



(Approved December 21, 2017)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Timestamps from [Commission Meeting 11/16/2017](#)
Thursday, November 16, 2017

Under Government Code section 11123(a), all meetings of a state body are open and public, and all persons are permitted to attend any meeting of a state body, except as otherwise provided in that article. The section further states that the portion of the teleconferenced meeting that is required to be open to the public must be audible to the public at the location specified in the notice of the meeting. The Commission may take action on any item listed on this agenda.

CALL TO ORDER

Chair Remke called the meeting to order at 10:00 am on November 16, 2017, at the Fair Political Practices Commission, 1102 Q Street, Suite 3800, Sacramento, CA 95811. Chair Remke and Commissioners Audero and Hayward were present. Commissioner Hatch was present via teleconference.

Welcome

6:27 Chair Remke: Okay, let's go ahead and get started. Do you want to call roll?

Chair Remke: Okay, so, Commissioner Hatch can you hear me okay?

Commissioner Hatch: I can hear you alright. It said that there were two people on the call.

Chair Remke: You know what, I can barely understand you. Are you on the speaker phone?

Commissioner Hatch: My question was, when I called in it said there were two other people on the call (inaudible)

Chair Remke: Sasha, you want to address that?

Sasha Linker, Commission Assistant: So, the two people would be the room and you.

Chair Remke: Okay. All right?

Commissioner Hatch: Okay, thank you.

Chair Remke: So – Jack - I mean... So, you're in, I understand from the notice, in a lobby and I'm going to go ahead and take a wild guess that there are no other public participants in that

lobby. In which case, I don't think there would be any problem for him to come off speaker and talk directly into the phone, assuming someone were to appear, he'd obviously have to go back on speaker. Is that fair?

Jack Woodside, General Counsel: I think that's correct.

Chair Remke: So, did you hear that, Commissioner Hatch? That makes it - makes it easier for us to hear you.

Commissioner Hatch: The only member of the public here is my wife.

Chair Remke: Well if you want to have her sit through this, go ahead and keep it on speaker, otherwise...

Commissioner Hatch: (Overlapping) She's graciously giving up her vacation time.

Chair Remke: Okay. It's just because I know I'm having trouble hearing you, and I will make sure to pause to ask for your comments, but I think it's going to be important for this hearing, more than usual, to wait to be recognized to start talking. Otherwise we're not going to be able to make any sense of this.

Commissioner Hatch: Okay.

Public Comment

- 1. Public Comment for Items not on Agenda.** During this comment period, any person is invited to speak on any topic that is not listed on this agenda. Action may not be taken on any matter raised during this public comment period until the matter is specifically listed on a future agenda. Those who wish to comment on an item that has been listed on this agenda may comment when that item has been opened for consideration by the Commission and before any action is taken.

Chair Remke: Okay. So, good morning everyone. Public comment for any items not on the agenda? Okay. Seeing or hearing none, we'll move on.

Approval of Commission Minutes

- 2. Approval of October 2017 Commission Hearing Minutes.**

Chair Remke: The approval of the Commission minutes. Are there any comments or corrections to the minutes from the Commissioners?

Commissioner Audero: I just have a question.

Chair Remke: Commissioner Audero.

Commissioner Audero: So, again we have this great transcript but the difference, I don't know if this question goes to you, or to you, chair, but the difference is that there's like, rarely any punctuation at all in this transcript. Did something change? What happened between the last version - the last month's...

Commissioner Hatch: (Inaudible).

Chair Remke: Commissioner... Is that you, Commissioner Hatch, talking?

Commissioner Hatch: I apologize for that. Sorry.

Chair Remke: Okay. So, I can answer that question. As I explained last time, we had an actual transcription from a court reporter type service because we are testing out this computer program. So, this is our computer program, which doesn't allow for punctuation and the like, but it's an issue of cost which, obviously, to have a professional transcribe it is considerably costly and this we can do in-house. So, that's the difference.

Commissioner Audero: Okay.

Chair Remke: Any other questions or comments on the minutes? Anything from you Commissioner Hatch? Okay, hearing nothing.

10:11 Commissioner Hayward: I move approval.

Chair Remke: I second.

Ayes: Commissioners Hatch, Hayward, and Chair Remke.

Nays: Commissioner Audero.

The motion passed 3-1.

Consent Calendar 3-35

Chair Remke: Okay. Moving to the consent calendar items 3 through 35. Do the Commissioners want to pull any items from consent?

Commissioner Audero: Yes. I do.

Chair Remke: Okay. Let me start with Commissioner Audero.

Commissioner Audero: Number 14, please.

Chair Remke: Okay. Number fourteen is pulled. Any other items? Commissioner Hatch you said something?

Commissioner Hatch: Yes. Also, items 19, 20, and 21.

Chair Remke: 19 20 and 21. So we have 14 19 20 and 21.

Commissioner Hatch: I have questions of those four items.

Chair Remke: Yeah, we'll get to that. Yeah. Anything else pulled? Commissioner Hayward?

Commissioner Hayward: No.

Chair Remke: Okay. So, as to the remaining items on consent, why don't you go ahead and start, Commissioner Hatch. You said you had some questions.

Commissioner Hatch: (Inaudible). What is the difference between streamline stipulation and streamline settlement?

Galena West, Chief of Enforcement: This is Galena West, Chief of Enforcement. They're interchangeable. So, streamline settlement, streamline stipulation, they're the same. We just used the name stipulation for the actual form itself and the signed document

Commissioner Hatch: Okay, I raise the question because one item uses the term streamline stipulation and everything else is settlement. So, (inaudible).

Galena West: Sorry about that.

Commissioner Hatch: And, I also had a second question. (Inaudible) Enforcement regulation compliance (inaudible).

Chair Remke: Can you repeat the question Commissioner Hatch. I couldn't hear you.

Commissioner Hatch: Sorry. My question is: does Enforcement regulate compliance for misleading committee names, and, if not, who does that?

Galena West: Actually, we follow the certain rules that there are for say: ballot measure committees, candidate control measure committees, committees that are primarily formed. They have very particular naming that they have to follow but for general purpose committees, their committee names are not regulated by the Act as far as

Commissioner Hatch: (Overlapping) Let's stick to the ones that are regulated.

Galena West: Right. So, we regulate according to the regulations and the statute about primarily formed ballot measure committees and candidate control, certain candidate controlled

committees. They have to have, and as well as sponsor committees, they have a certain naming that they have to follow that's written out in the regulations and then it's further explained in the manuals. There's always controversy...

Commissioner Hatch: (Overlapping) (Inaudible)

Galena West: Right. It gets especially tricky around the elections with the major funders and such.

Commissioner Hatch: I understand. I just wanted to verify (inaudible).

Galena West: You're welcome.

Commissioner Hatch: And then, the first question I had was, I had three, In the matter of Eric Mar, it mentions in the stipulation that this is a coordinated settlement and there is a \$1,690 local fine and a \$9,500 FPPC fine. How did coordination affect the fine amounts in your view? Did it raise it? Lower it?

Galena West: Certainly. Usually, when there's a local enforcement, we take that finding consideration as a total fine amount, as opposed to looking at our fine independently. So, even with say, Secretary of State fining, we have to take that in consideration. If their fines get up over ten thousand dollars, or something like that, taking into consideration with our fines, as a total amount fine for the committee for the same activity, and that is the case here, as well. We worked with San Francisco Ethics to see what their fine was going to be, or what they proposed it to be, what ours was proposed to be, and then making sure that it wasn't excessive, or too lenient

15:17 Commissioner Hatch: Thank you. So, absence of San Francisco you would have fined around 10,000 or, \$11,000, actually.

Galena West: Yeah, it would have been more because there would have been also the over-the-limit gift violations.

Commissioner Hatch: Okay. And, my next item with questions is number seven. This may be (inaudible) I just wanted to remind you that my concern, again, of the streamline numbers. This raises an issue of the pre-election report (inaudible) about \$200 or 2% in a 24-hour violation. This base seems to be about \$400 with a 4% and I'd appreciate it if you could (inaudible).

Chair Remke: So, you'd like us... This is Chair Remke. You'd like us to bring back the streamlined memo to review it? Because at this point, that's the standing adoption by the Commission. The amounts and the tier for violations for each of these types of cases. So, you're requesting that we revisit those. The streamline program.

Commissioner Hatch: Yes, (inaudible). But, yes (Inaudible).

Galena West: Certainly, this is Galena West again. I would recommend if we are going to bring it back, we bring it back as a discussion item so that we can get a feel on all the commissioners and how they feel about the fines. And, if we did this in January, that would be when we were presenting the advertising streamline program as well, to add to the programs so we could do it as a package of the Commission

Chair Remke: Right. So, we'll bring it up in January along with the new advertisement streamline proposal, get a discussion, and then you can bring it back to finalize it based on what you get from the Commissioners.

Commissioner Audero: I have a question about that.

Commissioner Hatch: Great. Thank you.

Chair Remke: Commissioner Audero.

Commissioner Audero: So, what distinction are you making between discussion, and I guess public comment, are you suggesting we -

Galena West: No. All I was suggesting was, since I don't know the majority of the Commission's feel on the current streamline program, that it would be a time for everyone to discuss and talk about what direction they would like to go on the different programs. As opposed to me just bringing back something and saying, here's some numbers, you guys all agree with me, right?

Chair Remke: And public comment would be a permissible at both meetings. Okay. All right, Commissioner Hatch did you have any other questions on the remaining consent items?

Commissioner Hatch: Yes. I have one final one and that is item 35, in the matter of Timothy O'Donnell. And, I couldn't tell from this, yet, but I was wanting to know what was the form of income for the Cadway (inaudible).

Galena West: Just one second. The - I think, if I heard you correctly, you're asking what the economic interest was and it was a source of income to him.

Commissioner Hatch: Yeah, it was several missed reports of \$500 or more of income and I just wanted... Cadway is the name of the source so I just wanted to know what was the form of income? Is it salary? Or commission? Or was it, like, a dividend?

Galena West: I believe it was salary for serving on the Cadway board

Commissioner Hatch: Okay. (Inaudible).

Galena West: Correct.

Commissioner Hatch: And did the city ever use, or consider using, Cadway services?

Galena West: Cadway does provide water in a very complicated system to the city of, I believe this is Brea, and they have - they have infrastructure for water in the city.

20:03 Commissioner Hatch: From what I could find on the internet, Cadway is a (inaudible) subsidiary of California Domestic Water Company.

Galena West: That's true.

Commissioner Hatch: Cadway is a profit-making subsidiary. And, so, what I wanted to know, Cadway is apparently managing real estate aspects of California Domestic Water Company. So, there's a possibility that there could be variances (inaudible) concessions of (inaudible). I just wouldn't even begin to know the - all the various ways the development company could interface with the city. So, I was just trying to get a sense of whether Cadway has been involved in any of the projects within that city.

Galena West: We found - we actually this was lengthy conflict of interest investigation and what we found after extensive record searches was just this involvement.

Commissioner Hatch: Just what?

Galena West: Just the involvement in the water rights and the water selling and buying.

Chair Remke: But no conflict of interest violation and, obviously, because we ended up here with a stream line, for the failure to report.

Galena West: Correct.

Commissioner Hatch: Thank you.

Chair Remke: Any other questions on consent items Commissioner Hatch?

Commissioner Hatch: That's it.

Chair Remke: Okay. Other commissioners, any questions on the remaining consent items? Okay. Any public comment for the remaining consent items? Okay. Seeing or hearing none, is there a motion?

Commissioner Audero: I'll move approval of the consent calendar except 14, 19, 20, and 21.

Commissioner Hayward: Second.

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.
The motion passed 4-0.

