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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

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11 In the Matter of:

12 SAN DIEGO COUNTY DEMOCRATIC
13 PARTY AND XAVIER MARTINEZ,

14 Respondents.

FPPC Case No. 15/1374

STIPULATION, DECISION AND ORDER

15 **INTRODUCTION**

16 Respondent San Diego County Democratic Party (the “SDCDP”) is a political party committee.
17 Respondent Xavier Martinez (“Martinez”) served as SDCDP’s treasurer from 2004 - 2017. In 2012, the
18 Political Reform Act (the “Act”)¹ required committees making or receiving contributions of \$1,000 or
19 more during the 16 days prior to an election to report the contribution within 24 hours of the time the
20 contribution is made or received. SDCDP and Martinez violated the Act by failing to timely report
21 contributions of \$1,000 or more it made and received in the final days prior to elections in 2012 and
22 2013.

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27 ¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the
28 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.

1 **SUMMARY OF THE LAW**

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

3 When enacting the Political Reform Act, the people of California found and declared that
4 previous laws regulating political practices suffered from inadequate enforcement by state and local
5 authorities.² For this reason, the Act is to be construed liberally to accomplish its purposes.³

6 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in
7 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
8 practices are inhibited.⁴ Along these lines, the Act includes a comprehensive campaign reporting
9 system—and the true sources of campaign contributions may not be concealed.⁵ Another purpose of the
10 Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁶

11 **Reporting Late Contributions**

12 In 2012, the Act defined a Late Contribution as “any contribution, including a loan, that totals in
13 the aggregate one thousand dollars (\$1,000) or more and is made to or received by a political party
14 committee, as defined in Section 85205, before the date of any state election but after the closing date of
15 the last campaign statement required to be filed before the election.”⁷ A late monetary contribution must
16 be reported within 24 hours of the time it is made or received.⁸ The recipient of a late in-kind
17 contribution must report the contribution within 48 hours of receipt, but the contributor is still required to
18 file within 24 hours of making an in-kind contribution.⁹

19 **SUMMARY OF THE FACTS**

20 In 2012, SDCDP was actively supporting Bob Filner (“Filner”), candidate for Mayor of San
21 Diego, and Mat Kostrinsky (“Kostrinsky”), candidate for the San Diego City Council, with monetary
22 contributions and non-monetary contributions. In doing so, the SDCDP and Martinez failed to timely
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24 ² Section 81001, subd (h).

25 ³ Section 81003.

26 ⁴ Section 81002, subd. (a).

27 ⁵ Sections 84200, *et seq.* and 84301.

28 ⁶ Section 81002, subd. (f).

⁷ Former Section 82036, subd. (b).

⁸ Section 84203, subd. (b).

⁹ Section 84203.3, subd. (b).

1 report late contributions that it made to the Filner and Kostrinsky campaigns. Additionally, SDCDP and
2 Martinez failed to timely report contributions that they received.

3 **Late Contributions Made to Bob Filner**

4 In 2012, Filner was elected Mayor of San Diego. In the June 5, 2012, primary election, Filner
5 received the second largest percentage of votes totaling approximately 30% of the vote,¹⁰ and thereafter
6 went on to win the runoff election on November 6, 2012, receiving approximately 52% of the vote.¹¹

7 In connection to the June 5, 2012 election, the SDCDP made \$106,700 in monetary contributions
8 and \$8,752 in non-monetary contributions to Filner, which made up approximately 35% of all
9 contributions received by Filner for the June election.

10 The following is a list of the late contributions SDCDP made to Filner for the June 5, 2012
11 election that it failed to properly report on late contribution reports:

12 Date Made	Recipient	Amount Reported	Amount Not Reported	Date Reported on LCR
13 5/30/12	Bob Filner for Mayor 2012	\$16,470	\$3,600	5/31/12
14 5/31/12	Bob Filner for Mayor 2012	\$2,743.94	\$3,000	6/1/12
15 6/1/12	Bob Filner for Mayor 2012	Not reported	\$6,000	N/A
16 6/3/12	Bob Filner for Mayor 2012	Not reported	\$5,000	N/A
17 6/4/12	Bob Filner for Mayor 2012	\$3,904.01	\$4,277 (non-monetary)	6/5/12
18		Total:	\$21,877	

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21 The contributions made to Filner were all reported after the election on SDCDP's semi-annual
22 campaign statement. Additionally, Filner filed late contribution reports to disclose all the contributions
23 listed above, except for the non-monetary contribution of \$4,277.
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28 ¹⁰ Smart Voter, <http://www.smartvoter.org/2012/06/05/ca/sd/race/019/> (Last visited April 24, 2017).

¹¹ Smart Voter, <http://www.smartvoter.org/2012/11/06/ca/sd/race/089/> (Last visited April 24, 2017).

1 **Late Contributions Made to Mat Kostrinsky**

2 On June 5, 2012, Kostrinsky lost his bid for a position on the San Diego City Council. Kostrinsky
3 received the second highest percentage of votes with approximately 40%, but lost to another candidate
4 who received approximately 50% of the votes.¹²

5 In connection to the June 5, 2012 election, the SDCDP made \$54,000 of monetary contributions
6 and \$1,234 in non-monetary contributions to Kostrinsky, which made up approximately 35% of all
7 contributions Kostrinsky received from sources other than himself.

