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7

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

11 In the Matter of) FPPC No. 2016-19816
12)
13 ANTONIO “TONY” MENDOZA, YES) **STIPULATION, DECISION and ORDER**
14 WE CAN, AND JOHN VALENCIA)
15)
16 Respondents.)
17

18 **STIPULATION**

19 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
20 Respondents Antonio “Tony” Mendoza, Yes We Can, and John Valencia (“Senator Mendoza, Yes We
21 Can and Valencia”), hereby agree that this Stipulation will be submitted for consideration by the Fair
22 Political Practices Commission at its next regularly scheduled meeting.

23 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this
24 matter and to reach a final disposition without the necessity of holding an additional administrative
25 hearing to determine the liability of Senator Mendoza, Yes We Can and Valencia.

26 Senator Mendoza, Yes We Can and Valencia understand, and hereby knowingly and voluntarily
27 waive, any and all procedural rights set forth in Government Code Sections 83115.5, 11503 and 11523,
28 and in California Code of Regulations, title 2, Sections 18361.1 through 18361.9. This includes, but is

1 not limited to the right to personally appear at any administrative hearing held in this matter, to be
2 represented by an attorney at Senator Mendoza's, Yes We Can's and Valencia's own expense, to confront
3 and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing,
4 to have an impartial administrative law judge preside over the hearing as a hearing officer, and to have
5 the matter judicially reviewed.

6 It is further stipulated and agreed that Senator Mendoza, Yes We Can and Valencia violated the
7 Political Reform Act as described in Exhibit 1: Senator Mendoza, Yes We Can and Valencia failed to
8 identify Senator Mendoza as the controlling candidate for Yes We Can in Yes We Can's statement of
9 organization and failed to add Senator Mendoza's name as the controlling candidate to the committee
10 name, violating Government Code sections 84102, subdivisions (e) and (g), and Regulation 18402,
11 subdivision (c) (1 count); Senator Mendoza, Yes We Can and Valencia failed to timely file a preelection
12 campaign statement for the reporting period of January 1 through March 17, 2012, by the March 22, 2012
13 due date, violating Government Code sections 84200.5, subdivision (a), and 84200.7, subdivision (a)
14 (1 count).

15 Exhibit 1 is attached hereto and incorporated by reference as though fully set forth herein. Exhibit
16 1 is a true and accurate summary of the facts in this matter.

17 Senator Mendoza, Yes We Can and Valencia agree to the issuance of the Decision and Order,
18 which is attached hereto. Senator Mendoza, Yes We Can and Valencia also agree to the Commission
19 imposing an administrative penalty in the total amount of Six Thousand Dollars (\$6,000). A cashier's
20 check from Senator Mendoza, Yes We Can and Valencia in said amount, made payable to the "General
21 Fund of the State of California," is submitted with this Stipulation as full payment of the administrative
22 penalty, and will be held by the State of California until the Commission issues its Decision and Order
23 regarding this matter.

24 The parties agree that in the event the Commission refuses to accept this Stipulation, it will
25 become null and void, and within fifteen (15) business days after the Commission meeting at which the
26 Stipulation is rejected, all payments tendered by Senator Mendoza, Yes We Can and Valencia in
27 connection with this Stipulation will be reimbursed to Senator Mendoza, Yes We Can and Valencia.
28 Senator Mendoza, Yes We Can and Valencia further stipulate and agree that in the event the Commission

1 rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither
2 any member of the Commission, nor the Executive Director, will be disqualified because of prior
3 consideration of this Stipulation.

4
5 Dated: _____
6 Galena West, Chief, on Behalf of the Enforcement Division
7 Fair Political Practices Commission

8 Dated: _____
9 Antonio "Tony" Mendoza, Respondent, individually and on
10 behalf of Yes We Can, Respondent

11 Dated: _____
12 John Valencia, Respondent

13 **DECISION AND ORDER**

14 The foregoing Stipulation of the parties "In the Matter of Antonio "Tony" Mendoza, Yes We Can,
15 and John Valencia," FPPC Case No. 2016-19816, including all attached exhibits, is hereby accepted as
16 the final decision and order of the Fair Political Practices Commission, effective upon execution below
17 by the Chair.

