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8
9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
10 STATE OF CALIFORNIA

11 In the Matter of

12
13 CONSUMERS FOR CHOICE, TIM
SNIPES, AND JOHN STOOS,

14
15 Respondents.

) OAH No. 2019110142
) FPPC No. 15/078
)
) **COMPLAINANT'S OPENING BRIEF IN**
) **SUPPORT OF PROPOSED DECISION**
)
) Hearing Judge: Hon. Tiffany L. King
) Hearing Date: February 10, 2020
) Hearing Time: 9:00 a.m.
) Hearing Place: 2349 Gateway Oaks Drive, Ste 200
Sacramento, CA 95833

18 Complainant, Enforcement Division of the Fair Political Practices Commission, submits this brief
19 pursuant to Government Code section 83116 and title 2, California Code of Regulations sections 18361.5
20 and 18561.9.¹ The proposed decision of Administrative Law Judge Tiffany L. King, dated
21 March 11, 2020, states findings of fact that are supported by and consistent with the evidence presented
22 at the hearing in this matter on February 10, 2020, in Sacramento, California..

23 The purpose of this brief is to provide the Enforcement Division's recommendation regarding this
24 proposed decision pursuant to Regulation 18361.9(b)(1)(D). Regulation 18361.9 refers to Government
25

26 ¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are
27 to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of Title 2 of
the California Code of Regulations, and all regulatory references are to this source. See §§ 83111 and 83116.

1 Code Section 11517 for the possible actions the Commission can take regarding this proposed decision
2 from the Administrative Law Judge after a full hearing on this matter.

3 Enforcement Division's recommendation is that the Commission make technical and minor
4 changes to the proposed decision and then adopt it.² The Enforcement Division recommends the
5 following technical and minor changes to the proposed decision since the agency may make clarifying
6 changes or a change of a similar nature so long as the change does not affect the factual or legal basis of
7 the proposed decision:

- 8 1. On page 5, paragraph 8, the decision incorrectly describes that Political Dynamics is owned by
9 Snipes. Amend to: "During this time, CFC also made multiple payments to respondent Snipes
10 and/or his firm Political Dynamics for 'consulting services.'"
- 11 2. On page 12, paragraph 34, the decision incorrectly cites Government Code Section 91005.5 as
12 being the authority that permits the Administrative Law Judge to impose of a penalty.
13 Government Code Section 91005.5 pertains to civil proceedings and Government Code Section
14 83116 pertains to administrative proceedings. This matter was administrative. Amend as follows:
15 "A violation of the Act carries a maximum penalty of \$5,000 per violation. (~~§91005.5~~83116)"
- 16 3. On page 14, paragraph 2, the decision incorrectly cites Government Code Section 91005.5 as
17 being the authority, which permits the Administrative Law Judge to impose a penalty.
18 Government Code Section 91005.5 pertains to civil proceedings and Government Code Section
19 83116 pertains to administrative proceedings. This matter was administrative. Amend as follows:

20
21 Complainant's authority to bring this action derives from California Code of
22 Regulations, title 2 (2 CCR), sections 18361 and 18361.4, subdivision (e), and
23 Government Code sections 83111, and 83116, ~~and 9100.5~~, which assign to the
24 Enforcement Division the duty to administer, implement, and enforce provisions of
25 the Act.
26

27 ² Gov. Code Section 1157, subd. (c)(2)(C).

1 4. On pages 14 and 15, paragraph 3 the decision incorrectly cites Government Code Section 91005.5
2 as being the authority, which permits the Administrative Law Judge to impose of a penalty.
3 Government Code Section 91005.5 pertains to civil proceedings and Government Code Section
4 83116 pertains to administrative proceedings. This matter was administrative. Amend as follows:

5 ~~Section 91005.5 provides, in pertinent part: Any person who violates any provision~~
6 ~~of this title, except Sections 84305, 84307, and 89001, for which no specific civil~~
7 ~~penalty is provided, shall be liable in a civil action brought by the commission...for~~
8 ~~an amount up to five thousand dollars (\$5,000) per violation. Section 83116~~
9 ~~provides, in pertinent part:~~

10 When the commission determines there is probable cause for believing
11 this title has been violated, it may hold a hearing to determine if a violation
12 has occurred. Notice shall be given and the hearing conducted in
13 accordance with the Administrative Procedure Act...When the
14 commission determines on the basis of the hearing that a violation has
15 occurred, it shall issue an order that may require the violator to do all or
16 any of the following:... (c) Pay a monetary penalty of up to five thousand
17 dollars (\$5,000) per violation to the General Fund of the state...

18
19 5. On page 16, paragraph 6, the decision incorrectly cites Government Code Section 91005.5 as
20 being the authority that permits the Administrative Law Judge to impose a penalty. Government
21 Code Section 91005.5 pertains to civil proceedings and Government Code Section 83116 pertains
22 to administrative proceedings. This matter was administrative. Amend as follows: “Thus, cause
23 exists to assess a monetary fine against respondents Stoos and CFC to Sections 84506, subdivision
24 (a)(1), and ~~91005.5~~ 83116.”

25 6. On page 16, paragraph 7, the decision incorrectly cites Government Code Section 91005.5 as
26 being the authority that permits the Administrative Law Judge to impose of a penalty.

1 Government Code Section 91005.5 pertains to civil proceedings and Government Code Section
2 83116 pertains to administrative proceedings. This matter was administrative. Amend as follows:
3 “Thus, cause exists to assess a monetary fine against respondents Stoos and CFC to Sections
4 84506, subdivision (a)(1), and ~~91005.5~~ 83116.”

- 5 7. On page 17, paragraph 9, the decision incorrectly cites Government Code Section 91005.5 as
6 being the authority that permits the Administrative Law Judge to impose of a penalty.
7 Government Code Section 91005.5 pertains to civil proceedings and Government Code Section
8 83116 pertains to administrative proceedings. This matter was administrative. Amend as follows:
9 “As such, cause exists to assess a monetary fine against respondents Stoos and CFC pursuant to
10 sections 84211 and ~~91005.5~~ 83116.

11 Additionally, the proposed total administrative penalty of \$12,500 for the five proven violations of
12 the Political Reform Act is appropriate in this matter because it takes into consideration all of the factors
13 to be considered in framing a proposed decision.³

14 Thus, the Enforcement Division respectfully requests that the Commission adopt the proposed
15 decision in this matter in its entirety.

16 Dated: March 23, 2020

FAIR POLITICAL PRACTICES COMMISSION

By: Galena West
Chief of Enforcement

Michael
Hamilton

Digitally signed by
Michael Hamilton
Date: 2020.03.23
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Michael W. Hamilton
Commission Counsel

27 ³ Reg. 18361.5(d).