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

10
11 In the Matter of:

12 DOUGLAS HANSON, COMMITTEE TO
RE-ELECT MAYOR DOUG HANSON
13 TO INDIAN WELLS CITY COUNCIL
2012, and M. ELENA HANSON,

14 Respondents.

FPPC Case Nos. 14/549 and 14/775

STIPULATION, DECISION AND ORDER

15
16 **STIPULATION**

17 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
18 Respondents Douglas Hanson, Committee to Re-Elect Mayor Doug Hanson to Indian Wells City Council
19 2012, and M. Elena Hanson, hereby agree that this Stipulation will be submitted for consideration by the
20 Fair Political Practices Commission at its next regularly scheduled meeting.

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

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

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 It is further stipulated and agreed that Respondents violated the Political Reform Act as set forth
4 in Exhibit 1, which is a true and accurate summary of the facts in this matter—and which is incorporated
5 by reference as though fully set forth herein.

6 Respondents agree to the issuance of the Decision and Order, which is attached hereto. Also,
7 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
8 \$7,500. 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 business
13 days after the Commission meeting at which the Stipulation is rejected, all payments tendered by
14 Respondents in connection with this Stipulation shall be reimbursed to Respondents.

15 Respondents further stipulate and agree that in the event the Commission rejects the Stipulation
16 and a full evidentiary hearing before the Commission becomes necessary, neither any member of the

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1 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this
2 Stipulation.

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5 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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9 Dated: _____

Douglas Hanson, individually and on behalf of
Committee to Re-Elect Mayor Doug Hanson to Indian
Wells City Council 2012, Respondents

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13 Dated: _____

M. Elena Hanson, Respondent

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15 **DECISION AND ORDER**

16 The foregoing Stipulation of the parties “In the Matter of Douglas Hanson, Committee to Re-
17 Elect Mayor Doug Hanson to Indian Wells City Council 2012, and M. Elena Hanson,” FPPC Case Nos.
18 14/549 and 14/775, including all attached exhibits, is hereby accepted as the final decision and order of
19 the Fair Political Practices Commission, effective upon execution below by the Chair.

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21 IT IS SO ORDERED.

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23 Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

In 2012, Douglas Hanson was the Mayor of Indian Wells. He was re-elected to the Indian Wells City Council on November 6, 2012. (Shortly after the election, a different city council person became the mayor—pursuant to newly approved Measure Q, which called for appointment of a new mayor every December on a rotating basis.)

Committee to Re-Elect Mayor Doug Hanson to Indian Wells City Council 2012 was Hanson's candidate controlled committee. The committee treasurer was his wife, M. Elena Hanson.

This case involves multiple violations of the Political Reform Act (the "Act"),¹ including campaign reporting violations and failure to use a single, designated campaign bank account.

SUMMARY OF THE LAW

The Act and its regulations are amended from time to time. Most of the violations in this case occurred in 2012. For this reason, all legal references and discussions of law pertain to the Act's provisions as they existed at that time—unless otherwise noted.

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

When enacting the Political Reform Act, the people 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 is to be construed liberally to accomplish its purposes.³ One purpose 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.⁴ Along these lines, the Act includes a comprehensive campaign reporting system.⁵ Also, the Act imposes certain rules that are designed to aid the audit and enforcement process, including the one bank account rule, which is discussed in more detail below.⁶ Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced."⁷

¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to this code. 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 this source.

² Section 81001, subdivision (h).

³ Section 81003.

⁴ Section 81002, subdivision (a).

⁵ Sections 84200, et seq.

⁶ See Sections 84300, subdivisions (a) and (b), and 85201.

⁷ Section 81002, subdivision (f).