18 IT IS SO ORDERED.

19 Dated: _____
20 Joann Remke, Chair
21 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

The Parties

Tony Mendoza

Respondent Antonio “Tony” Mendoza has served in the California Legislature for eight years: as a State Senator, 32nd District, from 2014 through present, and as a State Assemblymember, 56th District, from 2006 through 2012. Senator Mendoza was an unsuccessful candidate for the Central Basin Municipal Water District in the June 5, 2012 election. In 2011 and early 2012, Senator Mendoza was Chair of the California Latino Legislative Caucus. Senator Mendoza is also a named Respondent in a separate Stipulation related to these matters (FPPC Case No. 14/606).

Yes We Can

Respondent Yes We Can was a state general purpose committee established by Senator Mendoza in his capacity as Chair of the California Latino Legislative Caucus to independently facilitate the election of Latino candidates in state elections. At all relevant times, Yes We Can was Senator Mendoza’s controlled committee. Yes We Can is also a named Respondent in a separate Stipulation related to these matters (FPPC Case No. 14/606).

John Valencia

Respondent John Valencia was at all relevant times the treasurer for Yes We Can.

The Prohibited Activity

In this case, Senator Mendoza, Yes We Can and Valencia, as treasurer for Yes We Can, violated the Political Reform Act (the “Act”)¹ by failing to identify Senator Mendoza as the controlling candidate in Yes We Can’s statement of organization and failing to add Senator Mendoza’s name as the controlling candidate to the committee’s name to identify him as such. Senator Mendoza, Yes We Can and Valencia also failed to timely file a preelection campaign statement for Yes We Can disclosing that Yes We Can had made a \$50,000 contribution to Educating Voters, another state general purpose committee controlled by Senator Mendoza.

SUMMARY OF THE LAW

All legal references and discussions of law pertain to the Act’s provisions as they existed in 2012.

¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

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

When enacting the Political Reform Act, 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.² To that end, the Act must be liberally construed to achieve its purposes.³

There are many purposes of the Act. One purpose 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.⁴ Another is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁵

Definition of Controlled Committee

A “committee” includes any person or combination of persons who receives contributions totaling \$1,000 or more in a calendar year,⁶ commonly known as a “recipient committee.” A recipient committee which 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.”⁷ 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.⁸

Statement of Organization Requirements

Every recipient committee must file a statement of organization with the Secretary of State.⁹ The statement of organization must include the committee’s name, street address and telephone number, and the full name, street address and telephone number of the treasurer and other principal officers of the committee.¹⁰

The statement of organization must also include a statement of whether the committee was independent or controlled, and if controlled, include the name of each candidate by which it was controlled.¹¹ And whenever identification of a committee is required by law, that the committee identification must include the full name of the committee as required in the statement of organization and the last name of each candidate who controlled the committee.¹²

² § 81001, subd. (h).

³ § 81003.

⁴ § 81002, subd. (a).

⁵ § 81002, subd. (f).

⁶ § 82013, subd. (a).

⁷ § 82016.

⁸ § 82016, subd. (a).

⁹ § 84101

¹⁰ § 84102, subd. (a) and (c).

¹¹ § 84102, subd. (e).

¹² Reg. 18402, subd. (c).

Whenever there is a change in any of the information contained in a statement of organization, a committee must file an amendment within 10 days to reflect the change.¹³

Mandatory Filing of Preelection Campaign Statements

Candidates and committees must file campaign statements and reports for certain reporting periods by certain deadlines.¹⁴ All candidates for offices voted upon in the June 5, 2012 primary election, their controlled committees, and state general purpose committees who made contributions of \$500 or more during the reporting period were required to file preelection statements as follows: 1) For the period ending March 17, the statement must have been filed no later than March 22; 2) For the period ending May 19, the statement must have been filed no later than May 24.¹⁵

Liability for Violations

Any person who violates any provision of the Act, who purposely or negligently causes any other person to violate any provision of the Act, or who aids and abets any other person in the violation of any provision of the Act, is liable for administrative penalties up to \$5,000 per violation.¹⁶ This only applies to persons who have filing or reporting obligations under the Act, or who are compensated for services involving the planning, organizing or directing of any activity regulated or required by the Act.¹⁷

Every committee must have a treasurer.¹⁸ It is the duty of a committee's candidate and 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.¹⁹ A committee's candidate and treasurer may be held jointly and severally liable with the committee for any reporting violations.²⁰

If two or more parties are responsible for a violation of the Act, they are jointly and severally liable.²¹

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¹³ § 84103, subd. (a).

¹⁴ §§ 84200, et seq.

¹⁵ §§ 84200.5, subd. (a), and 84200.7, subd. (a); Reg. 18116, subd. (a).

