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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of:

FPPC Case No. 18/1372

JAMES ELIA FOR STATE
ASSEMBLY 2018, JAMES ELIA, AND
SARA KAGY

STIPULATION, DECISION AND ORDER

Respondents.

INTRODUCTION

Respondent, James Elia (“Elia”), was a candidate for the State Assembly for District 71 in the June 5, 2018, Primary Election, and the November 6, 2018, General Election. Respondent, Elia for State Assembly 2018 (the “Committee”) (ID# 1400530), is Elia’s controlled committee. Respondent, Sara Kagy (“Kagy”), is the Committee’s treasurer.

The Political Reform Act (the “Act”)¹ requires candidates, committees, and treasurers to file certain campaign statements to disclose contributions received and expenditures made for the associated reporting period. Additionally, the Act requires these campaign statements to be filed electronically and in paper format when a committee reaches the \$25,000 threshold.

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 Elia, the Committee, and Kagy violated the Act by failing to timely file campaign statements
2 electronically and in paper format.

3 **SUMMARY OF THE LAW**

4 The Act and its regulations are amended from time to time. The violations in this case occurred
5 in 2018 and 2019. For this reason, all legal references and discussions of law pertain to the Act's
6 provisions as they existed at that time.

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

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

15 **Controlled Committee**

16 A controlled committee means a committee that is controlled directly or indirectly by a
17 candidate.⁶ A candidate controls a committee if he has a significant influence on the actions or decisions
18 of the committee.⁷

19 **Pre-Election Campaign Statements**

20 The Act requires all candidates appearing on the ballot to be voted on at the next election to file
21 pre-election campaign statements as follows: (1) for the period ending 45 days before the election, the
22 statement shall be filed no later than 40 days before the election, and (2) for the period ending 17 days
23 before the election the statement shall be filed no later than 12 days before the election.⁸

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26 ² Section 81001, subdivision (h).

27 ³ Section 81003.

28 ⁴ Section 81002, subdivision (a).

⁵ Section 81002, subdivision (f).

⁶ Section 82016, subdivision (a).

⁷ *Id.*

⁸ Sections 84200.5 and 84200.8.

1 **Semi-Annual Campaign Statements**

2 A candidate-controlled committee shall file semi-annual campaign statements each year no later
3 than July 31 for the period ending June 30, and no later than January 31 for the period ending December
4 31.⁹

5 **Electronic Filing**

6 Any candidate or committee who are required to file statements in connection with a state
7 elective office that cumulatively receives contributions or makes expenditures totaling \$25,000 or more
8 is required to file campaign statements online or electronically with the Secretary of State.¹⁰ Once a
9 candidate or committee is required to file online or electronically, the candidate or committee is required
10 to file all subsequent reports online or electronically.¹¹ Persons filing online or electronically are also
11 required to continue to file statements and reports in paper format.¹²

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

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

16 **Liability for Violations**

17 Any person who violates any provision of the Act, who purposely or negligently causes any
18 other person to violate any provision of the Act, or who aids and abets any other person in the violation
19 of any provision of the Act, is liable for administrative penalties up to \$5,000 per violation.¹⁵

20 **SUMMARY OF THE FACTS**

21 Elia was successful in the June 5, 2018, Primary Election, but was defeated in the November 6,
22 2018, General Election, in his bid for State Assembly for District 71. The Committee reported receiving
23 approximately \$62,269 in contributions and making approximately \$72,333 in expenditures throughout
24 2018. This case was opened in response to a referral from the Secretary of State.

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26 ⁹ Section 84200, subdivision (a).

¹⁰ Section 84605, subdivision (a)(1).

27 ¹¹ Section 84605, subdivision (d).

¹² Section 84605, subdivision (f).

¹³ Sections 81004, 84100, and Regulation 18427.

28 ¹⁴ Sections 83116.5 and 91006.

¹⁵ Sections 83116 and 83116.5.

1 **Failure to Timely File Pre-Election Campaign Statements**

2 Prior to the June 5, 2018, Primary Election, candidate-controlled committees were required to
3 file pre-election campaign statements as follows:

4

STATEMENT	DUE DATE	REPORTING PERIOD
First Pre-Election	April 26, 2018	January 1, 2018 to April 21, 2018
Second Pre-Election	May 24, 2018	April 22, 2018 to May 19, 2018

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7 On April 27, 2018, one day late, Elia and Kagy filed the first pre-election campaign statement in
8 paper format for the correct reporting period. This statement disclosed \$28,850 in contributions received
9 and \$19,670 in expenditures made. Due to the Committee exceeding the \$25,000 threshold, the
10 Committee was also required to file the first pre-election campaign statement electronically as well as all
11 subsequent statements. On June 26, 2018, 61 days late, Elia and Kagy filed the statement electronically.