Required Reporting of Contributions, Expenditures, Loans, and Reimbursements

Campaign statements are required to disclose certain information about receipts and expenditures, including the following information:⁸

- ❖ the total amount of contributions received during the period covered by the campaign statement, including loans, and the total cumulative amount of contributions received;
- ❖ the total amount of contributions received during the period from persons who gave a cumulative amount of \$100 or more, including loans—along with the following additional information about each such contributor:
 - the contributor’s full name;
 - his or her street address;
 - his or her occupation;
 - the name of his or her employer, or if self-employed, the name of the business;
 - the date and amount received for each contribution received during the period, and if the contribution is a loan, the interest rate for the loan;
 - the cumulative amount of contributions;
- ❖ the total amount of expenditures made during the period, including contributions/loans, and the total cumulative amount of expenditures made;
- ❖ the total amount of expenditures made during the period to persons who received \$100 or more, including contributions/loans—along with the following information about each recipient of such expenditures:
 - the recipient’s full name;
 - his or her street address;
 - the amount of each expenditure;
 - a brief description of the consideration for which each expenditure was made;
 - 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;
- ❖ if the cumulative amount of loans received from or made to a person is \$100 or more and a loan has been received from or made to a person during the period, or is outstanding during the period, the following additional information must be reported for each such person/loan:
 - the person’s full name;
 - his or her street address;

⁸ Sections 84211, subdivisions (a), (b), (c), (f), (g), (i), (k); and 84216.

- his or her occupation;
- the name of his or her employer, or if self-employed, the name of the business;
- the original date and amount of each loan;
- the due date and interest rate of the loan;
- the cumulative payment made or received, to date, at the end of the period;
- the balance outstanding at the end of the period; and
- the cumulative amount of contributions.

In some cases, expenditures may be made on behalf of a committee by a volunteer or paid employee of the committee, using that person’s personal funds. The Act provides that such expenditures may be reimbursed by the committee and will be deemed expenditures from the campaign bank account if the committee treasurer is provided with a dated receipt and a written description of each expenditure prior to reimbursement (provided that reimbursement is paid within 45 days).⁹ However, specific reporting requirements apply. When a candidate or his controlled committee is notified that expenditures totaling \$100 or more in a filing period have been made by a person who is to be reimbursed, the candidate/committee must report the expenditures on the campaign statement for the period in which the expenditures were made by the person to be reimbursed—and the reimbursements also must be reported on the campaign statement for the period in which they were made.¹⁰

Required Reporting of Accrued Expenses

For reporting purposes, an expenditure is deemed to be made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.¹¹ When goods or services (consideration) are received first—and payment is not made until later—the expenditure is known as an “accrued expense.” These types of unpaid bills must be disclosed as accrued expenses when the goods/services first are provided/rendered.¹² (This rule helps prevent candidates and committees from hiding campaign spending until after the election.) Accrued expenses (excluding loans) that remain outstanding must be reported on each campaign statement until they are extinguished.¹³

⁹ Regulation 18526, subdivision (a).

¹⁰ Regulation 18526, subdivision (c).

¹¹ See Sections 82025 and 82044.

¹² Regulation 18421.6, subdivision (b).

¹³ Regulation 18421.6, subdivision (a).

One Bank Account Rule

The Act requires campaign funds to be segregated from non-political, personal accounts and kept in a single, designated campaign bank account.¹⁴ All contributions or loans made to the candidate, to a person on behalf of the candidate, or to the candidate's controlled committee must be deposited into this account.¹⁵ Any personal funds that will be utilized to promote the election of the candidate must be deposited into the account prior to expenditure.¹⁶ All campaign expenditures must be made from the account.¹⁷ At times, this is referred to as the one bank account rule.

There is an exception for volunteers or paid employees of a committee—who may use their personal funds to make expenditures on behalf of the committee and later be reimbursed (as described above). However, this exception does not apply to candidates. Because of the one bank account rule, personal funds of candidates must first be deposited into the campaign bank account prior to expenditure; candidates may not make campaign-related expenditures from personal funds and be reimbursed.¹⁸

Joint and Several Liability of Candidate, Committee and Treasurer

It is the duty of a committee treasurer to ensure that the committee complies with the Act.¹⁹ A treasurer may be held jointly and severally liable, along with the candidate and the committee, for violations committed by the committee.²⁰

PROCEDURAL HISTORY

This matter was previously scheduled for an administrative hearing in September 2017; however, the parties have reached a settlement, which is memorialized in this stipulation. This stipulation is intended to fully, completely, and finally resolve all violations, disputes, and controversies, both known and unknown, arising out of or in any way relating to the factual and legal issues raised in FPPC Case Nos. 14/549 and 14/775. Although Respondents contend that Case No. 14/549 was previously closed pursuant to a warning letter issued on or about July 25, 2014, and was not thereafter legally reopened, it is the position of the Enforcement Division that this case was properly re-opened following the discovery of new material information. In connection with this settlement, Hanson has filed all necessary amendments to correct the campaign reporting violations that are described below.

