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9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
10 STATE OF CALIFORNIA

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12 In the Matter of:

13 RE-ELECT GARY MENDEZ FOR RIO
HONDO COLLEGE BOARD 2015 and
14 GARY MENDEZ,

15 Respondents.
16

FPPC No. 16/20131

17 STIPULATION, DECISION, AND ORDER

18 **INTRODUCTION**

19 Respondent Gary Mendez (“Mendez”) currently is a member of the Rio Hondo College Board of
20 Trustees, and he was an unsuccessful candidate for the Water Replenishment District of Southern
21 California Board of Directors (the “Water Board”) in the November 8, 2016 election. Respondent Re-
22 Elect Gary Mendez for Rio Hondo College Board 2015 (the “Committee”) was his candidate-controlled
23 committee, and Mendez was the Committee’s treasurer. Respondents violated the Political Reform Act
24 (the “Act”),¹ by failing to timely file two pre-election campaign statements and one semi-annual
25 campaign statement.

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28 ¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and 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, and all regulatory references are to this source.

1 **SUMMARY OF THE LAW**

2 The violations in this case occurred in 2016, and all legal references and discussions of law pertain
3 to the Act’s provisions as they existed at that time.

4 Need for Liberal Construction and Vigorous Enforcement of the Act

5 When enacting the Act, the people of California found and declared that previous laws regulating
6 political practices suffered from inadequate enforcement by state and local authorities.² Thus, it was
7 decreed that the Act “should be liberally construed to accomplish its purposes.”³ One purpose of the Act
8 is to promote transparency by ensuring that receipts and expenditures in election campaigns are fully and
9 truthfully disclosed so that voters are fully informed and improper practices are inhibited.⁴ Another
10 purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously
11 enforced.”⁵

12 Committees

13 Prior to 2013, a committee qualified as a “recipient committee” when it received one thousand
14 dollars (\$1,000) or more in contributions in a single calendar year.⁶ A committee is a “controlled
15 committee” when it is controlled directly by or indirectly by a candidate.⁷

16 Pre-Election Campaign Statements

17 A controlled committee must file two pre-election campaign statements before the election in
18 which the candidate is listed on the ballot.⁸ A committee must file a first pre-election campaign statement
19 for the period ending 45 days before the election no later than 40 days before the election.⁹ A committee
20 must also file a second pre-election campaign statement for the period ending 17 days before the election
21 no later than 12 days before the election.¹⁰

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25 ² Section 81001, subd. (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subd. (a).

28 ⁵ Section 81002, subd. (f).

⁶ Former section 82013, subd. (a).

⁷ Section 82016, subd. (a).

⁸ Section 84200.5, subd. (a).

⁹ Section 84200.8, subd. (a).

¹⁰ Section 84200.8, subd. (b).

1 Semi-Annual Campaign Statements

2 A controlled committee must file two semi-annual campaign statements each year no later than
3 July 31 for the period ending June 30 and no later than January 31 for the period ending December 31.¹¹

4 A candidate who, during the past six months has filed a short form campaign statement stating that he
5 plans to receive contributions of less than \$2,000 and plans to make expenditures of less than \$2,000 in
6 a calendar year shall not be required to file a semi-annual campaign statement for that six-month period.¹²

7 Joint and Several Liability

8 It is the duty of a committee treasurer and the candidate to ensure that the committee complies
9 with the Act.¹³ A treasurer and candidate may be held jointly and severally liable, along with the
10 committee, for violations committed by the committee.¹⁴

11 **SUMMARY OF THE FACTS**

12 The Committee filed an amended statement of organization on November 22, 2011 and indicated
13 that it qualified as a committee on September 30, 2011. The Committee remained open in 2016 when
14 Mendez placed his name on the November 8, 2016 ballot to become a member of the Water Board.
15 However, the Committee and Mendez did not file two pre-election campaign statements for the reporting
16 periods covering July 1, 2016 through September 24, 2016 by September 29, 2016; and
17 September 25, 2016 through October 22, 2016 by October 27, 2016. The Committee and Mendez also
18 did not file one semi-annual campaign statement for the reporting period covering October 23, 2016
19 through December 31, 2016 by January 31, 2017.

20 It was not until August 10, 2018, almost two years after the 2016 election, that Mendez filed a
21 short form campaign statement for 2016 reporting no activity and terminated the Committee as of
22 December 31, 2015. Since the Committee remained open in 2016 while Mendez campaigned to become
23 a member of the Water Board, the Committee was required to continue filing campaign statements. In
24 the two years between the 2016 election and when Mendez filed various forms, the public remained
25 uninformed about the Committee's activities, or the lack thereof. Mendez would have still been required
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27 ¹¹ Section 84200, subd. (a).

28 ¹² Section 84200, subd. (a)(1) and Regulation 18406, subd. (a).

