No. 11/441). In that case respondents received a \$10,000
16 contribution, but failed to timely file a late contribution report within 24 hours of the contribution. On
17 August 22, 2013, the Commission approved a \$2,000 fine for the one violation. In another recent case,
18 *In the Matter of League of California Cities CitiPAC, and Dan Harrison* (FPPC No. 12/727),
19 respondents, among other reporting violations, failed to timely file a late contribution report disclosing
20 contributions received in the amount of \$4,250. On February 28, 2013, the Commission approved a
21 \$1,500 fine for the violation.

22 Based on the aforementioned facts, imposition of an administrative penalty in the amount of
23 \$1,500 for Count 2 is recommended.

24 **PROPOSED PENALTY**

25 After consideration of the factors of Regulation 18361.5, as well as Respondents' prior similar
26 violations, and the penalties imposed in prior cases, a penalty of two thousand dollars (\$2,000) for Count
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1 One is recommended and a penalty of one thousand five hundred dollars (\$1,500) for Count Two is
2 recommended, for a total penalty of three thousand five hundred dollars (\$3,500).

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