8 The following is a list of the late contributions that SDCDP made to Kostrinsky’s campaign that it
9 failed to report on late contribution reports:

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Date Made	Recipient	Amount Not Reported
5/29/12	Mat Kostrinsky for City Council 2012	\$1,234 (non-monetary)
5/30/12	Mat Kostrinsky for City Council 2012	\$14,500
5/31/12	Mat Kostrinsky for City Council 2012	\$6,000
	Total:	\$21,734

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16 The contributions made to Kostrinsky were all reported after the election on SDCDP’s semi-
17 annual campaign statement except for the \$1,234 non-monetary contribution, which was not reported on
18 any statement or report. Additionally, Kostrinsky did not file any late contribution reports to disclose
19 receiving the contributions listed above. The contribution Kostrinsky received for \$14,500 was reported
20 after the election on his semi-annual campaign statement. The remaining contributions were never
21 disclosed to the public on any campaign statement or report.
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23 **Late Contributions Received by SDCDP**

24 SDCDP did not report or failed to timely report five late contributions totaling \$12,478 it received
25 prior to the June 5, 2012 primary election, the November 6, 2012 general election, and January 8, 2013
26 special election. SDCDP reported receiving the contribution from Christine Kehoe after the election on
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28 ¹² Smart Voter, <http://www.smartvoter.org/2012/06/05/ca/sd/race/024/> (Last Visited April 24, 2017).

its semi-annual campaign statement. The contributions from Rancho Santa Fe Democratic Club and Rancho North Coast Democratic Club were never reported by SDCDP.

The following is a list of the late contributions that SDCDP failed to properly report receiving:

Date Received	Name of Contributor	Amount	Date Reported
5/21/12	Friends of Christine Kehoe for Assembly 2016	\$5,000	Not reported.
5/31/12	Rancho North Coast Democratic Club	\$1,916	Not reported.
5/31/12	Rancho Santa Fe Democratic Club	\$1,000	Not reported.
10/27/12	International Brotherhood of Electrical Workers Local 569	\$3,300 (non-monetary)	11/5/12 (7 days late)
12/31/12	Democratic State Central Committee of California	\$1,262	1/8/13 (6 days late)
	Total:	\$12,478	

VIOLATIONS

Count 1: Failure to Timely Report Late Contributions Made by SDCDP

SDCDP and Martinez failed to timely report late contributions made by SDCDP to Filner prior to the June 5, 2012 election, in violation of Government Code section 84203.

Count 2: Failure to Timely Report Late Contributions Made by SDCDP

SDCDP and Martinez failed to timely report late contributions made by SDCDP to Kostrinsky prior to the June 5, 2012 election, in violation of Government Code section 84203.

Count 3: Failure to Timely Report Late Contributions Received by SDCDP

SDCDP and Martinez failed to timely report late contributions received prior to the June 5, 2012 election, the November 6, 2012 election and the January 8, 2013 election, in violation of Government Code section 84203.

PROPOSED PENALTY

This matter consists of 3 counts. The maximum penalty that may be imposed is \$5,000 per count.

1 Thus, the maximum penalty that may be imposed is \$15,000.¹³

2 In determining the appropriate penalty for a particular violation of the Act, the Commission
3 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
4 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
5 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
6 inadvertent; (d) whether the violation was isolated or part of a pattern; € whether corrective amendments
7 voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior record of
8 violations.¹⁴ Additionally, the Commission considers penalties in prior cases with comparable violations.

9 The public harm in this case is the public was denied full information regarding SDCDP's
10 campaign activities in the run up to several elections. Although the Filner and Kostrinsky committees did
11 disclose some of the contributions made by SDCDP, a voter that examined SDCDP's campaign reports
12 would not have seen these contributions reported and the voter may not have understood that he or she
13 could have located the information from an alternative source.

14 The Enforcement Division did not find any evidence of an intention to deceive the public
15 regarding the contributions by SDCDP.

16 The Commission also considers penalties in prior cases involving similar violations to determine
17 adequate penalties. A recent similar case is *In the Matter of Citizens for Quality Kerman Schools,*
18 *Charles H. Jones, and Julie Gragnani*, FPPC Case No. 16/19661 (approved Nov. 17, 2016), where the
19 Commission approved a penalty of \$1,500 against the respondents for failing to timely report receiving
20 four late contributions prior to the election, totaling approximately \$21,762.

21 Regarding Counts 1 and 2, SDCDP and Martinez failed to timely report eight late contributions
22 totaling approximately \$40,650. The violations in this case are comparable to *Citizens for Quality*
23 *Kerman Schools* in that both committees failed to report late contributions. However, the amount of
24 contributions made in the current case is twice as much as the contributions received in *Citizens for*
25 *Quality Kerman Schools*. Additionally, the contributions in *Citizens for Quality Kerman Schools* were

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¹³ See Section 83116, subd. (c).

¹⁴ Regulation 18361.5, subdivision (d).

1 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
2 This includes, but is not limited to the right to appear personally at any administrative hearing held in this
3 matter, to be represented by an attorney at Respondent’s own expense, to confront and cross-examine all
4 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
5 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
6 reviewed.

7 5. Respondents agree to the issuance of the decision and order set forth below. Also,
8 Respondents agree to the Commission imposing against it an administrative penalty in the amount of Six
9 Thousand Dollars (\$6,000). One or more cashier’s checks or money orders totaling said amount—to be
10 paid to the General Fund of the State of California—is/are submitted with this stipulation as full payment
11 of the administrative penalty described above, and same shall be held by the State of California until the
12 Commission issues its decision and order regarding this matter.

13 6. If the Commission refuses to approve this stipulation—then this stipulation shall become
14 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
15 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to
16 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing
17 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
18 Director, shall be disqualified because of prior consideration of this Stipulation.

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