¹⁶ §§ 83116, and 83116.5.

¹⁷ § 83116.5.

¹⁸ § 84100.

¹⁹ §§ 81004, 84100, 84104 and 84213, and Reg. 18427.

²⁰ §§ 83116.5 and 91006.

²¹ § 91006.

SUMMARY OF THE FACTS

Senator Mendoza was the Latino Caucus chairman from approximately December 2010 through March 9, 2012. The activities at issue primarily occurred during and shortly after Senator Mendoza's final days as Latino Caucus chairman.

Yes We Can: Formation and Control

Shortly after becoming the Latino Caucus chairman, Senator Mendoza discussed with Valencia forming a committee that would allow the Latino Caucus to support candidates. The result was the formation of Yes We Can, an independent expenditure committee that would run independently of the Latino Caucus to "engage in independent efforts to elect Latino candidates in California state elections."

But records show that Yes We Can was not truly independent of the Latino Caucus. Senator Mendoza, as Latino Caucus chairman, "oversaw the political activities" of and had significant influence over Yes We Can. Numerous emails and other evidence show that Senator Mendoza and his staff were very active in fundraising for Yes We Can and participated in planning and attending fundraising events which solicited contributions for Yes We Can. And Senator Mendoza had significant influence over Yes We Can's expenditures. Valencia, as treasurer of Yes We Can, made Yes We Can expenditures based upon Senator Mendoza's recommendations, including payments to Sandino Consulting for organizing Yes We Can fundraisers, and expenditures supporting the election of Latino candidates. Yes We Can's statement of organization did not identify Senator Mendoza as the controlling candidate.

Latino Caucus: Internal Conflict

In or about February 2012, the Latino Caucus voted to endorse candidates in the June 2012 primary election. Ron Calderon, the Latino Caucus vice-chairman, challenged Senator Mendoza's handling of the endorsements because his brother, Tom Calderon, was not initially endorsed. Tom Calderon was running for the 58th Assembly District against Luis Marquez. Marquez was a long-time friend of Senator Mendoza's, and Senator Mendoza endorsed and supported him. According to Senator Mendoza "[P]olitically speaking, I don't want Tom to win, because everybody knew that Tom was not running for Assembly really. He was running for Senate." In 2014, Senator Mendoza and Tom Calderon both ran for the 32nd Senate District seat, which Senator Mendoza won.

Soon after the endorsement controversy, Senator Mendoza heard rumors that the Calderons planned to oust him from the Latino Caucus chairmanship and use the money he raised for Yes We Can to support themselves and oppose Senator Mendoza and his allies. Senator Mendoza stated that he wanted to move the money out of Yes We Can so the Calderons could not use the money.

Contribution from Yes We Can to Educating Voters

Senator Mendoza resigned the Latino Caucus chairmanship on March 9, 2012. Between January 1 and March 9, 2012, Yes We Can reported receiving contributions totaling \$87,500.

Before he vacated the chairmanship, on February 24, 2012, Senator Mendoza sent a written request to Valencia to make a \$50,000 contribution from Yes We Can to Educating Voters, a state general purpose committee. Educating Voters is a named Respondent in a separate Stipulation related to these matters (FPPC Case No. 14/606).

Based upon Senator Mendoza's direction that funding be provided to Educating Voters, Valencia wrote a \$50,000 check from Yes We Can to Educating Voters on or about February 27, 2012. Senator Mendoza personally picked up the \$50,000 check from Valencia's office in Sacramento and delivered it to Educating Voters.

Yes We Can was the subject of an audit by the Political Reform Audit Program of the Franchise Tax Board (FTB) for the period of January 1, 2011 through December 31, 2012. During the audit period, Yes We Can reported contributions received totaling \$577,500 and reported expenditures totaling \$478,690.

Yes We Can made the \$50,000 contribution to Educating Voters on February 27, 2012, and failed to timely file a preelection campaign statement for the reporting period of January 1 through March 17, 2012 disclosing this activity by the March 22, 2012 due date. Instead, Yes We Can disclosed this and other activity in a combined preelection statement for the period of January 1 through May 19, 2012, which Yes We Can filed on May 24, 2012. So Yes We Can disclosed the \$50,000 contribution to Educating Voters 63 days late.