Conflicts of Interest/Gift Non-Reporting

- 3. In the Matter of Eric Mar; FPPC No. 15/2201.** Staff: Assistant Chief of Enforcement Dave Bainbridge and Special Investigator George Aradi. Eric Mar, a former San Francisco County Supervisor, failed to disclose gifts from the concert promoter on his 2011-2015 Annual Statements of Economic Interests, in violation of Government Code Section 87203 and 87207, subdivision (a) (5 counts). Mar sponsored and voted in favor of a resolution before the San Francisco Board of Supervisors to extend a permit for a concert on county property when he had received gifts that exceeded the state gift limit from the concert promoter within 12 months of the decisions, in violation of Government Code Section 87100 (1 count). The proposed settlement in this case was prepared in coordination with the San Francisco Ethics Commission, which imposed a penalty at its October 2017 meeting of \$16,690.50 against Mar for violating a local San Francisco ordinance prohibiting public officials from receiving gifts of more than \$25 from persons who contract with the official's agency. The gifts in the San Francisco Ethics Commission action were the same gifts at issue in this case. **Total FPPC Proposed Penalty: \$9,500.**

Campaign Non-Filer

- 4. In the Matter of Committee to Elect Glenn Miller to State Senate 2014, Glenn Miller, and Steffani Miller; FPPC No. 16/0503 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Political Reform Consultant Teri Rindahl. Glenn Miller was an unsuccessful candidate in the June 3, 2014 Primary Election. Committee to Elect Glenn Miller to State Senate 2014 was his candidate-controlled committee. Steffani Miller was the Committee's treasurer. The Committee, Miller, and Miller failed to timely file twenty 24-Hour Reports, in violation of Government Code Section 84203 (20 counts). **Total Proposed Penalty: \$4,825**
- 5. In the Matter of Janice Keating for Assembly 2010, Janice Keating, and Jeff Perine; FPPC No. 16/19743 (Streamline Settlement).** Staff: Commission Counsel Christopher Burton and Political Reform Consultant Teri Rindahl. Janice Keating was a unsuccessful candidate for the California State Assembly, District 25, in the June 8, 2010 Primary Election. Janice Keating for Assembly 2010 is her candidate-controlled committee. Jeff Perine is the Committee's treasurer. The Committee, Keating, and Perine failed to timely file five semiannual campaign statements covering the reporting period of July 1, 2014 to December 31, 2016 electronically, in violation of Government Code Section 84200, subdivision (a) and 84605, subdivision (a)(1) (5 counts). **Total Proposed Penalty: \$4,001.**
- 6. In the Matter of Committee to Elect Ron Gillis and Ronald E. Gillis; FPPC No. 16/278.** Staff: Commission Counsel Christopher Burton and Political Reform Consultant

Chloe Hackert. Ronald E. Gillis was a successful candidate for Santa Clarita Community College District Board of Trustees in the November 4, 2003 General Election. Committee to Elect Ron Gillis was his candidate-controlled committee. The Committee and Gillis failed to timely file four semiannual campaign statements covering the reporting period of July 1, 2015 through July 31, 2017, in violation of Government Code Section 84200, subdivision (a) (2 counts). **Total Proposed Penalty: \$4,000.**

7. In the Matter of AFT College Guild – Los Angeles and Velma J. Butler; FPPC No. 17/613 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. This matter arose from an audit performed by the Franchise Tax Board’s Political Reform Audit Program. AFT College Guild – Los Angeles is a state general purpose committee. Velma J. Butler is the Committee’s treasurer. The Committee and Butler failed to timely file three 24-Hour Reports by their respective due dates, in violation of Government Code Section 84203 (3 counts); and failed to timely file one pre-election campaign statement for the reporting period of January 1, 2014 through May 17, 2014, in violation of Government Code Section 84200.5 (1 count). **Total Proposed Penalty: \$965.**

8. In the Matter of Patino for School Board 2015 and Graciela Patino; FPPC No. 16/19989 (Streamline Settlement). Staff: Commission Counsel Christopher Burton. Graciela Patino was an unsuccessful candidate for the Inglewood Unified School District Board of Education in the June 16, 2015 Primary Election. Patino for School Board 2015 was her candidate-controlled committee. The Committee and Patino failed to timely file two semiannual campaign statements covering the reporting periods of May 31, 2015 to December 31, 2015, in violation of Government Code Section 84200, subdivision (a) (2 counts); and two 24-Hour Reports, in violation of Government Code Section 84203 (2 counts). **Total Proposed Penalty: \$894.**

9. In the Matter of Committee to Re-Elect Ben Drake to Rancho California Water District 2017, Ben Drake, and Kathleen Hammond; FPPC No. 17/946 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Intake Manager Tara Stock. Ben Drake was a successful candidate for Director of the Rancho California Water District in the August 29, 2017 Special Election. Committee to Re-Elect Ben Drake to Rancho California Water District 2017 is his candidate-controlled committee. Kathleen Hammond is the Committee’s treasurer. The Committee and Hammond failed to timely file one pre-election campaign statement for the reporting period of July 16, 2017 through August 12, 2017, in violation of Government Code Section 84200.5 (1 count), and two 24-Hour Reports, in violation of Government Code Section 84203 (2 counts). **Total Proposed Penalty: \$700.**

- 10. In the Matter of David Miller for CalPERS 2014 and David Miller; FPPC No. 16/777 (Streamline Settlement).** Staff: Commission Counsel Theresa Gilbertson and Program Specialist Patricia Ballantyne. David Miller was the unsuccessful candidate for the CalPERS Board of Administration in the September 29, 2014 CalPERS election. David Miller for CalPERS 2014 was his candidate-controlled committee. The Committee and Miller failed to timely file one pre-election statement for the reporting period of August 25, 2014 to September 24, 2014 in violation of Government Code Section 84200.9 (1 count). **Total Proposed Penalty: \$446.**
- 11. In the Matter of Tankersley 2016 Election Committee, Tankersley for San Geronimo Memorial Healthcare District and Dennis Tankersley; FPPC No. 17/0334 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Political Reform Consultant Teri Rindahl. Dennis Tankersley was a successful candidate in November 8, 2016 General Election. Tankersley 2016 Election Committee, Tankersley for San Geronimo Memorial Healthcare District was his candidate-controlled committee. The Committee and Tankersley failed to timely file one pre-election statement covering the reporting period of January 1, 2016 through September 24, 2016, in violation of Government Code Section 84200.5. (1 count), and failed to timely disclose expenditures on the pre-election statement covering the reporting period of January 1, 2016 through October 22, 2016, in violation of Government Code Section 84211 subdivisions (k) (1 count). **Total Proposed Penalty: \$407.**
- 12. In the Matter of Committee for Competition and Economic Growth Controlled by Senator Gaines, Kelly A. Lawler, and Michael A. Price; FPPC No. 17/616 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Staff Services Analyst Hayley Porter. This matter arose from an audit performed by the Franchise Tax Board's Political Reform Audit Program. Edward "Ted" M. Gaines was a successful candidate for Senator in the November 6, 2012 General Election. Committee for Economic Growth Controlled by Senator Gaines was his candidate-controlled committee in opposition of Proposition 45 on the November 4, 2014 General Election Ballot. The Committee, Lawler, and Price failed to timely file one 24-Hour Report, in violation of Government Code Section 84203 (1 count). **Total Proposed Penalty: \$300.**
- 13. In the Matter of Rodriguez for City Council 2016, Jose Rodriguez, and Sandra Rodriguez; FPPC No. 17/358 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Intake Manager Tara Stock. Jose Rodriguez was an unsuccessful City Council Candidate for National City in the November 8, 2016 General Election. Rodriguez for City Council 2016 is his candidate-controlled committee. Sandra Rodriguez is the Committee's treasurer. The Committee and Rodriguez failed to timely file one semiannual campaign statement for the reporting period of October 23, 2016

through December 31, 2016, in violation of Government Code Section 84200 (1 count).
Total Proposed Penalty: \$211.

Campaign Non-Reporting

14. In the Matter of Pam Bertani for Solano County Supervisor 2014 and Pam Bertani; FPPC No. 14/1112 (Default Decision). Staff: Senior Commission Counsel Bridgette Castillo, Special Investigator Kelli Gould, and Staff Services Analyst Dominika Wojenska. Pam Bertani was a successful candidate for Solano County Board of Supervisors in the June 3, 2014 Primary Election and an unsuccessful candidate in the November 4, 2014 General Election. Bertani has been a member of the Fairfield City Council since 2011. Pam Bertani for Solano County Supervisor 2014 was her candidate-controlled committee. The Committee and Bertani failed to timely disclose contributions, expenditures, and contributor information on two pre-election and one semiannual campaign statements for the reporting periods of January 1, 2014 through June 30, 2014, in violation of Government Code Section 84211, subdivisions (a)-(f) (3 counts); and failed to timely file three 24-Hour Reports, in violation of Government Code Sections 84203 and 84203.3 (3 counts). **Total Proposed Penalty: \$18,500.**

Chair Remke: Okay. So, we'll take up the items removed one at a time starting with item 14. Would a Commissioner like to start? I think of both Commissioners Audero and Hatch asked for it to be pulled.

Commissioner Audero: Sure. Well, first of all, is Ms. Bertani even – Is she here? No. Okay. So, I just have general questions and then I have very specific questions. But I want to start with, if you could, kind of clarify the whole procedural posture. Where we find ourselves. It was very helpful when you explained it to two of us commissioners, but, I think it would be helpful to have a very clear record of where we are, how we got here.

Galena West, Chief of Enforcement: Certainly. Galena West, Chief of Enforcement. So, this came in as a complaint, and it came in right before, I think it was March 2014 and January, and then we opened the case, and we contacted Ms. Bertani's committee, and said there's been a complaint filed, there's a lot of reporting errors alleged and we're going to have to look into this. And, so, at that point, she hired a treasurer who cleaned up all of the statements and we worked with them for a while and came to no settlement agreement, so a probable cause report was issued. Ms. Bertani requested discovery. We provided discovery which supports all the allegations and any mitigation or exculpatory evidence we had and then she declined to request or schedule a probable-cause conference. So, then an ex parte application was put in and approved. And, an accusation was issued as a result of that and she also didn't request a hearing so then a default was prepared and sent to her...

Chair Remke: (Overlapping) File a defense, correct?

Galena West: File and notice a defense, correct.

Chair Remke: She did not.

Galena West: She did not. And, so, then a default was prepared and served upon her. And we sent her other correspondence and contacted her and so then she filed a response to the default asking for a zero fine as opposed to the 18,500.

25:00 Commissioner Audero: But, her response is entitled To Request for Reconsideration, and so that, just to make sure the record is clear, that's technically not the proper –

Galena West: Correct.

Commissioner Audero: but we're taking it we're trying to help her out

Galena West: We're trying to - we're trying to help her out. So, it was - it was supposed to be a comment or an objection to entering a default, and she entitled it a request for reconsideration, which after a default has been entered, they do have, under the regulation, the respondents have a right to ask for reconsideration from the Commission at the next hearing, and then after that, once a final judgment has been entered, 30 days to file a writ.

Commissioner Audero: So – so, today we have the default before us.

Galena West: Correct.

Commissioner Audero: Not the reconsideration.

Galena West: Stage one of the three.

Commissioner Audero: Okay. Thank you for that. That's very helpful. I - this was an interesting case because this is the first time that we actually got to see some things that we're not generally privy to and we had the benefit of looking at a negotiation strategy which is an unusual position for us. Very enlightening, I would say, but I do have some questions about that. In that, I will say, that the first thing that jumped out at me as I was reading some other communications that went back and forth, that one of the things that was said by staff, by Enforcement, was, you know, we're offering you this but, you know, those Commissioners, you know how they are. In the past three to four meetings they, they've increased the fines. So, I remember those past three to four meetings, but, just for fun, I went and I actually listened to them again and it is blatantly wrong. We did not do that. So, 14 things in those meetings were pulled out of the calendar, out of the consent calendar and there was discussion about a lot of them but out of all of those we only increase the fine once and I find - I find that a troubling negotiation strategy. I questioned

the ethics. I think that's not something that we, as a commission, want to be part of and so I guess, maybe, I'm missing something. So, what am I missing?

