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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10 In the Matter of:

11 HAROLD FONG FOR SCHOOL BOARD
12 2016 AND HAROLD FONG.

13 Respondents.

FPPC Case No. 18/0744

STIPULATION, DECISION AND ORDER

14
15 **INTRODUCTION**

16 Respondent Harold Fong (“Fong”) was first elected to the Sacramento County Office of Education
17 in 2000. He has been re-elected each time his term has expired, with his most recent election on June 7,
18 2016. His current term expires in 2020. His candidate controlled committee is: Harold Fong for School
19 Board 2016 (“2016 Committee”). Fong serves as the treasurer. The 2016 Committee and Fong violated the
20 Political Reform Act¹ (“Act”) by failing to timely file semiannual campaign statements.

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28 ¹ The Political Reform Act—sometimes simply referred to as 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.

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 previous
4 laws regulating political practices suffered from inadequate enforcement by state and local authorities.²
5 Thus, it was decreed that the Act “should be liberally construed 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 system.⁵
9 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be
10 “vigorously enforced.”⁶

11 **Duty to File Campaign Statements**

12 The Act requires candidates and their controlled committees to file campaign statements at specific
13 times disclosing information regarding contributions received and expenditures made by the campaign
14 committees.⁷ A committee must file two semi-annual campaign statements each year no later than July 31
15 for the period ending June 30 and no later than January 31 for the period ending December 31.⁸ Whenever
16 the deadline falls on a Saturday, Sunday, or official state holiday, the filing deadline for a statement shall
17 be extended to the next regular business day.⁹

18 **Joint and Several Liability of Committee, Candidate, and Treasurer**

19 It is the duty of a committee treasurer and the candidate to ensure that the committee complies with
20 the Act’s campaign reporting.¹⁰ A treasurer and candidate may be held jointly and severally liable with the
21 committee for violations committed by the committee.¹¹

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25 ² Section 81001, subdivision (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subdivision (a).

28 ⁵ Sections 84200, *et seq.*

⁶ Section 81002, subdivision (f).

⁷ Section 84200, *et seq.*

⁸ Section 84200, subdivision. (a).

⁹ Regulation 18116, subdivision. (a).

¹⁰ Sections 81004, 84100, 84104, and Regulation 18427.

¹¹ Sections 83116.5 and 91006.

1 **SUMMARY OF THE FACTS**

2 This case was opened pursuant to a referral from the filing officer, Sacramento County, for failure
3 to timely file campaign statements. The candidate controlled committee has remained open and continue
4 to incur a filing obligation. On August 29, 2018, the Enforcement Division sent a letter to Fong regarding
5 the failure to file the semiannual campaign statement for the reporting period of January 1, 2018 through
6 June 30, 2018. Fong filed this statement on September 29, 2018, 19 days late. On February 6, 2019, the
7 Enforcement Division sent an email to Fong regarding the failure to file the semiannual campaign statement
8 for the reporting period of July 1, 2018 through December 31, 2018. Fong filed this statement on February
9 29, 2019, 60 days late.

10 Previously, Fong paid a streamline penalty for failure to timely file semiannual campaign
11 statements. *In the Matter of Harold Fong and Harold Fong for School Board 2016*, FPPC Case No. 2017-
12 00185, the Commission imposed a \$400 penalty for one count for failure to timely file the semiannual
13 campaign statement for the reporting period of July 1, 2016 through December 31, 2016.

14 **VIOLATIONS**

15 **Count 1**

16 Failure to Timely File Semiannual Campaign Statements

17 The 2016 Committee and Fong failed to timely file semiannual campaign statements for the
18 reporting periods of January 1, 2018 through June 30, 2018 and July 1, 2018 through December 31, 2018,
19 in violation of Section 84200.

20 **PROPOSED PENALTY**

21 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per count.
22 Thus, the maximum penalty that may be imposed is \$5,000.¹²

23 In determining the appropriate penalty for a particular violation of the Act, the Commission
24 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission
25 considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention
26 to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d)

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¹² See Section 83116, subdivision (c).

1 whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were
2 filed to provide full disclosure; and (f) whether the violator has a prior record of violations.¹³ The actions
3 of the committee and Fong appear to be negligent, as opposed to intentional or with an intent to conceal.
4 However, there is a pattern of failing to fulfill the duty of candidate and treasurer to file timely campaign
5 statements. The Respondents have a prior record of violations; see FPPC Case No. 17-0185. In mitigation,
6 there appears to be low public harm as there was minimal to no campaign activity to report on the late-
7 filed campaign statements.

8 In determining a penalty, the Commission considers penalties in prior cases with comparable
9 violations. A comparable case in which a penalty was charged for failure to timely file multiple statements
10 is, *In the Matter of Contra Costa Supervisor John Gioia 2010 Officeholder Account, Contra Costa*
11 *Supervisor John Gioia 2014 Officeholder Account, John Gioia, and Jennifer Peck*, FPPC Case Nos. 17/84
12 and 17/86. (The Commission approved a stipulated decision in August of 2017.) Similar to the facts in this
13 case, Gioia maintained officeholder accounts but failed to timely file semiannual campaign statements over
14 a period of four years. There was minimal campaign activity during these years. The respondents in the
15 *Gioia* matter had previously been penalized by the FPPC for the same violation. The Commission charged
16 both committees one count per year of statements not filed and assessed a penalty of \$1,500 for each count.

17 Here, Fong timely filed in 2017 but failed to timely file in 2018. Fong has also maintained a second
18 committee, Harold Fong for School Board 2004 and has failed to file the same campaign statements for
19 this committee. As the two committees file with the same jurisdiction and reported no activity during the
20 reporting period, the violations against the second committee are not being charged but will be considered
21 as an aggravating factor for settlement purposes.

22 After considering the factors listed in Regulation 18361.5 and penalties in prior similar cases, a
23 penalty of \$2,000 is recommended.

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¹³ Regulation 18361.5, subdivision (d).

1 **CONCLUSION**

2 Complainant, the Enforcement Division of the Fair Political Practices Commission, and Harold
3 Fong for School Board 2016 and Harold Fong hereby agree as follows:

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

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

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

11 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all
12 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
13 This includes, but is not limited to the right to appear personally at any administrative hearing held in this
14 matter, to be represented by an attorney at Respondents’ own expense, to confront and cross-examine all
15 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
16 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
17 reviewed.

18 5. Respondents agree to the issuance of the decision and order set forth below. Also,
19 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
20 \$2,000. One or more payments totaling said amount—to be paid to the General Fund of the State of
21 California—is/are submitted with this stipulation as full payment of the administrative penalty described
22 above, and same shall be held by the State of California until the Commission issues its decision and order
23 regarding this matter.

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

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

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7 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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10 Dated: _____

Harold Fong, individually and on behalf of Harold Fong for
School Board 2004 and Harold Fong for School Board
2016.

1 The foregoing stipulation of the parties “In the Matter of Harold Fong for School Board 2016 and
2 Harold Fong,” FPPC Case No. 18/0744 is hereby accepted as the final decision and order of the Fair
3 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: _____

Richard C. Miadich, Chair
Fair Political Practices Commission