¹⁴ Section 85201.

¹⁵ Section 85201, subdivision (c).

¹⁶ Section 85201, subdivision (d).

¹⁷ Section 85201, subdivision (e).

¹⁸ *Griffin Advice Letter* (I-91-415).

¹⁹ Sections 81004, 84100, and Regulation 18427.

²⁰ Sections 83116.5 and 91006.

VIOLATIONS

Counts 1 and 2

Campaign Reporting Violations

On or about July 31, 2012, Hanson, his committee, and Mrs. Hanson filed a semi-annual campaign statement for the reporting period of January 1 through June 30, 2012, but they failed to comply with the Act's campaign reporting requirements in several ways. This included failure to properly report: committee expenditures totaling approximately \$1,117 and a contribution/loan from Hanson to his committee in the approximate amount of \$977.

On or about October 5, 2012, Hanson, his committee, and Mrs. Hanson filed a pre-election campaign statement for the reporting period of July 1 through September 30, 2012, but they failed to comply with the Act's campaign reporting requirements by failing to properly report a contribution from Hanson to his committee in the amount of \$2,000.

On or about October 25, 2012, Hanson, his committee, and Mrs. Hanson filed a pre-election campaign statement for the reporting period of October 1 through October 20, 2012, but they failed to comply with the Act's campaign reporting requirements in multiple ways. This included failure to properly report: accrued expenses totaling approximately \$4,196, contributions/loans from Hanson to his committee totaling at least \$1,638, committee expenditures totaling at least \$1,367, and reimbursement to Mrs. Hanson in the amount of \$310.

On or about January 31, 2013, Hanson, his committee, and Mrs. Hanson filed a semi-annual campaign statement for the reporting period of October 21 through December 31, 2012, but they failed to comply with the Act's campaign reporting requirements in multiple ways. This included failure to properly report: campaign expenditures totaling at least \$5,236, contributions/loans from Hanson to his committee totaling at least \$2,659, and reimbursement to Mrs. Hanson in the approximate amount of \$238.

In this way, Hanson, his committee, and Mrs. Hanson violated Section 84211 (two counts).

Count 3

Violation of the One Bank Account Rule

In connection with Hanson's 2012 candidacy for re-election to the Indian Wells City Council, Hanson paid multiple committee expenditures (totaling at least \$4,775) with personal funds, which were not first deposited into the committee's single, designated campaign bank account. Hanson claims these payments were loans/contributions from himself to his committee. In this way, Hanson and his committee violated Section 85201.

PROPOSED PENALTY

This matter consists of three counts. The maximum penalty that may be imposed is \$5,000 per count—for a total of \$15,000.²¹

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior record of violations.²² Additionally, the Commission considers penalties in prior cases with comparable violations.

Regarding Counts 1 and 2, the public harm inherent in campaign reporting violations is that the public is deprived of important, time-sensitive information regarding political contributions. Generally, these types of violations are considered to be more serious where the public is deprived of information that was required to be disclosed before an election because this has the potential to affect how votes are cast—so greater public harm is involved, and a higher penalty is warranted. Another factor that influences the amount of the penalty is whether the public harm was mitigated because some of the reportable activity was disclosed to the public on another campaign filing.

Recently, the Commission approved a settlement involving campaign reporting violations by a successful city council candidate. See *In the Matter of Annie Campbell Washington, Annie Campbell Washington for Oakland City Council 2014, and Jessica Leavitt*; FPPC Case No. 14/1253 (approved Sep. 17, 2015), where the failure to timely report expenditures on two separate campaign statements was charged as a single count, and the Commission imposed a penalty in the amount of \$2,000. All of the activity in question was required to be reported before the election, but it was not reported until after the election.

Whereas *Washington* involved two campaign statements that were charged as a single count, the current case involves reporting violations that spanned twice as many campaign statements. For this reason, two counts are recommended instead of one.