Galena West: Besides that, that attorney doesn't work here anymore?

Chair Remke: I think that's, we're laughing, but that's a big statement in and of itself.

Galena West: It is a big statement.

Commissioner Audero: Which, of course, you can't make because of privacy issues.

Galena West: Just that she doesn't work here anymore, that's all. And, I do, I agree with you. I think the tone at the time was to ask for increased penalties. I don't agree that that's a negotiating tool. I think, after reading the communications, she was trying to express why she would not go lower, as opposed to trying to bump up the fines, and I think that that is just a rationale of saying, okay we could - we could go through all these motions, but from the tone of what's happened, I doubt that they would approve this and so as an opinion, I think that it was okay, but as a negotiating tool, I see the concern.

Commissioner Audero: Yeah, and I, okay, I appreciate that and I, you know, maybe it has to do with training. I think you mentioned earlier that, not here, but earlier that she was a new attorney and so you know maybe some guidance would be helpful. I don't, yeah, I, enough said on that issue. I do have another question, which is in that same communication, the fine for, I think it was the 24-hour report, was two thousand and then it ended up at twenty-five hundred. So, I, what - what happened there?

Galena West: Everything that's in the communications that were attached, were not charges that went forward. So, none of those are included in the papers before you. They all, once we had other evidence and we looked into, and her supervisor, as well as me, and then when we look at the case. Then we say, you know, this is too close to call it and get notice, or whatever. So, just to clarify that none of those are in the default before you.

29:57 Commissioner Audero: Right. I had trouble matching...

Galena West: (Overlapping) And, we didn't even know that, at the time, that this was going to be in her response, so that was pretty good. So, then, but, as to the fine amounts, we try to always stay the most current, and as you can tell, this case has gone on a while, so we try to take whatever the Commission is currently doing as the most current comparable cases to come up with the fine structures. With defaults, a little harder because there's, they're fewer and farther between. So, that's what would show a differentiation between 2000 and 2500.

Commissioner Audero: Okay. Then, I do have a question about the comparators that were done, or that were used, I should say, Chiang and Working for Working Americans and Tyron.

Galena West: The warning letters that Ms. Bertani provided?

Commissioner Audero: I'm sorry. No, I'll get to the warning letters in a second. I'm sorry about that. The comparators, give me one second, I apologize.

Galena West: (Inaudible) Wall and Santiago.

Commissioner Audero: Right. So, what I saw, was that, as I was looking at Santiago, I think it was Santiago, and I'll keep looking through my papers to find what I wanted to talk about, but the, in those cases, the fine was less. It was three thousand dollars versus four thousand dollars for the pre-election statement, and I know that we had one pre-election statement at three thousand, one pre-election statement at four thousand, and then one semiannual statement at four thousand, is the recommendation. And, I think the distinction that you're making between the first one and the second two, the second and third, I should say, is that in the second and third, as they corrected it, more problems came to light. Is that...?

Galena West: Yes.

Commissioner Audero: And so, we're fine- we're increasing the fine to account for the undisclosed contributions and expenditures that came to light.

Galena West: Right.

Commissioner Audero: Because they corrected...

Galena West: I agree with you. The first one is occupation employer missing but the second two were occupation employer missing and then the amendment shows another almost twenty thousand dollars of activity per statement. And so, that was significant, in that, it was such a large percentage. I think it was, like, thirty-six and thirty percent of the activity that didn't get disclosed until three months after the election. So, that did get taken into consideration, as those can normally, back in the day, back in the day, they were charged separately. So, you had charge a statement and then occupation employer missing and not returning the contributions, because that's another statute that you have to return them within sixty days. And then, making them disgorge those contributions as well, and then a second count would be for the same campaign statement with the missing contributions themselves and expenditures. So, for us, for these counts, we combined them. And, to be reasonable in this default, to not make it such a giant amount of money, and to make it a fair and equitable default.

Commissioner Audero: But we still increase it. We still treat it as two things.

Galena West: Right.

Commissioner Audero: Right. I mean...

Galena West: (Overlapping) It bumps the fine per account a little but not nearly as much as it would be separate.

Commissioner Audero: Fair enough. So, I guess that's kind of a philosophical question, is, you know, do we just take, do we take a problem or a violation as, look, you just, you got three things wrong or you got one thing wrong, but you violated it no matter what. Right? Or, do we, do we, your approach is, well the more you violate this, the higher the fine is going to be. And so, I just I just kind of wonder what the philosophy behind that is.

Galena West: I think this... I think my philosophy always goes back to a lack of disclosure and public harm. So, we're always looking to see what, even if it's one or five violations, if everything was disclosed before the election and the public had the information, that's a completely different scenario then if there's a bunch of information missing, to where the information isn't out there, because it's not just about the public, it's also about a level playing field. So, you have to have the information before the election. You have to know how much is being spent. You have to know how much is being raised in order to make it an even election. So, for me, it's not about the number per count, it's more about the overall public harm of how much wasn't there.

359 Commissioner Audero: Okay. So, that's why you add.

Galena West: Right.

Commissioner Audero: So, going back to the, I found to my sheet on the comparators, so it seems, so in Santiago, what worked against him, was he was well aware of the filing obligation, had a repeated pattern, and he won the election, right? Bertani, I guess we can say, was well aware of the filing obligations, had a repeated pattern, although not as extensive as Santiago's, but lost, right? Somebody shaking their head, she did not lose, sir?

Galena West: She won the primary and lost the general.

Commissioner Audero: Okay. So, she lost, right? Santiago did eventually file, I'll be it, two or three months late. Bertani filed four months late. Santiago cooperated with enforcement. There's question as to whether Bertani cooperated, right? Although, I will say, that even though the stipulation says, here's our 14 or 16 times that week, I can't remember how many, we reached out to her. Here are the dates, there's not once a mention of the fact that there were communications going back from the Bertani camp. So, you know I kind of take the stipulation, or the, sorry not the stipulation, but the default as not being completely accurate that there was no cooperation because it does seem that there was a point of, what, there was cooperation. There was a tolling agreement in Santiago. I don't know that you needed one, so, I wouldn't count that against

Ms. Bertani, and no prior history of violations in Santiago, and I think the same thing for Mr. Bertani. I don't know, it was...

Galena West: That's true.

Commissioner Audero: So, it seems to me, that Santiago was worse than Bertani and yet Bertani is getting hit with higher amounts.

Galena West: I would disagree with that because, the, Santiago was \$4,000 per count, and Bertani is being recommended at 2500 per count, for those same counts.

Commissioner Audero: Oh, you're talking about the late, the late contribution...

Galena West: Yes.

Commissioner Audero: No, I'm sorry. My bad. I'm talking, I wasn't clear. I'm talking about the semi-annual. The pre-election. The two pre-elections. Santiago was hit and then yeah for all the semi-annuals and the two pre-election. Santiago was fined \$3,000 but Bertani is being fined \$4,000.

Galena West: And his was less activity per statement. So, that was the big thing. So, in the chart, in Santiago, it says his semiannual was \$3,200 of activity. His pre-election was about 12 to 13 thousand and his pre-election was five to six thousand and hers was significantly greater. And, whether it was filed the three years, two and three years, or two to three months, it was after the election. So, the pertinent election here is the primary, and, yes, some of these were filed two weeks before the general, but they weren't filed before the primary. She won the primary without the disclosure. She lost the general with the disclosure.

Commissioner Audero: Okay. So, she's then, then she is on a par with Santiago, who won the election.

Galena West: Right.

Commissioner Audero: Okay. So, the only main, the only difference I find, and correct me if I'm wrong because you've been living and breathing this for years, is the difference in how late they filed, and Santiago was worse.

Galena West: Right.

Commissioner Audero: And yet, Santiago gets 3,000 and she gets four. So, can you, and so, is your answer to that, well, what the factor that informs this difference is the amount of the activity.

Galena West: Yes.

Commissioner Audero: And is that consistent with what you've done regularly in the past?

Galena West: Yes. So, when we look for comparable cases, we generally look for cases that have the same level of activity. Or, we use a case that has a slightly different level of activity, but we give that as a difference. We say this compare-, comparable case is in other respects, they're still in office, it was this much late, what these are, these types of statements, it was filed correctly by the other side, whatever those factors are. But sometimes the amounts are different and we point that out and then comparable, and we say, but this should be five hundred or a thousand dollars lower because it is significantly less or it should be five hundred or a thousand higher because it's significantly more. So, we use the comparable cases only as the baseline and then try to find the ones that match the best. But you're not going to get them to match completely, so, sometimes it's this factor that's different and sometimes it's another factor that's different. But we just try to point it out and be able to say this is just one factor of the five that are different this is why it should be given greater weight or lesser weight and try to be consistent in that.

40:32 Commissioner Audero: And when you come to that point, where you say, I just don't have the right comparables, how do you decide how much more or less? How do you, what's the math there? If there is math. It sounds like it's kind of more like you're holding up your thumb.

Galena West: Yeah, it's not an exact science, but it's generally from what the Commission has said they find to be the most important, So, when I ask you guys questions and I say, is timely disclosure more important, or is it the content of this campaign statement, or..., And get the Commission's feelings and opinions on what they find to be the worst public harm and use those as the weighted factors.

Commissioner Audero: And, when was the last time that the Commission actually sat down to give you these thoughts or directives, as I've called them in the past, which has been objected to. When was the last time that was officially done? Not in the context of these discussions were you kind of trying to glean rules, right? When was the last time we actually sat down and had a discussion about the priorities of Enforcement?

Galena West: It was probably the streamlined memo adoption in May 2015. When they spoke about how they felt about the different violations and gave opinion and direction at that point.

Commissioner Audero: And, the non-streamlined, when was the last time we did that? The Commission did, because I wasn't there.

Galena West: I think that that's more fluid and it changes with each Commission's makeup. So, it's a trial and error presenting because this is really what we do. We present stipulations, you give us feedback, we direct the cases based on the feedback because

we're just trying to settle the cases as fair and equally as possible. Try to stay in the middle as much as we can and then go up and down based on Commission guidance. So, I don't know if the Commissioners know how they feel in abstract, whereas, when they have a factual scenario presented to them, then they say, oh yeah, I agree, this is terrible or I disagree, I think this is not terrible at all. So, I think that is the challenge of, it is talking about, yes, I think contribution limits are important, or I think they're stupid, or I think that this is, you know, it's just it's kind of a... I could get an overall policy feel but it wouldn't be specific enough. I don't know to be helpful. I don't know.

Commissioner Audero: I understand. I kind of, I kind of liken this to, and please don't anybody make a bigger deal out of this than it, then it's just sentencing guidelines, right? Which are, which are guidelines, and I just, I don't have a sense that that direction has been given. Or, at least for a very, very long time, such that you're kind of trying to figure it out, rather than us sitting down and just going, hey here's what we think is most important. Here's this, here's this, and then going from there, and maybe that's something that we need to do, but, okay, that you've answered the questions that I have on this matter. Thank you very much.

Chair Remke: Other questions on item 14 from the Commissioners?

Commissioner Hatch: Yes.

Chair Remke: Commissioner Hatch.

Commissioner Hatch: It seems like there was active discussion, back and forth emails, and perhaps even phone calls, right up until the 30th of October. What happened? Why the sudden stop?

Galena West: Galena West. I'm going to try to not speak too much out of turn, but I think what happened was, Ms. Bertani had hired a treasurer to help her amend her statements when the complaint was filed, and he was very successful, and he's the one that you see the communications with. He was very successful in getting the campaign statements up to date and in compliance and a settlement offer was made and agreed to, and just, the money portion never arrived. And so, then, I believe, the treasurer then separated ways with Ms. Bertani, and after that the communication was much more sporadic, if much at all.

