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

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11 In the Matter of) FPPC No. 14/0259
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Respondents.

STIPULATION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and respondents POWERPAC.ORG VOTER FUND, a Sponsored Committee of PowerPac.org and Lisa Lee (Respondents) agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission (Commission) at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondents.

Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to, the right to

1 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
2 its own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena
3 witnesses to testify at the hearing, to have an impartial administrative law judge preside over the
4 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 supplemental independent expenditure reports, in violation of Government Code section
7 84203.5 (2 counts); and failing to timely report independent expenditures made, in violation of
8 Government Code section 84211, subdivision (k)(5) (3 counts). Each count is described in Exhibit 1,
9 which is attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a
10 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 Respondents also agree to the Commission imposing upon them an administrative penalty in the
13 amount of \$13,500. A cashier's check from Respondents in said amount, made payable to the "General
14 Fund of the State of California," is submitted with this Stipulation as full payment of the administrative
15 penalty, to be held by the State of California until the Commission issues its decision and order
16 regarding this matter. The parties agree that in the event the Commission refuses to accept this
17 Stipulation, it shall become null and void, and within fifteen business days after the Commission
18 meeting at which the Stipulation is rejected, all payments tendered by Respondents in connection with
19 this Stipulation shall be reimbursed to it. Respondents further stipulate and agree that in the event the
20 Commission rejects the Stipulation, and a full evidentiary hearing before the Commission becomes
21 necessary, neither any member of the Commission, nor the Executive Director, shall be disqualified
22 because of prior consideration of this Stipulation.

23 Dated: _____
24 Galena West, Chief of Enforcement, on behalf of
25 The Enforcement Division of the Fair Political Practices Commission

26 Dated: _____
27 Lisa Le, Treasurer, individually and on behalf of
28 POWERPAC.ORG VOTER FUND, a Sponsored Committee of
PowerPac.org, Respondents

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of POWERPAC.ORG VOTER FUND, a
3 Sponsored Committee of PowerPac.org, and Lisa Le, Treasurer” FPPC No. 14/0259, including all
4 attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices
5 Commission, effective upon execution below by the Chair.

6 IT IS SO ORDERED.

7
8 Dated: _____

9 Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent POWERPAC.ORG VOTER FUND, a Sponsored Committee of PowerPac.org (PowerPac) is, and has been at all relevant times, a sponsored state general purpose committee, and Lisa Le has been, at all relevant times, PowerPac's treasurer. As a state general purpose committee and its treasurer, PowerPac and Le had a duty under the Political Reform Act¹ (Act) to timely and accurately report contributions received and expenditures made.

This case arose from the Franchise Tax Board's (FTB) audit of PowerPac for the January 1, 2009, through December 31, 2010, period, during which PowerPac reported receiving contributions totaling approximately \$585,000 and making expenditures totaling approximately \$578,141. The FTB's audit and the subsequent investigation by the Fair Political Practices Commission's Enforcement Division (Enforcement Division) revealed that PowerPac failed to file supplemental independent expenditure reports and failed to report making independent expenditures, in violation of the Act.

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.

Duty to File Campaign Statements

A person or combination of persons qualifies as a committee as soon as he or she receives contributions of \$1,000 or more during a single calendar year.² This type of committee is commonly referred to as a "recipient committee."

Under the Act, there are different kinds of recipient committees, defined by the type of election activity in which they engage. A recipient committee that is formed or exists primarily to support or oppose candidates or measures voted on in a state election, or in more than one county, is defined as a "state general purpose committee."³

Every recipient committee is required to file semiannual statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31.⁴

Every recipient committee must also file a preelection statement for each period in which it makes contributions or independent expenditures totaling \$500 or more.⁵ For the period ending

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations.

² Gov. Code § 82013, subd. (a).

³ Gov. Code § 82027.5, subd. (b).

⁴ Gov. Code § 84200, subd. (a).

⁵ Gov. Code § 84200.5, subd. (i).

September 30, a preelection statement must be filed no later than October 5.⁶ 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.⁷

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.⁸

In 2010, a state general purpose committee was required to file an original and a copy of all required campaign statements with the Secretary of State (SOS), a copy with the Registrar-Recorder of Los Angeles County, and a copy with the Registrar of Voters of the City and County of San Francisco.⁹

Required Reporting of Expenditures

An expenditure is defined as a payment, forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes.¹⁰ “An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.”¹¹

Committees are required to disclose on each campaign statement: (1) the total amount of expenditures made during the period covered by the campaign statement; and (2) the total amount of expenditures made during the period covered by the campaign statement to persons who have received \$100 or more.¹²

Additionally, for each person to whom an expenditure of \$100 or more has been made during the period covered by the campaign statement, the following information must be disclosed on the campaign statement:

(1) the recipient’s full name; (2) the recipient’s street address; (3) the amount of each expenditure; and (4) the 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 or independent expenditure to support or oppose a candidate or measure, in addition to the information required in paragraphs (1) to (4) above, the date of the contribution or independent expenditure, the cumulative amount of the contributions made to a candidate, elected officer, committee, or the cumulative amount of independent

⁶ Gov. Code § 84200.7, subd. (b)(1).

