

1 GALENA WEST
Chief of Enforcement
2 THERESA GILBERTSON
Commission Counsel
3 Fair Political Practices Commission
1102 Q Street, Suite 3000
4 Sacramento, CA 95811

5 Telephone: (916) 322-5660
6 Email: tgilbertson@fppc.ca.gov

7 Attorneys for Complainant
8 Enforcement Division of the Fair Political Practices Commission

9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
10 STATE OF CALIFORNIA

11 In the Matter of:

12 MELENDEZ FOR CALIFORNIA STATE
13 SENATE 2018 AND RUDY
MELENDEZ,

14 Respondents.

FPPC Case No. 2018-00863

STIPULATION, DECISION AND ORDER

15
16 **INTRODUCTION**

17 Melendez for California State Senate 2018 (“Committee”) was the candidate-controlled committee
18 for Rudy Melendez (“Melendez”), a candidate for State Senate District 18 during the November 6, 2018
19 General Election. Melendez served as the treasurer for the committee. The Committee and Melendez
20 violated the Political Reform Act (the “Act”)¹ by failing to timely file campaign statements and failing to
21 use a designated campaign bank account.

22
23
24
25 //

26
27
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 The Act and its regulations are amended from time to time. The violations in this case occurred in
3 2018. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they
4 existed at that time—unless otherwise noted.

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

6 When enacting the Political Reform Act, the people of California found and declared that previous
7 laws regulating political practices suffered from inadequate enforcement by state and local authorities.²
8 Thus, it was decreed that the Act “should be liberally construed to accomplish its purposes.”³

9 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in
10 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
11 practices are inhibited.⁴ Along these lines, the Act includes a comprehensive campaign reporting system.⁵
12 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be
13 “vigorously enforced.”⁶

14 **Committees**

15 A “committee” includes any person who directly or indirectly receives contributions totaling
16 \$2,000 or more in a calendar year.⁷ A committee must file a statement of organization with the Secretary
17 of State within 10 days of qualifying as a committee.⁸

18 **Pre-election Campaign Statements**

19 A recipient committee to support a candidate must file two pre-election campaign statements as
20 required by the Act.⁹ A committee must file a first pre-election campaign statement no later than 40 days
21 before the election for the reporting period ending 45 days before the election. A committee must file a
22 second pre-election statement no later than 12 days before the election for the reporting period ending 17
23

24
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 82013, subdivision (a).

⁸ Section 84101, subdivision (a).

⁹ Section 84200.5, subdivision (a).

1 days before the election. Whenever the deadline falls on a Saturday, Sunday, or official state holiday, the
2 filing deadline for a statement shall be extended to the next regular business day.¹⁰

3 In particular, in connection with the election held November 6, 2018, committees were required to
4 file pre-election campaign statements with the filing officer by the deadline of September 27, 2018 for the
5 reporting period of January 1 through September 22, 2018, and by the deadline of October 25, 2018 for the
6 reporting period of September 23, 2018 through October 20, 2018.¹¹

7 **24-Hour Reports**

8 Each committee that makes or receives a late contribution must file a report within 24 hours of
9 making or receiving the contribution.¹² A “late contribution” includes a contribution aggregating \$1,000
10 or more that is made or received by a candidate or his or her controlled committee, or a committee formed
11 or existing primarily to support or oppose a candidate or measure, during the 90-day period preceding the
12 date of the election or on the date of the election.¹³ In particular, in connection with the election held on
13 November 6, 2018, the 90-day reporting period commenced on August 8, 2018.

14 **Semi-annual Campaign Statements**

15 A recipient committee must file two semi-annual campaign statements each year no later than July
16 31 for the period ending June 30 and no later than January 31 for the period ending December 31.¹⁴
17 Whenever the deadline falls on a Saturday, Sunday, or official state holiday, the filing deadline for a
18 statement shall be extended to the next regular business day.¹⁵

19 **One Designated Campaign Bank Account**

20 A candidate-controlled committee must deposit all contributions and make all expenditures from
21 the committee’s designated bank account.¹⁶ Any loans to the candidate or committee must be deposited in
22 the campaign bank account before being utilized.¹⁷ Any personal funds a candidate intends to spend on
23

24
25 ¹⁰ Regulation 18116, subdivision (a).

26 ¹¹ Section 84200.8, subdivisions (a) and (b); and 84215.

27 ¹² Section 84203.