45:15 Commissioner Hatch: So, that active stuff on the 29th and 30th of October of last year, that was the treasurer who's responsible for that?

Galena West: Correct.

Commissioner Hatch: I see. Okay, (inaudible) it seems like there was sort of a wall of silence after that on the part of the Bertani camp, is that correct?

Galena West: Correct. Not complete silence but deafening silence, if there's a difference.

Commissioner Hatch: Okay. I'm a little troubled by three of the charges, the counts four, five, and six. (Inaudible) but, having said that, these are in-kind contributions from SEIU, and, as a candidate, you can't report an in-kind contribution until you know what the value is. I mean, you can't fill out the form properly, you can't say I got an in-kind contribution and I don't know how much it is, you have to have something. And, the allegations from the Bertani camp was that they filed those within 24 hours of receiving the information from SEIU, and yet, they didn't go away. So, my view and why I'm such a hawk on 24-hour reports is it's usually the last report that's made before the campaign, excuse me, before the election, and the 24-hour reports are usually the most important that there are around campaign election committees. I see cases where they didn't do these until well after the election, that just, you know, makes me breathe fire, but in this case, it looked like there was an honest attempt to comply. Those are still, there was no settlement in early secret meetings of minds between the Bertani camp and staff here in Enforcement?

Galena West: Galena West, again. Those three counts that you're talking about in exhibit A15, there are the timely filed letters from Olson Hagel and Fishburn providing notice of the in-kind contributions that was timely. And, those reports were not filed, so the difference is in Ms. Bertani's correspondence that she sent us. None of those 24-hour reports are in the documents that you have. None of them have been charged. So, the ones that are in controversy are not included in what you're being asked to approve.

Commissioner Hatch: Oh, well, they're in the attachment to this item. Let's see...

Galena West: Right. And, after discussion, we didn't include any of those in the charging.

Commissioner Hatch: Well, is this not the charging? Where am I? Page nine of the document.

Galena West: Yes, counts four, five, and six, are all 24-hour reports that they were notified timely by SEIU, and the evidence is attached that they were notified timely, and they did not file those reports. So, those are not in controversy. They don't deny that those weren't filed timely, or, at least, not that I have ever heard of. The ones in the correspondence that she provided are different contributions.

Commissioner Hatch: The response we received, this written response right before the meeting, I apologize, I was not able to read the entire thing because of the lateness of the hour, would seem to make me believe that this is going to head to litigation. Do you disagree?

50:05 Galena West: I believe, if this was going to head to litigation, she would have asked for a probable cause conference or an administrative law hearing, which she did not do.

Commissioner Hatch: Well, technically, she may be trying to skip the administrative law judge proceeding and go directly for...

Galena West: She could, as I was talking about the procedure earlier, she could ask for reconsideration next month and then file a writ based on the order of the Commission.

Commissioner Hatch: Okay. Thank you. Madam Chair, when it's appropriate, I'd like to make a motion.

Chair Remke: I'm going to wait for further questions first, from other Commissioners. Commissioner Hayward?

Commissioner Hayward: Thank you. This is more of a question that's applicable to, I mean, we've seen a couple of in-kind contribution problems in this packet and that makes me wonder. So, if you get, if you don't get timely notice of an in-kind contribution, do you then get a pass on not having to file that you received it until you do? I mean, how does that work?

Galena West: That's a good question. No, our definition, 18421.1, talks about making, receiving contributions, and in that it specifically talks about non-monetary. And, it talks about that it's when you get knowledge of receiving it or you get the benefit of it. And then, there's another regulation that says you need to make a good-faith effort estimate if you don't know, so if they don't tell you, you have to make an estimate within the times that are prescribed for your 24 hour, 48-hour reporting. And then, if you're off by 20% or more, you go back in amend later.

Commissioner Hayward: And it's not a violation if you do it that way, right? Okay. So, because, you know, they're in-kind contributions that are fairly easy to evaluate. If somebody hands you some Canadian Maple leaves, you can go online, you can figure out what they're trading at, and not that that would ever happen, but it's kind of an interesting idea, and... But, something like, having purchased, you know, lunch for all your volunteers and something that's not maybe all that easy to identify as the recipient because, you know, you don't have a check stub or a receipt or, you know. Then, you know, very hard to find, you know, define values. And so, the twenty percent rule was not something I was aware of and I think makes sense. So, you just, you file it when you need to file it. You do your best and if you're off by twenty percent you amend and then it's a nothing burger. You're fine.

Galena West: right and that's one of the factors that we are mandated to take in consideration that you made a good faith effort to disclose and that regulation gives you that option

Chair Remke: Do you have another question?

Commissioner Hayward: I'm done.

Chair Remke: Commissioner Audero.

Commissioner Audero: So, I have two questions, but one specifically about the twenty percent. So, what if you do, you have to amend before the election to get the pass?

Galena West: I don't have the exact reg in front of me. I was going to get it out but I think it's with, when you get knowledge that your estimate was off. So, it's you get the notification from them, then you have to modify it. I don't know the whole reg by heart.

Commissioner Audero: Fair enough. But what happens if you get it on the, their information, the donors or contributors information the night before the election. Then then do they still get the pass?

Galena West: I think, generally, if you're with, I mean, it has to be within twenty percent for you to even get into this safe harbor. So, if you've underestimated grossly in order to avoid disclosure, oh it's under \$1,000, I don't have to file a report, something like that, then we would take all that consideration.

Commissioner Audero: What is grossly to you? Because, is it just anything above 20%? Is it 21% or is it 40%? Do you know what I mean?

Galena West: Yeah. I know. And for me, it's hard because in an investigation, you usually have a little bit more information, and usually have some email correspondence where they say, estimate this at ten bucks and, you know, we'll fix it after the election, and then nobody will know. So, for me, there's usually other factors that I can look at but it would be case-by-case because you're looking at size of a campaign. You're looking at sizes of contribution if it's, if it's maple leaves and maple syrup and it's not a too big of a deal, then your 20% could be off because everything was only worth three hundred dollars, so that's why it's hard. I hesitate because it just becomes miniscule when it's a million-dollar media buy and then you apply 20% and it can be quite a little bit of wiggle room. So, 30% is a giant miscalculation. So...

55:11 Commissioner Audero: It's tough. I here, I feel your pain. But I also feel the pain of the other side where, if they, if there seems to be kind of no guidance other than the 20%, and I, you know, being on, being an attorney who represents employees, not in this circumstance, but of course, in terms of agency enforcement, I look for that kind of guidance from agencies. And, I think it's fair to provide it. So, you know, I guess that's the maybe, we have to come to some kind of terms on what kind of guidance is going to be provided on this, but...

Galena West: And we do look for good faith. So, we're not really, if you're reporting something and it's out there that Commissioner Hayward is your biggest supporter, because we're looking at that. So, we're taking everything into consideration.

Commissioner Audero: Yeah. Fair enough. Thank you for that. And then, my final question, which I started to talk about and then I forgot, why not a warning letter?

Galena West: Well, warning letters are reserved for things that are technical things, that are de minimis things, that don't qualify for streamline. So, why not, why not streamline? Why not a settlement? I look at the numbers of what she didn't disclose and you look at the streamline program and the size of some of these numbers make it even questionable that she would qualify for streamline. So, when you look at that and you look at the amount of the other cases that are here, so you look at the JOBSPAC case and its similar non-monetary contributions, and the month before we had the companion case for family farmers, it's the same type of non-disclosure. Not before the election, public harm, and when you look at the streamlined memo, that we'll look at again in detail in January, the factors tell you these are aggravating factors that deserve to be fined.

Commissioner Audero: So, compare Chiang for me.

Galena West: Okay. So, the John Chiang warning letter was presented by Ms. Bertani as a warning letter that's comparable to her situation. And, what I would say about all three warning letters, is that there was disclosure before the election, which is a huge factor. So, if you're looking to not be fined, you really should amend your statements and disclose your information before the election so there's a level playing field and the public has the information. So, I would say that is the baseline for these three warning letters and why they are inappropriate. And then, so Chiang is also very old letter, but it's 165 late contributions received and 2 for \$1,000 each we're not timely filed and 16 were late but filed before the election of 31,000 out of \$400,000 in late contributions. So, de minimis in the amount in comparison to the large amount of the Bertani late contributions that weren't filed.

Commissioner Audero: So, 10% to you is de minimis?

Galena West: 10%?

Commissioner Audero: Well, so, almost 10%.

Galena West: The 31,000 was filed before the election.

Commissioner Audero: Oh, I see. Okay.

Galena West: So, we're only talking about \$2,000. And then, for the sub vendor information, sub vendor information wasn't included in the streamlined program until May of 2015. So, the 84211 violations for disclosure on campaign statements were very, it was very discriminating as to what you can even get streamlined for. So, your choices back then, which is why I pointed out how old this is, this is a 2006 committee, and your choices back then for the semi-annual ending in 2006, was, first of all, we no longer

include postage as one of the sub vendor requirements that we will enforce against, because everybody knows that if you mail something, you have to pay postage, and if you didn't put US Post Office the harm is minimal. So, it's not usually considered in the amounts and then also whether or not these were what was one media buy. I'm not really sure because it's based on a FTB audit I no longer have access to. But so, the amount at a 3.4 million for 500,000 in sub vendor back then wouldn't have warranted that \$3500 fine. That it was the option between, that and a warning letter, so a very different circumstance.

1:00:11 Commissioner Audero: So, not apples and apples.

Galena West: Right.

Commissioner Audero: Okay, and then, what about Working for Working Americans? Because there they had, they failed to disclose two contributions of 5,000 each or 5,000 or more each.

Galena West: Sure, and they failed to disclose it on the correct forms. So, all of their score also happened before the election. Their problem was they filed as a major donor committee when they should have filed as a recipient committee. So, they filed reports, they just didn't file appropriate reports for becoming a recipient committee.

Commissioner Audero: But didn't Bertani do the same thing? Didn't - wasn't part of the, correct me if I'm wrong, but wasn't part of the mitigating factors for her that the amounts were reported in other forms?

Galena West: The SEIU LCR's. So, two of them were reported before the election and one was not. So, the 7000 something dollar one was not reported before the relevant election.

Commissioner Audero: So, Working for Working Americans didn't disclose two at 5,000 or more.

Galena West: But all the disclosure happened before the election in that case which is what all these warning letters have in common.

Commissioner Audero: Okay. Got it.

Galena West: And then for Tyrone Hampton, I mean, he actually filed before we even contacted him. Amended everything before the election. So, it's not like... Thank you, Mr. Hampton, I think is what the letter says.

Chair Remke: I would just like an opportunity to speak for a second because I feel, from my point of view, and I've said this before that we're giving this respondent way too much lenience, opportunity. Technically, she's in default. She's a sitting official, an

attorney, and the notion that she's cooperated, I find difficult to accept. I mean, she did not respond to, or participate in, the probable cause opportunity. She did not file a defense, from what I understand, you said she entered into an agreement, a stipulation, and then did not comply with it or follow through and that's why we're still here talking about this case much longer than we should be as far as time since the events occurred. I find that troubling. I find it troubling that she hasn't done anything but, yet, we still review her response at this stage. Again, if she wanted to make her argument, if she wanted to consider a lower fine, she could have done so at a hearing or even showing up to the probable cause hearing. I mean, to me, as I said again for I think when we reach defaults and we talk about clear violations, and I consider these serious violations, I think, if anything, that proposals too low on all of these violations. Again, I think default is, you really look for the five thousand and trying to tell me why we're not hitting people with five thousand. Again, we're encouraging people not to participate in these proceedings and come forward and reach a resolution or exercise the rights and go to a hearing when we sit here, at a default hearing, and consider all their best-case scenarios, which I do not think is appropriate. That's so that's just my two cents on defaults
Commissioner Hayward

Commissioner Hayward: And, I guess, I guess I came here needing a lot more education to even know how I felt about this default. I think part of the issue with why we have these questions is that we don't have this, these documents, before us for very long before we're supposed to make a decision on them. And I'll just say, I don't have a problem with finding her in default. I don't have a problem with the default report as it, as it currently stands but I really did feel like I got a lot out of the colloquy this morning. So...