⁷ Gov. Code § 84200.7, subd. (b)(2).

⁸ Cal. Code Regs., tit. 2, § 18116.

⁹ Gov. Code § 84215, subd. (a).

¹⁰ Gov. Code § 82025.

¹¹ Gov. Code § 82025.

¹² Gov. Code § 84211, subds. (b) and (i).

expenditures made relative to a candidate or measure; the full name of the candidate, and the office and name of district for which he or she seeks nomination or election, or the number or letter of the measure; and the jurisdiction in which the measure or candidate is voted upon.¹³

Required Reporting of Independent Expenditures Made

An independent expenditure is an expenditure made by any person in connection with a communication that expressly advocates the election or defeat of a clearly identified candidate but which is not made to or at the behest of the affected candidate or committee.¹⁴ In addition to any other campaign statement required by the Act, if a committee makes independent expenditure totaling \$1,000 or more in a calendar year to support or oppose a candidate, a measure or qualification of a measurer, it shall file independent expenditure reports at the same time, covering the same periods, and in the places where the committee would be required to file campaign statements, as if it were formed or existed primarily to support or oppose the candidate or measure or qualification of the measure.¹⁵ These reports are commonly referred to as “supplemental independent expenditure reports.”

A general purpose committee is required to file electronic reports if it cumulatively receives or makes expenditures totaling \$50,000 or more to support or oppose any candidate for elective state office or state measure.¹⁶

Treasurer Liability

A committee’s treasurer has the duty to ensure compliance with all requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds.¹⁷ The treasurer of a committee may be held jointly and severally liable, along with the committee, for the committee’s violations.¹⁸

SUMMARY OF THE FACTS

On or about July 14, 2010, the Enforcement Division issued PowerPac and Le a warning letter for failing to file two semiannual statements in 2009.¹⁹ On or about May 20, 2011, the Enforcement Division issued PowerPac and Le a warning letter for failing to file a preelection statement and two supplemental independent expenditure reports during the January 1, 2007, through December 31, 2008, audit period.²⁰ On or about February 28, 2013, the Fair Political Practices Commission (Commission) imposed a \$3,000 penalty on PowerPac and Le for failing to disclose required information regarding a contribution of \$100 or more, received on June 4, 2010, in a late independent expenditure report.²¹

¹³ Gov. Code § 84211, subd. (k).

¹⁴ Gov. Code § 82031.

¹⁵ Gov. Code § 84203.5.

¹⁶ Gov. Code § 84605.

¹⁷ Gov. Code §§ 81004, subd. (b), and 84100; Cal. Code Regs., tit. 2, § 18427, subd. (a).

¹⁸ Gov. Code §§ 83116.5 and 91006.

¹⁹ FPPC Case No. 10/159.

²⁰ FPPC Case No. 11/357.

²¹ FPPC Case No. 10/558.

During the January 1 through June 30, 2010, reporting period, PowerPac made independent expenditures totaling approximately \$145,778 in support of Kamala Harris for Attorney General. Kamala Harris was a successful candidate for Attorney General in the June 8, 2010, primary election. PowerPac reported \$136,481 of those independent expenditures on late independent expenditure reports, which were only required to be filed for independent expenditures of \$1,000 or more made in the last 16 days before the June 8, 2010, election. PowerPac did not file a supplemental independent expenditure report with the SOS for the independent expenditures it made in support of Kamala Harris for Attorney General during the January 1 through June 30, 2010, reporting period until 2015. Additionally, PowerPac did not report any of those independent expenditures on the semiannual statement it filed with the SOS on or about August 2, 2010, and did not amend the semiannual statement to reflect making those independent expenditures until 2015.

On or about October 4, 2010, PowerPac filed a preelection statement with the SOS for the July 1 through September 30, 2010, reporting period that did not disclose independent expenditures totaling approximately \$3,000 that PowerPac made during the July 1 through September 30, 2010, reporting period. PowerPac did not report making those independent expenditures until 2015.