¹³ Sections 81004, 84100, and 84104; Regulation 18427.

¹⁴ Sections 83116.5 and 91006.

1 to file a campaign statement disclosing his activity before the November 8, 2016 election (by the first
2 pre-election deadline) even if the committee had not been open for the other office.¹⁵ Instead, no
3 disclosure regarding the Water Board election occurred.

4 **VIOLATION**

5 Count 1: Failure to Timely File Pre-Election and Semi-Annual Campaign Statements

6 The Committee and Mendez failed to timely file two pre-election campaign statements for the
7 reporting periods of July 1, 2016 through September 24, 2016 and September 25, 2016 through
8 October 22, 2016, in violation of Government Code sections 84200.5, subdivision (a), and 84200.8, and
9 failed to timely file one semi-annual campaign statement for the reporting period of October 23, 2016
10 through December 31, 2016, in violation of Government Code section 84200.

11 **PROPOSED PENALTY**

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

13 In determining the appropriate penalty for a particular violation of the Act, the Commission
14 considers the facts of the case, the public harm involved, and the purpose of the Act. Also, the
15 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
16 any intention to conceal, deceive, or mislead; (c) whether the violation was deliberate, negligent, or
17 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective amendments
18 voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior record of
19 violations.¹⁶

20 This violation resulted in a lack of transparency for the public into the Mendez’s campaign, but
21 there is no evidence of an intention to conceal, deceive, or mislead the public. The violation seems to
22 have been negligent, but the Committee and Mendez have exhibited a pattern of failing to timely file
23 campaign statements since the Commission had approved a default decision in 2017 against the
24 Committee and Mendez for similar violations. In mitigation, the Committee and Mendez voluntarily
25 terminated the Committee.

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28 ¹⁵ Section 84206 and Regulation 18406.

¹⁶ Regulation 18361.5, subd. (d).

1 The Commission also considers penalties in prior cases with comparable violations. Recent cases
2 with a similar violation include the following:

3 Count 1

4 *In the Matter of Alicia Cruz 4 School Board 2016 and Alicia Cruz*; FPPC No. 17/620. (The
5 Commission approved a stipulated agreement on August 16, 2018.) Cruz ran for office in 2016, but she
6 and her candidate-controlled committee failed to file a pre-election campaign statement and a semi-
7 annual campaign statement until a case was opened by the Enforcement Division. As a result, Cruz and
8 the committee failed to timely report receiving \$4,126 in contributions and making \$5,668 in
9 expenditures. Cruz and the committee did not have prior enforcement history. The Commission approved
10 a penalty of \$2,000 for this violation.

11 Like *Cruz*, the Committee and Mendez did not file campaign statements until a case was opened
12 by the Enforcement Division. According to the short form that Mendez filed almost two years after the
13 election, he did not receive contributions or make expenditures of \$2,000 or more, which was a smaller
14 amount of activity that went unreported than in *Cruz*. However, Mendez does have a prior enforcement
15 history for the same violations. Taking into account these factors, a penalty of \$2,000 is recommended.

16 **CONCLUSION**

17 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
18 Respondents Re-Elect Gary Mendez for Rio Hondo College Board 2015 and Gary Mendez hereby agree
19 as follows:

20 1. Respondents violated the Act as described in the foregoing pages, which are a true and
21 accurate summary of the facts in this matter.

22 2. This stipulation will be submitted for consideration by the Fair Political Practices
23 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

24 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
25 of reaching a final disposition without the necessity of holding an administrative hearing to determine
26 the liability of the Respondents pursuant to Section 83116.

27 4. The Respondents understand, and hereby knowingly and voluntarily waive, any and all
28 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.

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

6 5. The Respondents agree to the issuance of the decision and order set forth below. Also, the
7 Respondents agree to the Commission imposing against it an administrative penalty in the amount of
8 \$2,000. 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 the matter.

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

18 7. The parties to this agreement may execute their respective signature pages separately. A
19 copy of any party's executed signature page including a hardcopy of a signature page transmitted via fax
20 or as a PDF email attachment is as effective and binding as the original.

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23 Dated: _____
24 Galena West, Chief of Enforcement
25 Fair Political Practices Commission

26 Dated: _____
27 Gary Mendez, individually and on behalf of Re-Elect
28 Gary Mendez for Rio Hondo College Board 2015

1 The foregoing stipulation of the parties “In the Matter of Re-Elect Gary Mendez for Rio Hondo College
2 Board 2015 and Gary Mendez,” FPPC No. 16/20131, is hereby accepted as the final decision and order
3 of the Fair Political Practices Commission, effective upon execution below by the Chair.
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5 IT IS SO ORDERED.
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7 Dated: _____

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9 Richard C. Miadich, Chair
10 Fair Political Practices Commission
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