Chair Remke: I'm sorry. I didn't mean to say that we shouldn't discuss it. I'm just saying my point of view about defaults in general.

Commissioner Hayward: Yeah.

Chair Remke: I think once the evidence is there in the motion, sure, let's discuss should it be higher or lower. Is that the adequate amount? Totally agree. I'm saying, I have concerns when we start making her case for her, to some extent, and taking into consideration what she states in her response, including that she should get credit in mitigation, for cooperating. I guess that was my response to that. She asked for it and I do not see how you get credit for cooperating when you have a default motion going. So, I'm sorry - yeah that wasn't talking about discussion.

1:04:55 Commissioner Hayward: I'm not pointing at you, as much, it's just sort of pointing at the audience, and the people viewing from home, that we have taken a long time on this and I tend to look at the defaults kind of closely just for things like odd due process things, like notice. You know, our jurisdiction reaches to, you know, the very smallest of public offices, and with a lot of people who aren't sophisticated. And, sometimes the default is a mistake, and sometimes the default is much more willing. I

think this one is much more willing and, so, like I say, I don't have a problem with the report. I think she's culpable and let's see where it goes. That's all I have to say.

Chair Remke: Commissioner Hatch, you had another question?

Commissioner Hatch: I'd just like to make a motion but I'll wait until the appropriate time.

Chair Remke: I'm sorry. I didn't understand that can you repeat that, please.

Commissioner Hatch: I'm sorry. I did but I think it's... I had a question but I think it's not necessary to answer. So, I'll just wait until the appropriate time to make a motion.

Chair Remke: Okay. Any other questions from the commissioners or I'll ask for any public comment on this matter.

Commissioner Audero: I just have a comment.

Chair Remke: Okay.

Commissioner Audero: So, just further to Commissioner Hayward's statement, I wholeheartedly agree that we should be discussing these. I understand a default. I know what it is. I've been lawyering for quite some time, so I know what it is. That said, I think that our situation, not in this particular case but in some cases, could be, could require some additional attention to be given to the smaller unsophisticated player, if you will. Much like a court would give a little bit of an edge to, or assistance, I shouldn't say an edge, assistant to a pro se filer. And, so I would not want to have the discussion about mitigating circumstances, or how we got to the default silenced because, merely because, here we are, so that's just my two cents on that. It's- I guess it's not really a question. It's just a statement.

Chair Remke: Okay, if there are no more questions from the Commissioners, is there any public comment on item 14? Okay, seeing none, is there a motion?

Commissioner Hatch: Yes, Madam Chair.

Chair Remke: Commissioner Hatch.

Commissioner Hatch: I move to postpone consideration of the default judgement and send the matter back and ask the Enforcement staff and Respondent to try and reach a settlement. That's option three of the memo sent by Chief Counsel.

Chair Remke: Okay. I just have a point of information on that motion. I just want to make sure I understand the record. So, she - you said you already did enter into a settlement with her which she signed. Is that correct?

Galena West: Yes. Galena West. We had a signed settlement without default.

Chair Remke: And then she failed to comply with that sign settlement.

Galena West: Quite a while ago, yes.

Chair Remke: Okay. I just want to make sure that that point of information is clear. Okay, so there's a motion to not take action.

Commissioner Audero: Point of information.

Chair Remke: Yeah.

Commissioner Audero: Further to that, if you would just give me two seconds on this, why... Do we have any, and not speculative, do we have any information as to why she failed to comply

Galena West: She would like to not pay.

Commissioner Audero: Got it. Thank you.

Chair Remke: Okay, so there's...

Commissioner Hayward: (Overlapping) So, her non-compliance was that she didn't write the check to go with the stip.

Galena West: That is correct.

Commissioner Hayward: Thank you.

Commissioner Hatch: I have a motion. I don't have a second?

Chair Remke: No, I'm just – wanted... So, I think we all got our questions out on your motion. So, there's a motion to not take action on this and direct Enforcement to try to reach a settlement. Is that the motion?

Commissioner Hatch: No, the motion is: postpone consideration and send it back to Enforcement (inaudible) reach a last-minute settlement. I'm saying the motion is a presumption it'll come back before us with a recommendation.

1:10:08 Chair Remke: Is there a second?

Commissioner Audero: I'll second it.

Commissioner Hatch: On my motion if you (inaudible).

Chair Remke: Sorry. What did you say?

Commissioner Hatch: Yes, I'd like to speak on my motion.

Chair Remke: Well, there's been a motion and a second. There has been a second.

Commissioner Hatch: I heard Commissioner Audero second it.

Chair Remke: There was a second.

Commissioner Audero: I did.

Chair Remke: Okay, so we'll take roll?

Commissioner Hatch: I asked to speak on my motion.

Chair Remke: Okay. Sorry. I thought you were waiting to see if there was a second. I'm just trying to follow along here. So, go ahead Commissioner Hatch.

Commissioner Hatch: Yeah. On my motion, for whatever reason, there was a lot of back and forth up until (inaudible). Somebody did something, I don't know what. But, this looks like it's going to head to litigation if we can't figure out a way to settle it. That's why I'm making this motion, one of the three recommended by Chief Counsel. Thank you.

Chair Remke: I guess I'm confused by the concern regarding litigation. Because, if we look at this procedurally, again, which is kind of the emphasis I'm making on the default process, once we enter a judgment the issue for any reconsideration, and ultimately the court, is, should that default be set aside? Are there grounds to set aside the default? It's the default judgment and I would find that hard to find any court who's going to agree that a default should be set aside and this... But, that's my position. So, okay, is there any more...

Commissioner Hatch: (Overlapping) The further we allow this to go the less options we have as a Commission to resolve this.

Chair Remke: Okay. Any more discussion...

Commissioner Hatch: (Overlapping) Less flexibility.

Chair Remke: Any further discussion on the motion? Okay. We'll take roll.

Ayes: Commissioners Audero and Hatch.
Nays: Commissioner Hayward and Chair Remke.
The motion tied 2-2.

Chair Remke: Okay. Is there... Well, I'll move to approve the default order. Decision and order.

Commissioner Hayward: Second.

Ayes: Commissioner Hayward and Chair Remke.
Nays: Commissioners Audero and Hatch.
The motion tied 2-2.

Chair Remke: Okay, so we'll take no action on this. So, if someone could help me out procedurally. I'm just talking about item 14. So, there's no action. So, it doesn't preclude you from perusing the matter. Okay.

15. In the Matter of JOBSPAC, A BI-PARTISAN COALITION OF CALIFORNIA EMPLOYERS; FPPC No. 17/1087. Staff: Commission Counsel Michael W. Hamilton and Program Specialist Patricia Ballantyne. JOBSPAC, A BI-PARTISAN COALITION OF CALIFORNIA EMPLOYERS is a state general purpose committee. In 2012, the Committee failed to timely disclose making in-kind contributions on the pre-election campaign statement covering the reporting period of July 1, 2012 through September 30, 2012; and on the semiannual campaign statement covering the reporting period of October 21, 2012 through December 31, 2012, in violation of Government Code Section 84211 subdivisions (b), (i), and (k) (2 counts). **Total Proposed Penalty: \$5,000.**

16. In the Matter of Committee Against Measure Z, Tim Flynn, and Nicole Godoy, FPPC No. 15/2257 (Streamline Settlement). Staff: Commission Counsel Theresa Gilbertson and Special Investigator Marshall Miller. Committee Against Measure Z was a primarily formed committee to oppose a Measure Z in the City of Mammoth Lakes on the October 6, 2015 Special Election. Tim Flynn and Nicole Godoy were the Committee's treasurers. The Committee, Flynn, and Godoy failed to timely file one pre-election statement for the reporting period of August 23, 2015 to September 19, 2015, in violation of Government Code Section 84200.5 (1 count); failed to timely disclose receiving \$3,284 in contributions on the semiannual campaign statement covering the reporting period of September 20, 2015 to December 31, 2015, in violation of Government Code Section 84211 (1 count), and failed to timely file a 24-Hour Report, in violation of Government Code Section 84203 (1 count). **Total Proposed Penalty: \$677.**

17. In the Matter of Committee to Elect Christian Legaspi for Public Administrator 2014 and Christian Legaspi; FPPC No. 17/408 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Staff Services Analyst Dominika Wojenska. Christian Legaspi was an unsuccessful candidate for Imperial County Public Administrator in the June 3, 2014 Primary Election. Committee to Elect Christian Legaspi for Public Administrator 2014 is his candidate-controlled committee. The Committee and Legaspi failed to timely disclose contributions and expenditures on two pre-election campaign statements covering the reporting periods of January 1, 2014 through June 30, 2014, in violation of Government Code Section 84211 (2 counts). **Total Proposed Penalty: \$501.**

18. In the Matter of Freemon for School Board, Jennifer Freemon, and Gloria Martin; FPPC No. 16/272 (Streamline Settlement). Staff: Commission Counsel Theresa Gilbertson. Jennifer Freemon was a successful candidate for the Glendale Unified School District Board of Education in the April 7, 2015 Special Election. Freemon for School Board was her candidate-controlled committee. Gloria Martin served as the Committee's treasurer. The Committee, Freemon, and Martin failed to timely report contributions of \$100 or more on one pre-election statement for the reporting period of February 21, 2015 to March 21, 2015 and on one semiannual statement for the reporting period of March 22, 2015 to June 30, 2015, in violation of Government Code 84211 (2 counts). **Total Proposed Penalty: \$421.**

Statement of Economic Interests Non-Filer

19. In the Matter of Sandeep Grewal; FPPC No. 15/034 (Default Decision). Staff: Commission Counsel Theresa Gilbertson. Sandeep Grewal served as Commissioner for the City of Delano Planning Commission from July 13, 2011 through June 6, 2016. Grewal failed to timely file Annual Statements of Economic Interests for the years of 2013 and 2015, in violation of Government Code Section 87203 (2 counts). **Total Proposed Penalty: \$8,000.**

Chair Remke: Okay, Item 19.

Commissioner Hatch: It was one of mine. I know it's a default decision again. This is, if I recall, a Form 700 not filed timely. And, if this had been streamlined it would have been a \$400 issue but the proposed fine is \$8,000 which is 20 times that amount. I realize it's because of lack of follow up on the person charged. It seems like that's a bit out of line. Galena, could you enlighten me as to why this is appropriate, none the less?

1:14:37 Galena West, Chief of Enforcement: Certainly. Galena West. What is traditionally happened in defaults for SEI, is that if you're holding an office, say, in this case is a Planning Commission, and you do not file your SEIs, if you comply file your SEIs, is you can get a streamline, which is, as you said, a couple hundred dollars. And, if you refuse to file them, if you just will not file your statements of economic interest to

show what your economic interests are while you are in office, then you cannot get a settlement. So, the public harm increases significantly when someone is on say a Planning Commission and they won't disclose what their interests are. So, Mr. Grewal was actually removed from the Planning Commission, but traditionally the Commission has always found that if you are not cooperating you won't file the SEIs, and you won't disclose your interests to the public, or to even the agency you work for, then it has been a much larger fine. It used to be all max fine, used to be all \$5,000 for any default of not filing your SEI's and then the considerations for being out of office or having filed subsequently once you were out of office have been taken into consideration, as well as, sometimes leaving office versus annual. So, I would say those were the considerations that caused the Commission to actually lower the fine from 5,000 to what you see now, but generally, this has been considered a make-or-break issue for the Commission, that the statements of economic interest, while you are in office, must be filed.