12 On May 19, 2018, Elia and Kagy timely filed the second pre-election campaign statement
13 electronically for the correct reporting period. This statement disclosed \$3,100 in contributions received
14 and \$3,494 in expenditures made. On May 28, 2019, the Enforcement Division notified Elia and Kagy
15 of the referral from the Secretary of State. On June 5, 2019, 377 days late, Elia and Kagy filed the
16 second pre-election campaign statement in paper format.

17 Prior to the November 6, 2018, General Election, candidate-controlled committees were required
18 to file pre-election campaign statements as follows:

19

STATEMENT	DUE DATE	REPORTING PERIOD
First Pre-Election	September 27, 2018	July 1, 2018 to September 22, 2018
Second Pre-Election	October 25, 2018	September 23, 2018 to October 20, 2018

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22 On September 27, 2018, Elia and Kagy timely filed the first pre-election campaign statement
23 electronically for the correct reporting period. This statement disclosed \$4,017 in contributions received
24 and \$16,818 in expenditures made. On June 5, 2019, 251 days late, Elia and Kagy filed the first pre-
25 election campaign statement in paper format.

26 On October 25, 2018, Elia and Kagy timely filed the second pre-election campaign statement
27 electronically for the correct reporting period. This statement disclosed \$2,843 in contributions received

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1 and \$10,377 in expenditures made. On June 5, 2019, 223 days late, the Committee filed the second pre-
2 election campaign statement in paper format.

3 **Failure to Timely File Semi-Annual Campaign Statements**

4 Throughout 2018, a candidate-controlled committee was required to file semi-annual campaign
5 statements as follows:

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DUE DATE	REPORTING PERIOD
July 31, 2018	May 20, 2018 to June 30, 2018
January 31, 2019	October 21, 2018 to December 31, 2018

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9 On July 31, 2018, Elia and Kagy timely filed the semi-annual campaign statement electronically
10 for the period ending June 30, 2018. This statement disclosed \$6,001 in contributions received and
11 \$6,754 in expenditures made. On June 5, 2019, 309 days late, Elia and Kagy filed this semi-annual
12 campaign statement in paper format.

13 On May 29, 2019, 118 days late, Elia and Kagy filed the semi-annual campaign statement
14 electronically for the period ending December 31, 2018. This statement disclosed \$2,900 in
15 contributions received and \$26,815 in expenditures made. On June 5, 2019, 125 days late, Elia and Kagy
16 filed this semi-annual campaign statement in paper format.

17 **VIOLATIONS**

18 **Count 1: Failure to Timely File Pre-Election Campaign Statements**

19 Prior to the 2018 Primary Election, Elia, the Committee, and Kagy failed to timely file the first
20 pre-election campaign statement electronically by the April 26, 2018 deadline, the second pre-election
21 campaign statement in paper format by the May 24, 2018 deadline, and prior to the 2018 General
22 Election, Elia, the Committee, and Kagy failed to timely file the first pre-election campaign statement in
23 paper format by the September 27, 2018 deadline, and the second pre-election campaign statement in
24 paper format by the October 25, 2018 deadline, in violation of Government Code Sections 84200.5,
25 84200.8, and 84605.

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1 **Count 2: Failure to Timely File Semi-Annual Campaign Statements**

2 Elia, the Committee, and Kagy failed to timely file the semi-annual campaign statement in paper
3 format for the reporting period ending June 30, 2018, by the July 31, 2018 deadline, and the semi-annual
4 campaign statement in both paper format and electronically for the reporting period ending December
5 31, 2018 by the January 31, 2019 deadline, in violation of Government Code Sections 84200 and 84605.

6 **PROPOSED PENALTY**

7 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per
8 count. Thus, the maximum penalty that may be imposed here is \$10,000.¹⁶

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

16 The public harm inherent in campaign reporting violations is that the public is deprived of
17 important, time-sensitive information regarding campaign activity. Generally, these types of violations
18 are considered to be more serious when the public is deprived of information that was required to be
19 disclosed prior to an election because this has the potential to affect how votes are cast. Another factor
20 that influences the seriousness of the violation is whether the public harm was mitigated because some
21 of the reportable activity was disclosed, prior to the election, on another campaign filing. The
22 seriousness of the campaign reporting violations committed here are mitigated due to the Committee's
23 reportable activity being fully disclosed on timely filed campaign statements, either electronically or in
24 paper format, prior to the pertinent elections.

25 The evidence supports there was no intent to conceal, deceive or mislead the public as to the
26 Committee's campaign activity because the filed campaign statements fully disclosed the Committee's
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28 ¹⁶ Section 83116, subdivision (c).

¹⁷ Regulation 18361. 5, subdivision (d).

