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9 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
10 **STATE OF CALIFORNIA**

11 In the Matter of:

12 ROBERT JORDAN FUNK, Committee,
13 and JORDAN FUNK,

14 Respondents.

FPPC Case No. 2018-00376

STIPULATION, DECISION AND ORDER

15 **INTRODUCTION**

16 Jordan Funk (“Funk”) was an unsuccessful incumbent candidate for District Attorney for Modoc
17 County in the June 5, 2018 Primary Election. His committee was called, “Robert Jordan Funk”
18 (“Committee”). Funk also served as the treasurer for the Committee. The Committee and Funk violated
19 the Political Reform Act (the “Act”)¹ by failing to timely file campaign statements and failing to use a
20 designated campaign bank account.

21 **SUMMARY OF THE LAW**

22 The Act and its regulations are amended from time to time. The violations in this case occurred in
23 2018. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they
24 existed at that time—unless otherwise noted.

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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 period of January 1 through April 21, 2018, and by the deadline of May 24, 2018 for the reporting period
2 of April 22, 2018 through May 19, 2018.¹¹

3 **Semi-annual Campaign Statements**

4 A recipient committee must file two semi-annual campaign statements each year no later than July
5 31 for the period ending June 30 and no later than January 31 for the period ending December 31.¹²
6 Whenever the deadline falls on a Saturday, Sunday, or official state holiday, the filing deadline for a
7 statement shall be extended to the next regular business day.¹³

8 **One Designated Campaign Bank Account**

9 A candidate-controlled committee must deposit all contributions and make all expenditures from
10 the committee's designated bank account.¹⁴ Any loans to the candidate or committee must be deposited in
11 the campaign bank account before being utilized.¹⁵ Any personal funds a candidate intends to spend on
12 campaign-related expenses must first be deposited in the campaign bank account before the expenditure is
13 made.¹⁶

14 **Liability**

15 Every committee must have a treasurer.¹⁷ It is the duty of the treasurer and the candidate to ensure
16 that the committee complies with all the requirements of the Act.¹⁸ The treasurer and the candidate may be
17 held jointly and severally liable, along with the committee, for violations committed by the committee.¹⁹

18 **SUMMARY OF THE FACTS**

19 This matter was opened pursuant to a referral from Modoc County. Funk filed a Form 410,
20 Statement of Organization, with the Modoc County Clerk on May 1, 2018 and indicated that the Committee
21 qualified on April 12, 2018. Funk filed a Form 460 campaign statement on May 1, 2018 and reported for
22 the reporting period of March 10, 2018 through May 1, 2018. He filed no other campaign statements prior
23 to the election. As of March 11, 2019, Funk filed the outstanding campaign statements. Initially, Funk
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25 ¹¹ Section 84200.8, subdivisions (a) and (b); and 84215.

26 ¹² Section 84200, subdivision (a).

27 ¹³ Regulation 18116, subdivision (a).

28 ¹⁴ Section 85201, subdivision (e).

¹⁵ Section 85201, subdivision (c).

¹⁶ Section 85201, subdivision (d), and Regulation 18524, subdivision (a).

¹⁷ Section 84100.

¹⁸ Sections 81004, 84100, 84104, and 84213, and Regulation 18427.

¹⁹ Sections 83116.5 and 91006.

1 reported no contributions but did report expenditures. When asked to explain, Funk confirmed that his
 2 personal funds were the sole source of all contributions. He told Enforcement Division staff that he did not
 3 open a designated campaign bank account but rather used his own accounts and credit cards to make
 4 payments on behalf of the Committee. In total, the Committee raised approximately \$7,538 and made an
 5 equal number of expenditures in connection with the June 5, 2018 Primary Election.

6 The following chart details the timeline of statements filed by Funk and the Committee:

7 8	Reporting Period	Filed	Due	Contributions & Expenditures
9 10	Original 03/10/18 – 05/01/18	05/01/18	04/26/18	C: “None” E: \$2,561
11 12	Amendment 01/01/18 – 04/21/18	03/11/19	04/26/18	C: “None” E: \$4,749
13 14	Amendment (2) 01/01/18 – 04/21/18	10/07/20 ²⁰	04/26/18	C: \$3,092 E: \$3,092
15 16	Original 4/22/18 – 05/19/18	3/11/19	5/24/18	C: “None” E: 2,788
17 18	Amendment 04/22/18-05/19/18	10/07/20 ²¹	05/24/18	C: \$4,441 E: \$4,441
19 20	Original 05/20/18-06/30/18	3/11/19	7/31/18	\$0 / \$0
21 22	Original 7/1/18 – 7/31/18	3/11/19	07/31/18	\$0 / \$0

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28 ²⁰ This was filed as a single statement for the reporting period of 01/01/18 – 11/01/18.

²¹ This was filed as a single statement for the reporting period of 01/01/18 – 11/01/18.