Commissioner Hatch: Did he ever file?

Galena West: this case I do not believe so never filed

Commissioner Hatch: Okay. Then I move approval.

Chair Remke: Any further questions from the other Commissioners? Any public comment on item 19? Okay. Hearing none, your motion Commissioner Hatch?

Commissioner Hatch: I move approval.

Commissioner Hayward: Second.

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.
The motion passed 4-0.

20. In the Matter of Sam Ramirez; FPPC No. 15/1169 (Default Decision). Staff Commission Counsel Michael W. Hamilton and Staff Services Analyst Dominika Wojenska. Sam Ramirez failed to timely file a Leaving Office Statement of Economic Interests within thirty days of leaving his position of Delano City Councilmember on December 4, 2012, in violation of Government Code Section 87204. (1 count). Additionally, Ramirez served as a Senior Field Representative for State Assemblyman Steve Fox of the Thirty-Sixth State Assembly District from August 12, 2013 through January 2, 2015. As a designated employee, Ramirez failed to timely file a combined Annual/Leaving Office Statement of Economic Interests within thirty days of leaving office by the February 2, 2015 deadline, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$7,000.**

Chair Remke: Item 20.

Commissioner Hatch: This is similar. How I read this, if it were a streamline it would be about a \$400 fine and this is \$7,000. Did he ever file his forms?

Galena West, Chief of Enforcement: Well, he filed yesterday.

Commissioner Hatch: Okay, so he gets a \$1,000 off.

Galena West: It's amazing what a default on the agenda can do.

Chair Remke: So, that's two and a half years late.

Galena West: So close.

Chair Remke: Any other questions from you, Commissioner Hatch?

Commissioner Hatch: I move approval.

Chair Remke: Yeah. Okay. Sorry, I'm just trying to make sure we give everyone an opportunity before we...

Commissioner Hatch: (Overlapping) Sorry.

Chair Remke: Any other questions from the Commissioners? Any public comment? Okay. So, you move approval. Motion to approve has been...

Commissioner Hayward: (Overlapping) Second.

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.
The motion passed 4-0.

21. In the Matter of Andrew Klompus; FPPC No. 16/014 (Streamline Stipulation). Staff: Commission Counsel Theresa Gilbertson and Political Reform Consultant Teri Rindahl. Andrew Klompus, Consultant for the Mental Health Department of Santa Clara County, failed to timely file Annual Statements of Economic Interests for the years of 2011 through 2014 and failed to timely file a Leaving Office Statement of Economic Interests in violation of Government Code Section 87300 (5 counts). **Total Proposed Penalty: \$3,000.**

Chair Remke: Okay, and item 21.

Commissioner Hatch: Item 21 is another form filed late. This was labeled as a streamline stipulation. Looking at the grid on this it shows he had a proposed fine of \$600 per violation, whereas the next, oh gosh, items 22 through 34 are all \$200 per violation. They're all streamline and they're all for the same thing. So, I ask Galena, why \$600 in this particular case (inaudible) 200.

Galena West, Chief of Enforcement: Sure, that's a good question. Our streamlined memo that we follow for compliance... Compliance, in response to the first enforcement contact, is \$200. But compliance, prior to the issuance of a probable cause report, is \$400 and compliance, prior to the issuance of an accusation, is between 600 and 800 dollars. So, in this case, as you can see, if this goes back to the 2011 annual SEI that wasn't filed. So, this case has gone on for a while to get Mr. Klompus to comply. So, as it goes through the process the fine is increased

1:20:07 Commissioner Hatch: Okay. So, he had those other two things, I'm sorry, I didn't (inaudible).

Galena West: A probable cause report and finding of probable cause.

Commissioner Hatch: Okay. Madam Chair, since I'm the hold up on this, I would move to approve.

Chair Remke: Any other questions? Okay. No public comment? Seeing none, okay, motion. Is there a second?

Commissioner Hayward: Second.

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.
The motion passed 4-0.

22. In the Matter of Ryan Stephens; FPPC No. 16/598 (Streamline Settlement). Staff: Commission Counsel Christopher Burton and Political Reform Consultant Teri Rindahl. Ryan Stephens, a former Planning Commissioner for the City of Grand Terrace, failed to timely file his 2014 and 2015 Annual Statements of Economic Interests, in violation of Government Section Code 87203 (2 counts) and a Leaving Office Statement of Economic Interests, in violation of Government Code Section 87204 (1 count). **Total Proposed Penalty: \$600.**

23. In the Matter of Ying Ku; FPPC No. 16/248 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Ying Ku, as a Senior Systems Analyst II of the Department of Housing and Community Investment for the City of Los Angeles, failed to timely file a 2014 Annual Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**

24. In the Matter of John "Tim" Scott; FPPC No. 16/599 (Streamline Settlement). Staff: Chief of Enforcement Galena West, Intake Manager Tara Stock and Staff Services

Analyst Katie Trumbly. John “Tim” Scott, a Commissioner on the Rolling Hills Estates Planning Commission, failed to timely file his 2013 Annual Statement of Economic Interests, in violation of Government Code Section 87203 (1 count). **Total Proposed Penalty: \$200.**

25. In the Matter of Jeffrey Davis; FPPC No. 17/674 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Enforcement Intake Manager Tara Stock. Jeffrey Davis, a former Commissioner on the Homeless Commission for the City of Berkeley, failed to timely file a Leaving Office Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**

26. In the Matter of Tim Almond; FPPC No. 17/752 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Enforcement Intake Manager Tara Stock. Tim Almond, a Consultant for the City of San Jose, failed to timely file a 2016 Annual Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**

27. In the Matter of Christopher Decareau; FPPC No. 17/751 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Enforcement Intake Manager Tara Stock. Christopher Decareau, a Consultant for the City of San Jose, failed to timely file a 2016 Annual Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**

28. In the Matter of Daniel Fiorio; FPPC No. 17/932 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Daniel Fiorio, an Alternate Commissioner of the California Pepper Commission, failed to timely file a 2016 Annual Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**

29. In the Matter of Travis Gibbs; FPPC No. 17/975 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Travis Gibbs, as Legal Counsel for the Transbay Joint Powers Authority, failed to timely file a 2016 Annual Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**

30. In the Matter of Teresa Holoman; FPPC No. 17/995 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Teresa Holoman, Board Member of the Voting Modernization Board, failed to timely file

a 2016 Annual Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**

31. In the Matter of Carl Schuster; FPPC No. 17/997 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Carl Schuster, as a Commissioner of the California Travel & Tourism Commission d.b.a Visit California, failed to timely file a 2016 Annual Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**

32. In the Matter of Carole Goldsmith; FPPC No. 17/999 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Carole Goldsmith, as a former Board Member of the California Partnership for the San Joaquin Valley, failed to timely file a 2016 Annual Statement of Economic Interest, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**

33. In the Matter of Alison Bernstein; FPPC No. 17/1078 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Alison Bernstein, as a Commissioner of the Police Review Commission for the City of Berkeley, failed to timely file a Leaving Office Statement of Economic Interests, in violation of Government Code Section 87300 (1 count). **Total Proposed Penalty: \$200.**

34. In the Matter of William Hofferber; FPPC No. 17/1157 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. William Hofferber, as a Planning Commissioner of the City of Jurpua Valley, failed to timely file a 2016 Annual Statement of Economic Interests, in violation of Government Code Section 87203 (1 count). **Total Proposed Penalty: \$200.**

Statement of Economic Interests Non-Reporter

35. In the Matter of Timothy O'Donnell; FPPC No. 15/1344 (Streamline Settlement). Staff: Senior Commission Counsel Neal Bucknell, Special Investigator George Aradi, and Program Specialist Grant Beauchamp. Timothy O'Donnell, as City Manager for the City of Brea, failed to disclose Cadway, Inc. as a source of income of \$500 or more on his 2011-2014 Annual Statements of Economic Interests and on his Leaving Office Statement of Economic Interests, in violation of Government Code Section 87207 (5 counts). **Total Proposed Penalty: \$500.**

Chair Remke: Okay. I'm just wondering if we can give Miss West some further direction. I'm kind of just sitting here thinking how we've left item 14 hanging with no action and I guess, by default, its, she'll go back and try to reach a settlement, as was requested. I would say, from my

personal point of view, and I'll leave it up to Miss West, if she can't reach a settlement, I mean her only other cause would be to seek litigation, which I would not avoid. I mean, to me, the worst-case scenario is that someone doesn't show up. We can't agree for various reasons on the course of action but she ends up getting no action? I think that was not what our intent was. If I understood the discussion.

Commissioner Hayward: Madam Chair. Yeah. I don't think anyone means to give her a hall pass. I think it's just the way forward that we disagreed about but, moving forward is something I think, I'm, I shouldn't speak for my colleagues, I think, but my sense was that's what we wanted.

Chair Remke: Okay. Any other comments on that for direction to move forward? See what we can do and then we'll bring it back in one form or another.

Commissioner Audero: So, let me just state my thoughts.

Chair Remke: Okay. Commissioner Audero.

Commissioner Audero: I agree this is not a pass. That in my mind, this is not, I think - I think we're disagreeing, perhaps, on amounts. And so, you know, I think the best - the best option is, see if you can go get this settled or come back to us with a default that we can agree on.

Galena West, Chief of Enforcement: Okay.

Chair Remke: Commissioner Hatch, did you have a comment?

Commissioner Hatch: Yes, I did. Thank you. I just want to confirm, again, Galena, that items four, five, and six, that are on her memo, are not a part of this default charge.

Galena West: Counts four, five, and six are different than the ones that were contested. So yes, they are included, but the counts that they were discussing, that the treasurer was going back with the Enforcement Council about, were different counts, different dates, different amounts. There was, I believe, \$90,000 in non-monetary contributions, and those were four different non-monetary contributions. So, the ones that are in here...

Commissioner Hatch: (Overlapping) Four, five, and six are non-monetary contributions, where they received the information for the contributor late, but they were within 24 hours of the date they received the information, is that not correct?

Galena West: They received the information timely, as in exhibit A15, the letters from the contributor. So, there's no contention on whether or not there were 24-hour reports due for those contributions that they received the information timely from the contributors.

Commissioner Hatch: Okay. But, our law, and not you, this is what we've done in the past, requires the receiver to file that 24-hour report within 24 hours of the contribution. And, whether it's a media buy or, you know, a mailer, it's very difficult for the receiver to know what they've

received until they actually get something tangible. I mean, (inaudible) on television, you know. How big is the buy? I don't know. Oh, I got something in my mailbox. Well, it was the universe. Was it four out of five frequent voters or was it all democrats? All republicans? There's no way of knowing that until you get information. It comes in in trickles. But, our law requires that they do it, literally, before they receive the notice from the contributor and I recall reading it the other night (inaudible) had they gotten the information when the contribution was made they would have been able to file timely but, because of the two-step process, they're in violation of our law. (Inaudible) I don't think we should charge those three. I think we should revisit (inaudible).

1:25:32 Chair Remke: Well, I think - I think Ms. West is, and this is Chair Remke, again there's the confusion because the attachments by the respondent talk about that situation where they may or may not have received timely notice. The three counts that are charged are best summarized on page 7 of the decision and order. The first full paragraph, where it states the date of the in-kind contribution and the timely notice from the contributor, which all was within one day, two days, four days, but yet despite that timely notice, they filed no 24-hour reports.

Galena West: That's correct.

Chair Remke: Okay.

Galena West: And, we included those timely...

Commissioner Hatch: (Overlapping) No 24-hour reports at all?

Galena West: No, not at all for those three contributions.

Commissioner Hatch: Okay. I'm sorry. I was confusing that with the ones where they filed it.

Chair Remke: Right.

Commissioner Hatch: Within 24 hours of receiving the information but not within 24 hours of the actual gift.