In *Washington*, all of the reportable activity in question was required to be reported on campaign filings prior to the election, but disclosure did not occur until after the election. In the current case, roughly 36% of the reportable activity in question was not required to be reported until after the election. Also, a small amount of the activity in question that was required to be reported before the election was in fact reported before the election—albeit late. However, these distinguishing factors are overshadowed by several considerations, which justify a higher penalty than what was imposed in *Washington*. In *Washington*, the amount of reportable activity in

²¹ See Section 83116, subdivision (c).

²² Regulation 18361.5, subdivision (d).

question was small, averaging approximately \$1,028 per campaign statement. In the current case, the amount is greater, averaging roughly \$3,604 per campaign statement. Further, in *Washington*, the respondents failed to timely report expenditures that represented approximately two percent of the total amount of expenditures reported during the pertinent year. Here, Respondents failed to timely report approximately 34 percent of all reportable activity in 2012.

Under these circumstances, a penalty in the amount of \$2,500 per count is warranted for Counts 1 and 2.

Count 3 involves failure to use a single, designated campaign bank account. This type of violation involves circumvention of an important safeguard that is meant to create a paper trail to aid the audit and enforcement process. When this type of violation is committed, it becomes difficult or impossible to track and verify campaign financial activity, to ensure that campaign funds are used for campaign-related purposes, and to identify other potential violations.

Recently, the Commission approved a settlement involving this type of violation by a city councilman. See *In the Matter of Luis Castro, Committee to Elect Luis Castro for Calexico City Council Member 2012, and Ana Castro, Treasurer*; FPPC Case No. 13/1200 (approved Oct. 20, 2016), where a penalty in the amount of \$2,000 was imposed for violation of the one bank account rule.

In the current case, regarding Count 3, Hanson paid multiple committee expenditures—totaling at least \$4,775—with personal funds, which were not first deposited into the committee’s single, designated campaign bank account. This is less than the *Castro* case—where known contributions that were not deposited into the campaign bank account totaled roughly \$5,800. In spite of this difference, a higher penalty of \$2,500 is warranted for Count 3 in the current case because approximately \$1,048 of the subject expenditures were also paid in cash, which was charged as a separate count in the *Castro* case and taken as aggravation here.

In general, lower penalties are not being sought in this case because the committee had other issues, including the Hansons failure to maintain required records of committee activity, which hindered the audit and enforcement process.

Further, on July 17, 2014, at a special meeting of the Indian Wells City Council, as reflected on the agenda, the city council and its attorney engaged in a closed session for the purpose of discussing potential litigation involving a tenant of Mr. Hanson. Although Hanson was asked to leave the room during the closed session, he declined but agreed not to participate in the discussion. Hanson contends that Regulation 18705, subdivision (c), as then in effect, permitted him to remain in the meeting. Although the Enforcement Division disagrees with Hanson’s analysis, for settlement purposes, this matter is not being charged.

In closing, it is mitigating that the Hansons do not have a history of prior campaign reporting violations. Further, the Hansons did not benefit personally from any of the campaign reporting violations contained herein. However, in aggravation, in a race awarding three seats to ten candidates, only 28 votes separated Hanson’s second-place finish from third, and 76 votes separated the successful third-place finisher from the unsuccessful fourth-place candidate. As a

result, the significance of the violations in this case—and the public harm—must be considered in the context of this competitive election. Also, a lower penalty is not being sought because Hanson was an experienced candidate who had reason to be familiar with the Political Reform Act.

CONCLUSION

For the foregoing reasons, the following agreed upon penalty is recommended:

Count	Description	Respondents	Penalty
1	Campaign Reporting	Douglas Hanson, Committee to Re-Elect Mayor Doug Hanson to Indian Wells City Council 2012, and M. Elena Hanson	\$2,500
2	Campaign Reporting	Douglas Hanson, Committee to Re-Elect Mayor Doug Hanson to Indian Wells City Council 2012, and M. Elena Hanson	\$2,500
3	One Bank Account Rule	Douglas Hanson and Committee to Re-Elect Mayor Doug Hanson to Indian Wells City Council 2012	\$2,500
Total Penalty:			\$7,500