1 **VIOLATIONS**

2 **Count 1: Failure to Timely File Campaign Statements**

3 The Committee and Funk failed to timely file pre-election campaign statements for the reporting
4 periods of January 1, 2018 through April 21, 2018 by the deadline of April 26, 2018 and April 22, 2018
5 through May 19, 2018 by the deadline of May 24, 2018, in violation of Government Code Section 84200.5.
6 The Committee and Funk failed to timely file a semiannual campaign statement for the reporting period of
7 May 20, 2018 through June 30, 2018 by the deadline of July 31, 2018, in violation of Government Code
8 Section 84200.

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

10 The Committee and Funk failed to deposit all contributions, including personal funds of the
11 candidate, into a designated campaign bank account and failed to make all expenditures from a designated
12 campaign bank account, in violation of Government Code Section 85201.

13 **PROPOSED PENALTY**

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

16 This case does not qualify for the Streamline Program because the violations at issue do not meet
17 the eligibility criteria for either the Tier One or Tier Two programs for failure to utilize a campaign bank
18 account. For a campaign bank account violation to qualify for a streamline penalty, the total amount of all
19 contributions not deposited in a campaign bank account during the statement period must not exceed 10%
20 for Tier One and 40% for Tier Two. In this matter, the total amount of all contributions not deposited in
21 the campaign bank account was 100% in all campaign statement periods.²³

22 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
23 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
24 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers
25 the facts and circumstances of the violation in the context of the following factors set forth in Regulation
26 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused by the specific
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28 ²² See Section 83116, subdivision (c).

²³ See Regulation 18360.1 (d)(5)(B)(ii)(a).

1 violation; (2) The level of experience of the violator with the requirements of the Political Reform Act;
2 (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence or absence of
3 any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate, negligent or
4 inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission staff or any
5 other governmental agency in a manner not constituting complete defense under Government Code Section
6 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the violator has a prior
7 record of violations of the Political Reform Act or similar laws; and (8) Whether the violator, upon learning
8 of a reporting violation, voluntarily filed amendments to provide full disclosure.

9 Failure to timely file pre-election and semiannual campaign statements deprives the public of
10 timely disclosure of the Committee's actions before and after the election. Funk has previously run for
11 office and was the incumbent in the election. He knew or should have known the requirements regarding
12 campaign reporting deadlines and the requirement to open a designated campaign bank account. The
13 Committee and Funk were cooperative with the Enforcement Division. However, failing to utilize a
14 designated campaign bank account impedes the ability of the Enforcement Division to substantiate the
15 campaign activity that a candidate reports.

16 The Committee and Funk have no prior enforcement history and have filed corrective amendments
17 to provide full disclosure. Funk's understanding was that he need only report other people's money and
18 that it would be understood that the payments made by the Committee were his. There is no evidence to
19 suggest that the violation was made with intent to conceal or deceive as Funk responded to requests to file
20 late statements and amendments. According to Funk, he was ignorant of the requirement to utilize a
21 campaign bank account when only using his own personal funds and he maintained documentation for his
22 campaign expenditures. There is no evidence that Funk sought or received advice regarding campaign
23 reporting, therefore this factor is not considered as mitigation or aggravation. The error appears to be
24 isolated to this campaign. The failure to file disclosure statements and failure to report expenditures were
25 corrected upon contact by the Enforcement Division.

26 Additionally, the Commission considers penalties in prior cases with comparable violations. A
27 recent comparable case is, *Melendez for California State Senate 2018 and Rudy Melendez*, FPPC No. 18-
28 863. The candidate, Melendez, and the committee failed to timely file campaign statements, and failed to

1 open a designated campaign bank account. Similar to the case at hand, Melendez was unsuccessful and
2 raised and spent less than \$10,000. Melendez reported a total of \$5,808 in expenditures in connection with
3 a primary and general election. Similar to the matter at hand, all the campaign funds were the personal
4 funds of the candidate and were not deposited to a campaign bank account before the funds were expended.
5 On April 16, 2020, the Commission imposed a penalty of \$1,500 for a single count for one pre-election
6 campaign statement filed late but before the election, failing to file a 24-hour contribution report before
7 the election, and failing to timely file a semiannual campaign statement. The Commission imposed a
8 penalty of \$2,500 for failure to use a single designated campaign bank account.

9 The facts in this case are substantially similar to the comparable case, *Melendez*, including that both
10 candidates were unsuccessful and had small, self-funded campaigns. However, in this case, the Committee
11 and Funk failed to timely file two pre-election statements, although one was filed prior to the election. As
12 there was less disclosure prior to the election than in *Melendez*, a penalty of \$2,000 is recommended for
13 Count 1. A similar penalty is recommended for Count 2.

14 After considering the factors listed in Regulation 18361.5, prior similar cases, and other relevant
15 facts, a total penalty of \$4,500 is recommended.

16 CONCLUSION

17 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
18 Respondents Robert Jordan Funk, Committee, and Jordan Funk, 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 \$4,500. 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.

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21 Dated: _____

Angela J. Brereton, Chief of Enforcement
Fair Political Practices Commission

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25 Dated: _____

Jordan Funk, Candidate and Treasurer
Individually and on behalf of Robert Jordan Funk,
Committee