During the October 17 through December 31, 2010, reporting period, PowerPac made independent expenditures totaling: 1) \$237,907 in support of Kamala Harris for Attorney General; 2) \$47,018 in opposition to Proposition 23; and 3) \$47,018 in opposition to Proposition 26. Kamala Harris was a successful candidate for Attorney General in the November 2, 2010, election. Proposition 23 was an unsuccessful state ballot measure and Proposition 26 was a successful state ballot measure in the November 2, 2010, election. PowerPac reported, on late independent expenditure reports filed with the SOS prior to the November 2, 2010, election, making independent expenditures totaling \$228,000 in support of Kamala Harris for Attorney General, \$43,633 in opposition to Proposition 23, and \$37,500 in opposition to Proposition 26. However, PowerPac did not file supplement independent expenditure reports with the SOS for any of the independent expenditures it made during the October 17 through December 31, 2010, reporting period in support of Kamala Harris for Attorney General and in opposition to Propositions 23 and 26 until 2015.

On or about January 29, 2011, PowerPac filed a semiannual statement with the SOS for the October 17 through December 31, 2010, reporting period that did not report independent expenditures totaling approximately \$6,133 that PowerPac made during the October 17 through December 31, 2010, reporting period. PowerPac did not amend the semiannual statement to reflect making those independent expenditures until 2015.

Accordingly, PowerPac and Le committed five violations of the Act, as follows:

COUNT 1

Failure to Timely File a Supplemental Independent Expenditure Report

As a state general purpose committee that made independent expenditures totaling \$1,000 or more in support of Kamala Harris for Attorney General during the January 1 through June 30,

2010, reporting period, PowerPac, and its treasurer Le, had a duty to file a supplemental independent expenditure report with the SOS by August 2, 2010, that disclosed all independent expenditures PowerPac made in support of Kamala Harris for Attorney General during the January 1 through June 30, 2010, reporting period.

By failing to file a supplemental independent expenditure report with the SOS by August 2, 2010, that disclosed all independent expenditures PowerPac made in support of Kamala Harris for Attorney General during the January 1 through June 30, 2010, reporting period, PowerPac and Le violated Government Code section 84203.5.

COUNT 2

Failure to Timely File Supplemental Independent Expenditure Reports

As a state general purpose committee that made independent expenditures totaling \$1,000 or more in support of a state candidate and two state ballot measures being voted on in the November 2, 2010, election, during the October 17 through December 31, 2010, reporting period, PowerPac, and its treasurer Le, had a duty to file a separate supplemental independent expenditure report for the state candidate and each of the state ballot measures with the SOS by January 31, 2011, that disclosed all independent expenditures PowerPac made in support of the state candidate and in opposition to the state ballot measures during the October 17 through December 31, 2010, reporting period.

By failing to file supplemental independent expenditure reports with the SOS by January 31, 2011, that disclosed all independent expenditures PowerPac made in support of Kamala Harris for Attorney General, in opposition to Proposition 23, and in opposition to Proposition 26, during the October 17 through December 31, 2010, reporting period, PowerPac and Le violated Government Code section 84203.5.

COUNT 3

Failure to Timely Report Independent Expenditures Made

As a state general purpose committee and its treasurer, PowerPac and Le had a duty to report all independent expenditures PowerPac made during the January 1 through June 30, 2010, reporting period on a semiannual statement filed with the SOS by August 2, 2010.

By failing to report all independent expenditures that PowerPac made during the January 1 through June 30, 2010, reporting period, on a semiannual statement filed with the SOS by August 2, 2010, PowerPac and Le violated Government Code section 84211, subdivision (k)(5).

COUNT 4

Failure to Timely Report Independent Expenditures Made

As a state general purpose committee that made independent expenditures totaling \$500 or more during the July 1 through September 30, 2010, reporting period, PowerPac, and its treasurer Le, had a duty to report all independent expenditures PowerPac made during the July 1

through September 30, 2010, reporting period on a preelection statement filed with the SOS by October 5, 2010.

By failing to report all independent expenditures that PowerPac made during the July 1 through September 30, 2010, reporting period, on a preelection statement filed with the SOS by October 5, 2010, PowerPac and Le violated Government Code section 84211, subdivision (k)(5).

COUNT 5

Failure to Timely Report Independent Expenditures Made

As a state general purpose committee and its treasurer, PowerPac and Lee had a duty to report all independent expenditures PowerPac made during the October 17 through December 31, 2010, reporting period on a semiannual statement filed with the SOS by January 31, 2011.

By failing to report all independent expenditures that PowerPac made during the October 17 through December 31, 2010, reporting period, on a semiannual statement filed with the SOS by January 31, 2011, PowerPac and Le violated Government Code section 84211, subdivision (k)(5).

CONCLUSION

This matter consists of five counts of violating the Act, which carry a maximum administrative penalty of \$25,000.