Galena West: Right. So, they didn't disclose anything the mitigation we used was that two of them were on report other statements but no 24-hour

Commissioner Hatch: They were on the donor statements, correct?

Galena West: Right. So, no 24-hour reports by Ms. Bertani's committee for those three contributions.

Commissioner Hatch: Okay. Thank you. I appreciate that.

Galena West: Mahalo.

Chair Remke: Commissioner Audero.

Commissioner Audero: So, Ms. West, do you think that you can cut a deal with Ms. Bertani. I mean, not for a dollar. That's off the table, right? I mean, I think we, I won't speak for others, but for me, that's off the table. I wouldn't vote for that. But, some kind of reasonable deal that will just get this done. Much less expense to us, as a Commission, because, going forward is going to cost a whole lot more than \$18,000, right? I think we all agree on that and I think we have to be reasonable with our resources. So, I mean, I that's kind of where I'm going. If you can cut a decent deal, I think that you come back with another default or either you cut a deal or you come back with a default that well approve.

Galena West: Okay.

Chair Remke: Yeah, I would just say the counter to the concern about costs to us is there's no cost for a default. We get a judgment. So, if we can't reach a deal, I mean, I just don't want us to say we want a stipulation at all cost, and, I know that's not what you're saying. I just...

Commissioner Audero: (Overlapping) That's not what I'm saying.

Chair Remke: Yeah. Okay. All right. So, that we will, that is to be revisited. I think we've all given our thoughts and directions on that. I just didn't want to leave that hanging. So, thank you Ms. West.

General Items 36-41

36. Adoption of Amendment to Regulation 18531.5 and Approval of Campaign Manual 4 and Recall Fact Sheet. Staff: Zachary Norton, Senior Counsel, Legal Division. Staff proposes to amend Regulation 18531.5 and to update Campaign Manual 4 and the Recall Fact Sheet consistent with the Rios Opinion, No. O-17-001, to permit a state candidate to contribute unlimited funds to a recall committee controlled by another state candidate to oppose his or her recall. Staff also proposes updates to Campaign Manual 4 unrelated to the Rios Opinion.

Staff Memo

Proposed Amendment to Regulation 18531.5

Updated Campaign Manual 4

Updated Recall Fact Sheet

Chair Remke: and now we move to item 36 adoption of amendment to reg 18531.5 campaign manuals and fact sheets you just state your name for everyone

Zachary Norton, Senior Counsel, Legal Division: Okay. I think that... yeah, that's working. So, good morning Chair Remke and Commissioners. I'm Zachary Norton, Senior Counsel, Legal Division. I'm here with Trish Mayer, Assistant Chief Legal Division. So, today, staff is proposing amendments to regulation 18531.5, as well as, to

the recall fact sheet and campaign manual four, and, I'd like to note that there was a proposed change to the recall fact sheet. The addition of question and answer number 19, and that was in response to a concern raised by Commissioner Hatch at its October meeting. The Commission, consistent with the Rios opinion, adopted amendments to regulation 18535 to make clear that the contribution limits of section 85305 do not apply to state candidates who are the subject of a recall. The regulatory amendment proposed today is the result of a public comment following the adoption of the Rios opinion. Staff is also proposing changes to the recall fact sheet and campaign manual four to reflect the change resulting from the Rios opinion, as well as, unrelated changes. Those would include a minor clarification reflecting the advice in the Piercy letter and updated references to the Commission's current 'Q' street address.

1:30:52 Chair Remke: Thank you. Any... So, can you just again to clarify for the record, so I understand that they're copies outside in the hallway for anyone in the public and I just was received the changes. I guess there was suggested changes to the fact sheet, is that right? where are the suggested changes just so I know what we're talking about. Okay ... okay so it's question 19.

Zachary Norton: Yes. Question 19 originally had been stricken in its entirety and then, as a result of comment from Commissioner Hatch, we've reintroduced it with modifications.

Chair Remke: Okay. Just... okay so, 19's back in with amendments. All right. Thank You, Zak. Any questions or comments from the Commissioners first?

Commissioner Hayward: I have... I think it's a point of order.

Chair Remke: Okay. Commissioner Hayward.

Commissioner Hayward: Are we going to take the reg, the fact sheet, and the manual separately or are we going to consider them as a unit?

Chair Remke: I think, I would propose we take them separately.

Commissioner Hayward: Thank you.

Chair Remke: So, with that, any questions or comments regarding the regulation first? Let's take the regulation first. That seems to be the most straightforward. Okay, any well, I'll take the public all at the end. Any questions or comments from the Commissioners on the recall fact sheet considering the proposed recent amendments as well from Commissioner Hatch?

Commissioner Hayward: I would just say that I think the Hatch version is just fine, though, I have to say, I'm not sure I had problems with the Pre-Hatch version. I'm not sure we have to specify that the replacement candidate being a candidate for office does

not enjoy the lack of a limit, but, you know, if to the extent there might be confusion on that point, then sure, let's make sure it's specific there.

Chair Remke: Thank you. Commissioner Audero.

Commissioner Audero: Thank you. So, I was not a fan of cutting out question 19, or, I think it was question 18. Yeah, I don't know, the one that we got is weirdly numbered. It doesn't have a number on that question. Notwithstanding, I'm not a fan of completely eliminating this question because people have been looking at this question for years now, right? And, to completely take it out, I think, is going to lead to confusion and perhaps more calls than you would want to take. So, I'm not a fan of taking it out. So, I like - I like bringing it back in as, what is now numbered question 19 on this Hatch version, but I also would like when I might... My instinct was initially, was why don't we just tell the people what happened? Why don't we just say, you know, are contributions made to other elected officials to the table, blah blah blah, the question number 19, and then just say no on this and yes on this. I mean, why are we kind of beating around the bush and hiding an answer? It's, is what I feel like. I feel like... just tell people.

Zachary Norton: Zachary Norton. I think that's what we're trying to do with the recall factsheet. I think it's trying to, sort of, spell it out in a way that presents questions and answers that Trish and the Advice Staff have dealt with in the past. So, it's attempting to be kind of a usable document that presents things in kind of a real-world sort of common language manner.

Commissioner Audero: So, what's wrong with saying, are contributions made by other elected officials to the target candidate subject to limits? No. Are contributions made by other elected officials to a replacement candidate's controlled committee subject to limits? Yes. Just a thought.

1:35:17 Zachary Norton: There wouldn't necessarily be anything wrong with that.

Chair Remke: You're... so, it's the proposal, or your question is why we add the references after that?

Commissioner Audero: No, my propose... my question is, why aren't we answering the question that everybody has been asking, which is, are contributions made by other elected officials to the target candidates subject to limits? To the target count candidate, I guess, of a recall, subject to limits? No.

Chair Remke: That's question two, right? I guess I'm ...

Commissioner Audero: (Overlapping) Okay.

Chair Remke: I'm having a hard time following.

Commissioner Audero: No, I don't... I'm not sure that's question 2. Question 2 is whether that person can receive. I think question 19 is whether another elected official can make, which was 90 percent of the debate that we had for three months, as I read it. I could be wrong, so correct me if I'm wrong.

Chair Remke: Commissioner Hayward.

Commissioner Hayward: Yes, Madam Chair. I think - I think maybe what they're grappling with is trying to get rid of the make or receive distinction that the Commission was following. Similar to the regulatory language, where we add made to or into it because we're no longer trying to trying to perpetuate that distinction and if you've got a suggestion for how to be, you know, clear with people now that we no longer recognize that distinction, I don't know. I didn't have a... I didn't have a problem with the Hatch draft on that point but I'm... if Commissioner Audero has thoughts I'd be willing to think about it.

Commissioner Audero: Yeah. So, I did have a thought so my next one is break it up into two, right? or a contribution...

Commissioner Hatch: (Overlapping)(Inaudible) I'm sorry.

Chair Remke: Go ahead, Commissioner Audero.

Commissioner Hatch: (Inaudible).

Chair Remke: Pardon me? Commissioner Audero has the floor. Go ahead, Commissioner Audero.

Commissioner Audero: Break it up into two to make sure we are absolutely clear. Are contributions made by other elected officials to the target candidates subject to limits? No. Are contributions made by other elected officials to a replacement candidates controlled committee subject to limits? Yes. And, in the language that is stated here currently that's, I think would make it clearer. I say that my only goal here is to be as clear as possible and to avoid a whole bunch of calls to your office, you know, but maybe there's a compromise that we can make, which is, we leave it as the Commissioner Hatch version and if we start to get a whole bunch of calls then we revise it again. I'm fine with that. I just want to make sure that we're as clear as possible so that - to save resources and avoid headaches for everybody all around.

Chair Remke: So, if you're fine with leaving it, and these are the people who answer the questions, and you're think you've hit the right tone based on the questions you receive, maybe we start with there, and if they get problems, we'll bring it back for... And we - it's most likely we will be bringing it back if we adopt further regulations in December. So, we could perhaps take that comment under consideration and, if further amendments are made to this, you may work that out a little bit more.

Commissioner Audero: Yeah. Although, I would say, I don't think that by December we'll have enough calls. I mean, I don't think one month is enough... is a fair enough test of this. That said, yes, I am fine, well, if you guys feel comfortable and, I guess, Ms. West, if you feel comfortable, because you're going to be enforcing this and you don't feel that this is, or you feel that this is clear enough, then let's go for it and see what happens.

Chair Remke: Commissioner Hatch.

Commissioner Hatch: Just to clarify, my first impression was exactly what Ms. Audero's was. My notes to myself were to, you know, write to staff that this should, first of all, be back in and that it should say yes for the target and no for the challenger. And, the language that was actually drafted by Staff in response to my concerns. I would ever much be happy with the version Commissioner Audero suggested. So, add back in a sentence that makes it clearer that a target, the contributors to a target, are not limited.

1:40:40 Chair Remke: And, this just goes back to my question. I guess, I'm still slightly confused why question, and maybe I'll ask staff this, help me understand what we're doing, why this concern isn't answered by question two.

Commissioner Hatch: (Overlapping) I can answer that. Question 2 talks only...

Chair Remke: (Overlapping) I'm actually asking staff to just address my concern right now. Thank you.

Trish Mayer, Assistant Chief, Legal Division: Hi, Trish Mayer. it seems that question two does answer the question.

Chair Remke: And, I say that because, then the issue is just question two, would it be easier to amend question two to be more direct. If that's the concern, as in it reads, are contributions made... Oh, I see. It could say, is the elected official - is the target of recall subject to contribution limits and voluntary expenditure limits, including from other elected officials, and the answer is no.

Commissioner Audero: That that would work as well.

Chair Remke: Is that - is that... Would that be an accurate statement? Just because I'm doing this on the fly. I want to make sure that would be accurate.

Trish Mayer: Yes, it would.

Chair Remke: So, if we were to amend question two, which is up front more, and it's on the recall, and the target, which seems to make a good spot for it, who was the target of a

recall, the state recall, subject to contribution limits and the voluntary expenditure limit including contributions from other elected officials.

Commissioner Audero: Yeah.

Chair Remke: The answer is no. Okay. That would be my proposed modification to this modified version.

Commissioner Hayward: Madam Chair?

Chair Remke: Yes?

Commissioner Hayward: I want... Is that a friendly amendment to the amendment of our friend in Hawaii?

Chair Remke: Yes.

Commissioner Hayward: Mr. Hatch.

Chair Remke: Yes. I'm working off that version.

Commissioner Hatch: (Inaudible).

Commissioner Hayward: Excellent.

Trish Mayer: and clarify, we'll leave Commissioner Hatch's version

Chair Remke: Yes, that's the proposal right now. So, we're working off the amended version that's been available today, making a slight additional amendment. Obviously no substantive changes because, while we're trying to do is clarify what the law is and make sure everyone understands it, so including other elected officials with that, are we done with the fact sheet? Any public comment on the fact sheet? Okay, seeing none, I'll ask... Commissioner Audero.