28 ¹³ Section 82036.

¹⁴ Section 84200, subdivision (a).

¹⁵ Regulation 18116, subdivision (a).

¹⁶ Section 85201, subdivision (e).

¹⁷ Section 85201, subdivision (c).

1 campaign-related expenses must first be deposited in the campaign bank account before the expenditure is
2 made.¹⁸

3 **Joint and Several Liability**

4 Every committee must have a treasurer.¹⁹ It is the duty of the treasurer and the candidate to ensure
5 that the committee complies with all the requirements of the Act.²⁰ The treasurer and the candidate may be
6 held jointly and severally liable, along with the committee, for violations committed by the committee.²¹

7 **SUMMARY OF THE FACTS**

8 This matter was opened as part of the Enforcement Division’s pre-election efforts during the
9 November 6, 2018 General Election. Los Angeles County Registrar-Recorder/County Clerk referred the
10 Committee and Melendez to the Enforcement Division because Melendez failed to timely file a pre-
11 election campaign statement.

12 Melendez filed a candidate intention statement with Los Angeles County for State Senate District
13 18 on or around February 7, 2018. At that time, he also filed a Short Form 470, indicating that he did not
14 intend to raise or spend \$2,000 or more in support of his candidacy. These forms were also filed with the
15 Secretary of State. Melendez was successful during the June 5, 2018 Primary Election, garnering 11.5%
16 of the total share of votes, the second highest share. Melendez was ultimately unsuccessful in the November
17 6, 2018 General Election, receiving only 21.9% of the vote.

18 On July 20, 2018, Melendez filed a Supplemental Short Form 470 with Los Angeles County,
19 indicating that he made expenditures or received contributions of \$2,000 or more. At the same time,
20 Melendez filed a Form 410 Statement of Organization for the Committee with the County. He failed to file
21 the Supplemental Short Form 470 or the Form 410 with the Secretary of State.

22 The Committee failed to timely file the first pre-election campaign statement for the reporting
23 period of January 1, 2018 through September 22, 2018 by the deadline of September 27, 2018. After being
24 contacted by Enforcement, Melendez filed the statement on October 12, 2018, prior to the election but 15
25 days late. He timely filed the second pre-election statement. Melendez failed to timely file the post-election
26

27 ¹⁸ Section 85201, subdivision (d), and Regulation 18524, subdivision (a).

28 ¹⁹ Section 84100.

²⁰ Sections 81004, 84100, 84104, and 84213, and Regulation 18427.

²¹ Sections 83116.5 and 91006.

1 semi-annual campaign statement for the reporting period of October 21, 2018 through December 31, 2018
2 by the deadline of January 31, 2019. He filed this statement on February 21, 2019, 21 days late, and at that
3 time, he terminated the Committee.

4 The Committee reported a total of \$5,808 in expenditures for all of 2018, including expenditures
5 made in connection with both the Primary and General Elections. The campaign statements failed to
6 disclose any contributions, reporting “\$0” or “none” in contributions. When contacted, Melendez indicated
7 that he personally made the payments. He also admitted that he failed to open a designated campaign bank
8 account. He amended the campaign statements to disclose the source on the contributions as himself on
9 September 25, 2019. He reported receiving no outside contributions.

10 Per his amended campaign statements, the Committee and Melendez were required to timely file
11 one 24-hour contribution report to disclose his late contribution of \$1,000 in the aggregate during the 90-
12 day period prior to the election. On August 9, 2018, he contributed \$254. On August 16, 2018, he
13 contributed \$590. On September 6, 2018, he triggered a 24-hour contribution report by contributing \$400
14 and should have reported his aggregated contribution of \$1,244 by the deadline of September 7, 2018.

15 VIOLATIONS

16 **Count 1: Failure to Timely File Campaign Statements and a 24-Hour Report**

17 The Committee and Melendez failed to timely file a pre-election campaign statement for the
18 reporting period of January 1, 2018 through September 22, 2018 by the deadline of September 27, 2018.
19 The Committee and Melendez failed to timely file a 24-hour report to disclose \$1,244 in late contributions
20 from the candidate. The Committee and Melendez failed to timely file a semiannual campaign statement
21 for the reporting period of October 21, 2018 through December 31, 2018 by the deadline of January 31,
22 2019. In this way, the Committee and Melendez violated Government Code sections 84200.5, 84203, and
23 84200.