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 context of the factors set forth in Regulation 18361.5, subdivision (d): 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether, upon learning of the violation, the violator voluntarily provided amendments to provide full disclosure.

COUNTS 1-2: Recent penalties imposed by the Commission for failing to timely file supplemental independent expenditure reports include:

- *In the Matter of Citizens for a Clean and Honest Local Government and Brian Hews*, FPPC No. 13/0071: In April 2014, the Commission imposed a \$3,000 penalty for failing to file supplemental independent expenditure reports for independent expenditures totaling approximately \$11,455.
- *In the Matter of Redwood City Chamber of Commerce*, FPPC No. 09/266: In April 2011, the Commission imposed a \$3,000 penalty for failing to file a supplemental independent expenditure report for independent expenditures totaling approximately \$24,785.

In this matter, the seriousness of the violations is aggravated by the following facts: all

four supplemental independent expenditure reports were required to be filed prior to the general election but were not filed until years after the general election; the amount of independent expenditures that were not timely reported totaled \$477,721; PowerPac and Le have been the subject of Enforcement actions related to their duty to timely and accurately report contributions received and expenditures made that pre-date the violations in this matter; and PowerPac and Le have a previous Enforcement case regarding reporting required contribution information. (See *In the Matter of PowerPac Voter Fund and Lisa Le*, FPPC No. 10/0558, approved by the Commission on February 28, 2013.)

However, the seriousness of the violations is mitigated by the fact that over 90% of the independent expenditures that PowerPac and Le were required to report on the four supplemental independent expenditure reports were reported on late independent expenditure reports that PowerPac and Le filed with the SOS prior to the pertinent elections.

COUNTS 3-5: Recent penalties imposed by the Commission for failing to timely report independent expenditures made include:

- *In the Matter of Arthur “Art” C. Brown, et. al*, FPPC No. 12/0224: In November 2014, the Commission imposed a \$2,500 penalty for failing to report contributions and expenditures totaling approximately \$7,200. The respondents had a history of enforcement actions and did not cooperate in the FTB’s audit and the Enforcement Division’s investigation.
- *In the Matter of Xavier Campos, et. al*, FPPC No. 13/177: In November 2014, the Commission approved a \$2,000 penalty for failing to report contributions, totaling \$3,665, on two campaign statements.

In this matter, the seriousness of the violations is aggravated by the following facts: PowerPac and Le failed to timely report independent expenditures totaling \$154,911; PowerPac and Le have been the subject of Enforcement actions related to their duty to timely and accurately report contributions received and expenditures made that pre-date the violations in this matter; and PowerPac and Le have a previous Enforcement case regarding reporting required contribution information. (See *In the Matter of PowerPac Voter Fund and Lisa Le*, FPPC No. 10/0558, approved by the Commission on February 28, 2013.)

For the aforementioned reasons, a \$3,000 penalty per count for Counts 1 and 2, and a \$2,500 penalty per count for Counts 3 through 5 are recommended.

PROPOSED PENALTY

After considering the factors listed in Regulation §18361.5, prior similar cases, and other relevant factors, a total penalty of \$13,500 is recommended.

* * * * *

TOLLING AGREEMENT

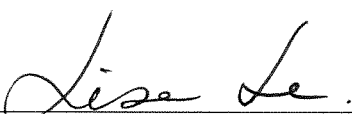
FPPC Case No. 14/0259

I, the undersigned (individually and on behalf of POWERPAC.ORG VOTER FUND, a Sponsored Committee of PowerPac.org), understand that I am being investigated by the Enforcement Division of the Fair Political Practices Commission for potential violations of the Political Reform Act—including, but not limited to, the failure to timely file required campaign statements and reports, and the failure to report making independent expenditures on campaign statements and reports. In order to allow time for further evaluation of this matter and meaningful settlement discussions, I agree to toll any statute of limitations that might be applicable, including but not limited to, Government Code sections 91000.5 and 91011.

I have been afforded an opportunity to consult with a private attorney of my choosing. By entering into this tolling agreement, I am not waiving any claims, rights, or defenses that may have accrued prior to the effective date of this tolling agreement.

This tolling agreement shall be effective starting July 31, 2015. Thereafter, this agreement may be terminated by me at any time with 30 days' written notice to the Enforcement Division of the Fair Political Practices Commission—with the understanding that the notice must be conveyed via certified mail, return receipt requested, to Milad Dalju, Commission Counsel, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, CA 95814.

Dated: 7/2/15



Lisa Le, individually and on behalf of
POWERPAC.ORG VOTER FUND, a Sponsored
Committee of PowerPac.org