STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811

January 18, 2022

Mr. Roger Hernandez
Hernandez for Assembly 2014
San Gabriel Valley Leadership Roger Hernandez Ballot Measure Committee
[redacted]

Mr. David Gould (treasurer)
dlgould@gouldorellana.com

<u>Warning Letter re: FPPC Case No. 20/406; Roger Hernandez; Hernandez for Assembly 2014; San Gabriel Valley Leadership Roger Hernandez Ballot Measure; David Gould</u>

Gentlepersons:

The Enforcement Division of the Fair Political Practices Commission ("FPPC") enforces the provisions of the Political Reform Act.[1] This case was opened in response to two audits that were performed by the Political Reform Audit Program of the Franchise Tax Board ("FTB") with respect to the controlled committees of Roger Hernandez, known as Hernandez for Assembly 2014—and the San Gabriel Valley Leadership Roger Hernandez Ballot Measure committee. For the assembly committee, the period covered by the audit was January 1, 2015 through December 31, 2017. For the ballot measure committee, the audit period was January 1, 2015 through December 31, 2016. Both audit reports were transmitted to the FPPC in March 2020. Please be advised that we are closing this case with this warning letter, as discussed below.

Summary of the Law

At the core of the Act's campaign reporting system is the requirement that candidates and committees must file campaign statements and reports for certain reporting periods and by certain deadlines. For example, two semi-annual campaign statements must be filed each year. Generally, the first is for the reporting period of January 1 through June 30—and this statement must be filed by the deadline of July 31. The second is for the reporting period of July 1 through December 31—and this statement must be filed by January 31. (See Section 84200.)

Among other things, such campaign filings are required to include itemized and accurate information about campaign expenditures of $100 or more. (Section 84211, subd. (k).) Additionally, for a committee that is controlled by a candidate, when such expenditures are for gifts, meals, or travel, heightened reporting requirements apply. Pursuant to Regulation 18421.7, a brief description of the political, legislative, or governmental purpose of the expenditure must be disclosed, along with the following:

[1] The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections 81000 through 91014. The regulations of the Fair Political Practices Commission are contained in California Code of Regulations, title 2, sections 18110 through 18998. Unless otherwise noted, all statutory references are to the Government Code, and all regulatory references are to Title 2, Division 6 of the California Code of Regulations—as they were in effect during calendar years 2015 through 2017.

1. For a gift, the date of the gift, the nature of the gift, and if made to an individual recipient, the name of the recipient, or if made to a group of recipients, the name of each recipient who received a benefit of $50 or more.
2. For a meal, other than a meal reported as an expenditure for travel, the date of the meal, the number of individuals for whom the expenditure was paid, and whether these individuals included the candidate, a member of the candidate's "household," or an individual with the authority to approve expenditures of the committee's campaign funds.
3. For travel, including lodging or a meal, the date or dates of travel, the destination, the goods or services paid for by the expenditure, the number of individuals for whom the expenditure was paid, and whether these individuals included the candidate, a member of the candidate's "household," or an individual with authority to approve expenditures of the committee's campaign funds.

Also, the Act imposes important safeguards that are meant to create a paper trail to aid the audit and enforcement process. For example, each candidate, treasurer, and elected officer must maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that campaign statements were properly filed, and to otherwise comply with the Act's campaign disclosure provisions. (Section 84104.) This requirement includes a duty to maintain detailed information and original source documentation for all contributions and expenditures. Generally, records must be maintained for a period of four years following the date that the campaign statement to which they relate is filed. However, in the case of an elected state officer serving a four-year term, the records for campaign statements filed during the first year following his or her election must be kept for five years following the date the campaign statement to which they relate is filed. (See Regulation 18401.)

Additionally, for a committee controlled by a candidate that incurs an expenditure of $100 or more for a gift, meal, or travel—the records that must be kept include a dated memorandum, or other dated written record, containing the information required to be reported (as noted above), and the names of all individuals for whom an expenditure for a meal or travel was paid. (Regulation 18401, subd. (a)(5).)

The Assembly Committee

With respect to the assembly committee, FTB's audit covered calendar years 2015 through 2017. For this audit period, FTB found that the committee reported spending approximately $241,061—but the filers did not substantially comply with the Act's disclosure and recordkeeping requirements.

Required records—such as invoices, receipts, or vendor billing statements—were not maintained for expenses (in amounts of $25 or more) that were charged on committee credit cards, totaling approximately $71,639. Of this amount, approximately $41,500 consisted of expenditures for gifts, meals, or travel (in amounts of $100 or more), for which the additional required records were not maintained. In this way, Mr. Hernandez, the committee, and Mr. Gould violated Section 84104 and Regulation 18401. FTB noted that the lack of records precluded the determination of whether the expenses were made for political, legislative, or governmental purposes and/or if additional information for gifts, meals, and travel was required to be reported.

FTB records reflect that in December 2019, Mr. Hernandez admitted to FTB that he had purged the records; he had to move out of his house; and he had no room for storage. The exact date when these records were purged is unknown, but this admission by Mr. Hernandez was made at a time when Mr. Hernandez still was required to have the records—and the five-year statute of limitations has not run with respect to the date of this admission, which would have been the earliest notice of a recordkeeping violation in this case.

Also, with respect to the expenditures for gifts, meals, or travel that are noted above (totaling approximately $41,500), these expenditures were reported on campaign statements, but for about three-quarters of the expenditures, none of the additional, required information for gifts, meals, and travel was reported—and for the remaining one-quarter, only some of the required, additional information was reported. In this way, Mr. Hernandez, the committee, and Mr. Gould violated Section 84211, subdivision (k), and Regulation 18421.7. The five-year statute of limitations has run with respect to the original semi-annual campaign statements that were filed for the reporting periods covering the 2015 and 2016 calendar years, but not for 2017. It is worth noting, however, that for calendar years 2015 through 2017, all of the semi-annual campaign statements were amended in 2018. The statute of limitations has not run with respect to any of those amendments, which included the same reporting violations.

The Ballot Measure Committee

With respect to the ballot measure committee, FTB's audit covered calendar years 2015 and 2016. For this audit period, FTB found that the committee's reported receipts and expenditures totaled approximately $11,700 and $14,403, respectively. Also, FTB concluded that the filers substantially complied with the Act's disclosure and recordkeeping requirements—except that civic donations totaling $11,000 were made before the permissible 60-day period prior to the effective date of termination of the committee. Of this amount, $10,000 was reported as scholarships paid to ten individuals. (Mr. Gould stated to FTB that Mr. Hernandez wanted to give money to charity and found individuals worthy of scholarships.)

However, the five-year statute of limitations has run with respect to these findings.

Conclusion

Both committees are terminated, and Mr. Hernandez no longer holds a public office. For this, and other reasons, including the age of the violations noted above, we are closing this matter without further action. This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to $5,000 for each violation.

A warning letter is an Enforcement Division case resolution without administrative prosecution or fine. The Commission has adopted Regulation 18360.1 to authorize the Enforcement Division to issue warning letters to conclude cases in specified circumstances. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the Enforcement Division will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the Commission's website ten (10) days from the date of this letter.

If you need guidance regarding your obligations in the future, please visit our website at www.fppc.ca.gov/advice.html or call the Commission's Toll-Free Advice Line at 1-866-ASK-FPPC (1-866-275-3772).

Thank you for your attention to this matter. Please do not hesitate to call if you have any questions.

Very truly yours,

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