24 **Count 2: One Designated Campaign Bank Account**

25 The Committee and Melendez failed to deposit all contributions, including personal funds of the
26 candidate, into a designated campaign bank account and failed to make all expenditures from a designated
27 campaign bank account, in violation of Section 85201.

28 //

1 **PROPOSED PENALTY**

2 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per count.
3 Thus, the maximum penalty that may be imposed is \$10,000.²²

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

10 Failure to timely file 24-hour contribution reports, pre-election and semiannual campaign
11 statements deprives the public of timely disclosure of the Committee’s actions before and after the election.
12 The Committee and Melendez were cooperative with the Enforcement Division. Failing to utilize a
13 designated campaign bank account impedes the ability of the Enforcement Division to substantiate the
14 campaign activity that a candidate reports.

15 The Committee and Melendez have no prior enforcement history. Melendez has filed corrective
16 amendments to provide full disclosure. Melendez is not a first-time candidate, having run in 2014 for Los
17 Angeles County Board of Supervisors, District 3; however, this is the first time he has qualified as a
18 committee. In aggravation, he failed to report his personal contributions to the campaign, leaving voters in
19 the dark as to how he funded his campaign. These are not being pursued as separate charges in
20 consideration of settlement.

21 Additionally, the Commission considers penalties in prior cases with comparable violations. Recent
22 similar cases include the following with respect to Count 1: *In the Matter of Arcadian’s Rights Protection*
23 *Association to Support Roger Chandler and Bob Harbicht for Arcadia City Council 2018, Karlfedt Su, and*
24 *Joseph Su*; FPPC Case No. 18/153. The respondents failed to timely file a pre-election campaign statement,
25 a 24-hour independent expenditure report, and a semiannual campaign statement. The committee here
26 raised \$3,718 and spent \$9,352 for the election at issue. The respondents had prior history of enforcement,
27

28

²² See Section 83116, subd. (c).

²³ Regulation 18361.5, subd. (d).

1 having paid a streamline penalty for the same type of violations. On September 19, 2019, the Commission
2 imposed a penalty of \$2,000 for this count.

3 Here, the activity of the Committee is only \$5,808 for both a primary and a general election and
4 there is no prior history of enforcement. Melendez entirely self-funded his campaign and he quickly filed
5 the required statements after contact from the Enforcement Division. Therefore, a penalty of \$1,500 is
6 recommended.

7 A recent similar case with respect to Count 2: *In the Matter of David Albanese for Oxnard City*
8 *Council and David Albanese*; FPPC Case No. 16/19663. The respondents failed to make all campaign
9 expenditures and deposit all contributions into a designated campaign bank account, totaling about \$5,162
10 in contributions and \$4,200 in expenditures. On September 19, 2019, the Commission imposed a penalty
11 of \$1,500.

12 Here, the amount of activity was similar. However, in aggravation, 100% of the contributions
13 received were not timely disclosed. Therefore, a penalty of \$2,500 is recommended.

14 After considering the factors listed in Regulation 18361.5, prior similar cases, and other relevant
15 facts, a total penalty of \$4,000 is recommended.

16 CONCLUSION

17 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
18 Respondents Melendez for California State Senate 2018 and Rudy Melendez hereby agree as follows:

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

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

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

26 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all
27 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
28 This includes, but is not limited to the right to appear personally at any administrative hearing held in this

1 matter, to be represented by an attorney at Respondents' own expense, to confront and cross-examine all
2 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
3 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
4 reviewed.

5 5. Respondents agree to the issuance of the decision and order set forth below. Also,
6 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
7 \$4,000. One or more payments totaling said amount—to be paid to the General Fund of the State of
8 California—is/are submitted with this stipulation as full payment of the administrative penalty described
9 above, and same shall be held by the State of California until the Commission issues its decision and order
10 regarding this matter.

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

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

20 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

21
22
23
24 Dated: _____

Rudy Melendez, Candidate and Treasurer
Individually and on behalf of Melendez for California
State Senate 2018

1 The foregoing stipulation of the parties “Melendez for California State Senate 2018 and Rudy
2 Melendez,” FPPC Case No. 2018-00863, is hereby accepted as the final decision and order of the Fair
3 Political Practices Commission, effective upon execution below by the Chair.

4
5 IT IS SO ORDERED.

6
7 Dated: _____

8 _____
Richard C. Miadich, Chair
Fair Political Practices Commission