1 campaign activity prior to the pertinent elections. The violations here do not appear to be deliberate as
2 Elia and Kagy timely filed many of the statements either electronically or in paper format. The
3 violations committed here were isolated incidents as Elia and Kagy have not had prior enforcement
4 history. After receiving contact from the Enforcement Division regarding the Committee's non-
5 compliance, Elia and Kagy immediately filed the outstanding statements in the proper format.

6 The Commission considers penalties in prior cases with the same or similar violations and
7 comparable facts.

8 *In the Matter of California Conservative PAC and John Fugatt*; FPPC Case No. 15/1301.
9 Respondents, a state general purpose committee and its treasurer, failed to timely file four semi-annual
10 campaign statements (Counts 1 & 3) and one pre-election campaign statement (Count 2). Respondents
11 were required to file the statements both electronically and in paper format beginning July 1, 2013. The
12 statements were not filed electronically or in paper format until after Respondents received contact from
13 the Enforcement Division. Respondents received approximately \$63,750 in contributions and made
14 approximately \$67,850 in expenditures between July 1, 2013 and June 30, 2015. The Committee and
15 Fugatt had prior enforcement history for failing to timely file campaign statements both electronically
16 and in paper format. On August 16, 2018, the Commission approved a penalty of \$7,500; \$2,500 per
17 count.

18 A lesser penalty than that approved in the *California Conservative* case is recommended. A
19 central purpose of the Act is to ensure receipts and expenditures in election campaigns are fully and
20 truthfully disclosed.¹⁸ Unlike *California Conservative*, aside from one semi-annual campaign statement
21 due after the pertinent elections and one pre-election campaign statement filed one day late, all of the
22 Committee's campaign statements were timely filed either electronically or in paper format. Thus,
23 voters were fully and timely informed of the Committee's receipts and expenditures prior to the
24 pertinent elections.

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¹⁸ Section 81002, subdivision (a).

1 Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty
2 in the amount of \$3,000 is justified, as reflected in the chart below:

Count	Violation	Penalty
1	Failure to Timely File Pre-Election Campaign Statements	\$1,500
2	Failure to Timely File Semi-Annual Campaign Statements	\$1,500
	TOTAL	\$3,000

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8 **CONCLUSION**

9 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
10 Respondents James Elia for State Assembly 2018, James Elia, and Sara Kagy hereby agree as follows:

- 11 1. Respondents violated the Act as described in the foregoing pages, which are a true and accurate
12 summary of the facts in this matter.
- 13 2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at
14 its next regularly scheduled meeting – or as soon thereafter as the matter may be heard.
- 15 3. This stipulation resolves all factual and legal issues raised in this matter – for the purpose
16 of reaching a final disposition without the necessity of holding an administrative hearing to
17 determine the liability of Respondents pursuant to Section 83116.
- 18 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all
19 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through
20 18361.9. This includes, but is not limited to the right to appear personally at any administrative
21 hearing held in this matter, to be represented by an attorney at Respondents’ own expense, to
22 confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to
23 testify at the hearing, to have an impartial administrative law judge preside over the hearing as a
24 hearing officer, and to have the matter judicially reviewed.
- 25 5. Respondents agree to the issuance of the decision and orders set forth below. Also,
26 Respondents agree to the Commission imposing against them an administrative penalty in the
27 amount of \$3,000. One or more cashier’s checks or money orders totaling said amount – to be
28 paid to the General Fund of the State of California – is/are submitted with this stipulation as full

1 payment of the administrative penalty described above, and same shall be held by the State of
2 California until the Commission issues its decision and order regarding this matter.

3 6. If the Commission refuses to approve this stipulation – then this stipulation shall become
4 null and void, and within fifteen business days after the Commission meeting at which the
5 stipulation is rejected, all payments tendered by Respondents in connection with this stipulation
6 shall be reimbursed to Respondents. If this stipulation is not approved by the Commission, and if
7 a full evidentiary hearing before the Commission becomes necessary, neither any member of the
8 Commission, nor the Executive Director, shall be disqualified because of prior consideration of
9 this stipulation.

10 7. The parties to this agreement may execute their respective signature pages separately. A
11 copy of any party’s executed signature page, including a hardcopy of a signature page
12 transmitted via fax or as a PDF email attachment, is as effective and binding as the original.
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15 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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19 Dated: _____

James Elia, individually and on behalf of
James Elia for State Assembly 2018, Respondents

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22 Dated: _____

Sara Kagy, Respondent

1 The foregoing stipulation of the parties “In the Matter of James Elia for State Assembly 2018,
2 James Elia, and Sara Kagy,” FPPC Case No. 18/1372, is hereby accepted as the final decision and order
3 of the Fair Political Practices Commission, effective upon execution 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
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