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9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
10 STATE OF CALIFORNIA

11
12 In the Matter of:

FPPC No. 17/274

13 JANET McCLEAN FOR SMUSD
SCHOOL BOARD 2012 and JANET
14 McCLEAN,

STIPULATION, DECISION, AND ORDER

15 Respondents.
16

17 **INTRODUCTION**

18 Respondent Janet McClean (“McClean”) was re-elected onto the San Marcos Unified School
19 District Governing Board (the “SMUSD Board”) in the November 8, 2016 election and continues to serve
20 on the SMUSD Board. Respondent Janet McClean for SMUSD School Board 2012 (the “Committee”) was
21 her candidate-controlled committee, and McClean was the Committee’s treasurer. Respondents
22 violated the Political Reform Act (the “Act”),¹ by failing to timely file a semi-annual campaign statement.
23

24 **SUMMARY OF THE LAW**

25 The violations in this case occurred in 2017, and all legal references and discussions of law pertain
26 to the Act’s provisions as they existed at that time.

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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 Need for Liberal Construction and Vigorous Enforcement of the Act

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

9 Committees

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

13 Semi-Annual Campaign Statements

14 A controlled committee must file two semi-annual campaign statements each year no later than
15 July 31 for the period ending June 30 and no later than January 31 for the period ending December 31.⁸

16 Joint and Several Liability

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

20 **SUMMARY OF THE FACTS**

21 The Committee filed a statement of organization on October 4, 2012 and indicated that it qualified
22 as a committee on October 1, 2012. The Committee remained open in 2016 when McClean placed her
23 name on the November 8, 2016 ballot for re-election to the SMUSD Board.

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25 ² Section 81001, subd. (h).

³ Section 81003.

26 ⁴ Section 81002, subd. (a).

⁵ Section 81002, subd. (f).

27 ⁶ Former section 82013, subd. (a).

⁷ Section 82016, subd. (a).

28 ⁸ Section 84200, subd. (a).

⁹ Sections 81004, 84100, and 84104; Regulation 18427.

¹⁰ Sections 83116.5 and 91006.

1 The Committee and McClean filed pre-election campaign statements prior to the election. They
2 filed a pre-election campaign statement for the reporting period covering July 1, 2016 through
3 September 24, 2016 on October 3, 2016. They reported that the Committee did not have any campaign
4 activity. The Committee and McClean also filed a pre-election campaign statement for the reporting
5 period covering September 25, 2016 through October 22, 2016 on October 31, 2016. They again reported
6 that the Committee did not have any campaign activity.

7 Then, the Committee and McClean failed to timely file a semi-annual campaign statement for the
8 reporting period covering October 23, 2016 through December 31, 2016 by January 31, 2017. It was not
9 until August 1, 2019, around 30 months after the semi-annual campaign statement was due, that McClean
10 terminated the Committee as of November 9, 2016. Since the Committee remained open in 2016 while
11 McClean campaigned for re-election, the Committee was required to continue filing campaign
12 statements. In the 30 months between the 2016 election and when McClean terminated the Committee,
13 the public remained uninformed about the Committee's activities, or the lack thereof.

14 VIOLATION

15 Count 1: Failure to Timely a Semi-Annual Campaign Statement

16 The Committee and McClean failed to timely file one semi-annual campaign statement for the
17 reporting period of October 23, 2016 through December 31, 2016, in violation of Government Code
18 section 84200.

19 PROPOSED PENALTY

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

21 In determining the appropriate penalty for a particular violation of the Act, the Commission
22 considers the facts of the case, the public harm involved, and the purpose of the Act. Also, the
23 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
24 any intention to conceal, deceive, or mislead; (c) whether the violation was deliberate, negligent, or
25 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective amendments
26 voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior record of
27 violations.¹¹

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¹¹ Regulation 18361.5, subd. (d).

1 This violation resulted in a lack of transparency for the public into McClean’s campaign, but there
2 is no evidence of an intention to conceal, deceive, or mislead the public. The violation seems to have
3 been negligent, but the Committee and McClean have exhibited a pattern of failing to timely file
4 campaign statements since the Commission had approved a stipulated agreement in 2016 against the
5 Committee and McClean for failing to timely file a late contribution report and failing to timely file five
6 semi-annual campaign statements. In mitigation, the Committee and McClean voluntarily terminated the
7 Committee after receiving contact from the Enforcement Division.

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

10 Count 1

11 *In the Matter of Jim Kelly and Jim Kelly for Grossmont Union High School Board 2014*; FPPC
12 No. 15/274. (The Commission approved a stipulated agreement on July 21, 2016.) Kelly was re-elected
13 into office in November 2014. He and his committee filed the semi-annual campaign statement for the
14 reporting period covering October 19, 2014 through December 31, 2014 three months late and reported
15 minimal campaign activity. Kelly terminated his committee soon after. He and his committee had prior
16 enforcement history for failing to timely file a semi-annual campaign statement. The Commission
17 approved a penalty of \$1,000 for this violation.

18 Like *Kelly*, McClean was re-elected into office and failed to timely file the post-election semi-
19 annual campaign statement. Similarly, McClean and the Committee reported minimal campaign activity
20 when they eventually filed the delinquent semi-annual campaign statement and also terminated the
21 Committee. McClean and the Committee also have prior enforcement history for the same violation. Due
22 to these similarities between *Kelly* and this case, a penalty of \$1,000 is recommended.

23 **CONCLUSION**

24 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
25 Respondents Janet McClean for SMUSD School Board 2012 and Janet McClean hereby agree as follows:

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

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

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

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

13 5. The Respondents agree to the issuance of the decision and order set forth below. Also, the
14 Respondents agree to the Commission imposing against it an administrative penalty in the amount of
15 \$1,000. One or more cashier’s checks or money orders totaling said amount—to be paid to the General
16 Fund of the State of California—is/are submitted with this stipulation as full payment of the
17 administrative penalty described above, and same shall be held by the State of California until the
18 Commission issues its decision and order regarding the matter.

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

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