VIOLATIONS

Based on the evidence obtained during the investigation of this matter, as summarized above, the parties' violations are stated as follows:

Count 1: Mandatory Disclosure of Controlling Candidate

Senator Mendoza, Yes We Can and Valencia failed to identify Senator Mendoza as the controlling candidate for Yes We Can in Yes We Can's statement of organization and failed to add Senator Mendoza's name as the controlling candidate to the committee name, violating Government Code sections 84102, subdivisions (e) and (g), and Regulation 18402, subdivision (c).

Count 2: Failure to Timely File a Preelection Campaign Statement

Senator Mendoza, Yes We Can and Valencia failed to timely file a preelection campaign statement for the reporting period of January 1 through March 17, 2012, by the March 22, 2012 due date, violating Government Code sections 84200.5, subdivision (a), and 84200.7, subdivision (a).

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CONCLUSION

This matter consists of two counts of violating the Act, which carries a maximum administrative penalty of Five Thousand Dollars (\$5,000) per count for a total of Ten Thousand Dollars (\$10,000).

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.

The Commission also considers penalties in prior cases involving similar violations. Recent cases for similar violations include:

Mandatory Disclosure of Controlling Candidate (Count 1)

- *In the Matter of Breans Against Measures T & U, Rehan Chaudry, and Brett Murdock*; FPPC No. 12/758. The Committee qualified as a Primarily Formed ballot measure committee on or about October 1, 2012. At all times relevant to this matter, Chaudry was the Treasurer of the Committee. At all times relevant, Murdock was a member of the Brea City Council as well as the controlling candidate. The Committee opposed Measures T and U on the ballot in the November 6, 2012 election. The respondents failed to disclose that the Committee was controlled, and failed to include the name of the controlling candidate on its statement of organization, violating Government Code section 84102 subdivision (e) (1 count). In September 2013, the Commission approved a \$2,000 penalty for this count.

Failure to Timely File Preelection Campaign Statement (Count 2)

- *In the Matter of Patricia López, Patty López for Assembly 2014, and Carolina Perez*; FPPC Nos. 15/313 and 15/314. Respondents, a successful candidate for State Assembly, her candidate controlled committee, and the treasurer of the Committee. failed to timely file one semiannual campaign statement and two preelection campaign statements for reporting periods in 2014 by the applicable due dates, violating Government Code sections 84200, subdivision (a), 84200.5, subdivision (a), and 84200.7, subdivision (b) (1 count). In March 2016, the Commission imposed a penalty of \$2,500 for this count.
- *In the Matter of Virginia Mari Goodman, Mari Goodman for Assembly 34-2012, and Joan Slater*; FPPC No. 13/1327. Respondent, an unsuccessful candidate for State Assembly, her controlled committee and its treasurer, failed to file two preelection

campaign statements for the November 2012 election, violating Government Code sections 84200.5, subdivision (a), and 84200.7 (1 count). In June 2015, the Commission approved a \$2,500 penalty for this count.

The evidence shows that Senator Mendoza had significant influence and control over Yes We Can and Senator Mendoza feared the Calderons would use the money he raised for Yes We Can against him. In order to keep it away from them, Senator Mendoza directed Yes We Can to make a \$50,000 contribution to Educating Voters. Senator Mendoza, Yes We Can and Valencia, as treasurer for Yes We Can, did not disclose that Yes We Can was Senator Mendoza’s controlled committee. Senator Mendoza, Yes We Can and Valencia, as Yes We Can’s treasurer, also failed to timely file a preelection campaign statement disclosing the \$50,000 contribution from Yes We Can to Educating Voters. This violation is more serious than the comparable cases, above, because the failure to timely file the preelection campaign statement allowed the \$50,000 contribution to go unnoticed for approximately two months after it was made.

Senator Mendoza has prior enforcement history for conduct which was unrelated to campaign disclosure.²²

In mitigation, Valencia has no prior enforcement history, and the information contained in the second preelection statement was provided to the public prior to the applicable election. And Senator Mendoza and Valencia cooperated with the investigation of this case.

PROPOSED PENALTY

Count	Description	Penalty per count
1	Mandatory Disclosure of Controlling Candidate	\$2,500
2	Failure to Timely File a Preelection Campaign Statement	\$3,500
Total Agreed Upon Penalty		\$6,000

* * * * *

²² Senator Mendoza was fined \$400 in 2010 for failure to disclose two gifts in his 2008 annual statement of economic interest (FPPC Case No. 09/854). And in 2015, Senator Mendoza received a warning letter for underreporting the value of the sale of real property in his 2010 annual and leaving office statements of economic interests (FPPC Case No. 12/504).