Commissioner Audero: Just one tiny little change and I would say not I would say including from other elected officials we're not including other elected officials.

Chair Remke: Yes, good idea. Okay then, let's just... is there any questions or comments regarding the manual language? From the Commissioners, any questions regarding the manual? Any public comment regarding the manual? Okay, so we're going to take these one at a time. I move to approve the regulation.

Commissioner Audero: Second.

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.

The motion passed 4-0.

Chair Remke: Okay. As to the recall fact sheet as amended today, is there a motion?

Commissioner Audero: I move approval of the further revised Hatch revision.

Commissioner Hayward: Second.

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.
The motion passed 4-0.

Chair Remke: Okay, and finally as to the amendments to campaign manual four. Is there a motion?

Commissioner Hayward: I'll move it.

Commissioner Audero: Second.

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.
The motion passed 4-0.

- 37. Adoption of the 2017/2018 Statement of Economic Interests, Form 700 and related documents.** Staff: Courtney Miller, External Affairs and Education Division Manager. Forms and related documents have been revised to reflect current dates and filing deadlines.

Staff Memo

Form 700 2017/2018

Form 700 Reference Pamphlet 2017/2018

Form 700-A – 2017/2018

Form 700-U – 2017/2018

1:44:58 Chair Remke: Okay. Item 37, adoption of the 2017-2018 Statement of Economic Interests. We did receive one public comment, which isn't as to these amendments, but a bigger policy issue as to Form 700s, which is posted online and I believe the Commissioners received it? Okay. Go ahead, please introduce yourself.

Courtney Miller, Manager, External Affairs and Education Division: Good morning, Chair Remke and Commissioners. My name is Courtney Miller and I'm the manager of the External Affairs and Education Division. I'm here today to ask for your approval of the 2017-2018 Form 700 and related documents. As I noted in my memo, there are only updated - the updates pertain only to the dates and deadlines in the documents. Staff recommends approval of the updated Form 700, Form 700 reference pamphlet, Form 700 A, and Form 700 U. I'm happy to answer any questions you may have. Thank you.

Chair Remke: Thank you. Any questions from the Commissioners as to item 37?

Commissioner Hatch: Yes.

Chair Remke: I'm sorry, what did you say Commissioner Hatch?

Commissioner Hatch: I said yes.

Chair Remke: Okay. Go ahead.

Commissioner Hatch: Was there any thought given to providing further examples or is that something that would be kind of a different context?

Chair Remke: Further examples on the instruction fact... that's an instruction sheet. Is that the issue?

Commissioner Hatch: Yeah.

Chair Remke: Do we have other further information or secondary sources regarding the Form 700?

Courtney Miller: We don't.

Commissioner Hatch: The reason why I raise that question is because I, you know, I filled out my first Form 700 in March, you know, the one you do when you take office. And, I found many areas that I really had to struggle on. Thankfully, there was some really kind staff to help me find my way through it but, you know, I have not forgotten that those information sheets were not terribly helpful. I think there could be further work done on that in several areas.

Erin Peth, Executive Director: Commission... Oh sorry. Commissioner Hatch, this is Erin Peth. Just - this current version that we're asking for approval for doesn't have any additional FAQ's but in the past, that has been changed, you know. If we monitor carefully all the advice that we receive, all the advice requests we receive, and if we notice the same types of questions coming up over and over, we do try to keep these documents, you know, as current as possible to be consistent with the advice questions we're getting. But, that doesn't mean, couldn't add additional examples in the future, as well, and we do, as you know, and I just referenced provide advice via phone and email and formal legal advice. So, if questions are not answered in the documents themselves, we're available to help individuals fill out their forms as well.

Commissioner Hatch: Right. I just found, in some cases, some of those facts were what contributed to confusion. Like you said, I think that, (inaudible).

Chair Remke: I know that in addition to everything that Erin just mentioned, we also do provide formal training for filing officers who then really are the first front line to the people filing with them. I mean there's a lot out there, but to the extent, Commissioner Hatch, you think there's anything in particular in this form that you want to talk with Courtney about we could revisit that and or just have an additional information we have a page on our website regarding Form 700s. And, if there are any things you think would be helpful, I'm sure she'd be open to hearing those.

Commissioner Hatch: Okay. I'll try and go back through and make a list. (Inaudible)

Chair Remke: Can you speak a little bit more into the phone? I'm having trouble hearing you.

Commissioner Hatch: I apologize. I tend to trail off. That's my suggestion. (Inaudible). I'll look through and see if I can find some of those things and contact Courtney.

Chair Remke: Okay. I'll actually have Courtney reach out to you just so you guys have contact, okay?

Commissioner Audero: I just have a comment on that

1:49:50 Chair Remke: Yes, Commissioner Audero.

Commissioner Audero: I echo the concerns about the difficulty. That said, I, the first time after my eyes rolled into the back of my head and then rolled back out, I just handed it over. I'm fortunate I have an accountant that I can just hand it over to, wash my hands of it, and, you know. I - the second time, as I was going through it, I actually thought, okay, why can't I do this? I'm a normally intelligent person, not the - not the most intelligent, but okay, and I thought, what could, what would I rewrite in this? And so, I actually went to the rules, and I went to the regulations, and I concluded that I could not write this any better because it's just a nightmare. I think it's, the problem in understanding it is not a fault of our or the Commission's efforts to make it clearer. It's just that it's impossible to make it clearer. It's - the conclusion that I have reached. So, I'm good with it as it is and if Commissioner Hatch can come up with some helpful things to add then not only should we add it but Commissioner Hatch should go get a job writing manuals. So, that's my one cents worth.

Chair Remke: okay there are no other comments or questions from the commissioners is there any public comment on item 37 seeing none is there a motion

Commissioner Hayward: I'll move them.

Chair Remke: Okay.

Commissioner Audero: Second.

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.
The motion passed 4-0.

- 38. Disclose Act Implementation and Timeline. (Information Item)** Staff: Erin Peth, Executive Director. Governor Brown signed AB 249 (the Disclose Act) and substantive provisions of the bill go into effect on January 1, 2018. FPPC staff has begun implementing the legislation and efforts will continue in the coming months. The memo summarizes the implementation plan for AB 249.

Staff Memo

Chair Remke: Okay. So, the next item was at the request of Commissioner Audero, to come back with a more formalized written statement as to the work that's being done as far as implementation of the DISCLOSE Act and a timeline. That's item 38. So, just, do the Commissioners have any questions regarding this document? Commissioner Audero.

Commissioner Audero: Thank you. So, first, thank you. This is exactly what I was looking for. I think it's very helpful but I am not... I am not... I didn't go back and read every single one of these regulations. So, I guess, I would I ask, what was your reasoning for the order in which things are done? I had raised a particular question about earmarked funds and people are going to have to start tracking that and I just kind of... I want to make sure that we're on track with that and then just I'd love to hear your reasoning's.

Erin Peth, Executive Director: Sure, I'm actually going to defer to Sukhi from the Legal. There wasn't... she's handling all the regulation packages.

Sukhi Brar, Senior Commission Counsel, Legal Division: Hi Sukhi Brar, Senior Counsel, Legal Division. So, our reasoning for it basically, is there are a lot of regulations on the list. There's about 18 regulations. So, we started off with the ones that we found to be more of the simple ones to get them out there as fast as possible because we could get those out more quickly and then we're going with the second set for the January regulations. We find those to be a little bit more complicated but the plan is, the bill doesn't go into effect until January 1st, and we're going to put all of the regulations together and have them go in effect at the same time. That's for ease of enforcement, as well, so we don't have two sets of regulations out there that are implemented at different times, also. So, that was the thinking behind this and we're having an interested persons meeting on the first set of regulations on November 28th and then another one for the second set in the middle of December.

Commissioner Audero: Thank you. So, okay, I appreciate getting as many out as possible, but, was there any thought given to the fact that some people are going to have to start doing things right away on your marketing. For example, where's ear marking?

Sukhi Brar: Right. So, there was thought given to that, and again, we're making all of the regulations go in at the same time. Enforcement will give a grace period for that as well and the bill itself has a lot of information in it already. When it comes to earmarking and how to comply with that. So, I think we're okay on that front, and again, we need to have a lot of public comment on that, as well. So, we're trying to get that done as soon as possible and have the meetings where people can give input as well so

Commissioner Audero: So, where's earmarking?

Sukhi Brar: Earmarking...

Commissioner Audero: (Overlapping) Is in January.

Sukhi Brar: Yes, that will be up in January.

Commissioner Audero: Well, out in...? No. Nothing is going to be out in January, right? Because we are... the December meeting is going to address this first set and then the January meeting is going to address the second set and nothing is going out until after that, right?

Sukhi Brar: So, the second set includes the regulation that addresses that, might address ear marking, right, and that will be voted on by the Commission in January. So, I'm not sure what your question is.

Commissioner Audero: So, that'll be after January 1.

Sukhi Brar: Right. It's...

Commissioner Audero: (Overlapping) Nothing's going out, I guess nothing's going out until it all goes out together.

1:55:04 Sukhi Brar: Yes. Exactly.

Commissioner Audero: I guess that's fine. Oh. That's it. thank you

Chair Remke: Any other questions or comments from the Commissioners?

Commissioner Hatch: Mr. Hatch.

Chair Remke: Commissioner Hatch.

Commissioner Hatch: I'd just like to reiterate my cautionary comments to Erin by email. I don't like... Looking at the flow sheet here, it looks like it's possible to adopt fact sheets and manuals before we adopt regulations. I just want to make sure that we don't do that. We interpret the law with the regulations and we adopt the fact sheets to provide

clarification as to what we did but I don't want to get into that situation where we adopt a fact sheet and then we have to modify regulations to a fact sheet.

Erin Peth: Commissioner Hatch, this is Erin. Yes, I understand that. It's sort of a cart and horse problem, so we'll be monitoring those... that situation as the regulations are going through the interested persons process, and going before the Commission, and make sure that we're not duplicating any efforts. And, at the same time, balancing the desire to produce these materials as soon as we can. So, I understand that direction.

Commissioner Hatch: Okay. Thank you.

Chair Remke: Okay. Any public comment on item 38? All right. Thank you.

Commissioner Audero: Can I just...?

Chair Remke: Commissioner Audero.

Commissioner Audero: Sorry. Just for my personal planning purposes, are we going to get all of this in one packet 10 days before the January meeting?

Erin Peth: Are you referring to the manuals, or the regulations, or all of it?

Commissioner Audero: Well, it seems like we're going to get a packet of regulations which are on the first page before the January... before the December meeting and those will be voted on and approved. Or, maybe...

Chair Remke: Are you on the interested persons list of the FPPC? Because you could get what goes out.

Commissioner Audero: Yeah, I am on that.

Chair Remke: So, you'll get the initial version. So, if you want to get a head start on it and see what we're presenting to the public, and then there would only be minor modifications to what actually goes on the agenda, based on those comments?

Sukhi Brar: Right. And, the December list is already out. The drafts are already posted on our website and they've been noticed.

Chair Remke: So, just re-forward it to Commissioner Audero again so make sure she...

Commissioner Audero: (Overlapping) Yeah, I'm sorry about that.

Sukhi Brar: Sure. Okay.

Commissioner Audero: All right. Thank you.

Erin Peth: And, the same will happen for the January package. So, they will be, you know, they are actually publicly available before the 10 days. Obviously, there could be tweaks made but at least the initial staff drafts will circulate for quite a long time.

Commissioner Audero: And then... So, the January packet will have the regulations that are listed on page 2 of this document, and then all the website stuff, the manuals, the education outreach, and the additional legislation? No. That's going to come out in the February Commission meeting. So, January is going to be jam-packed.

Erin Peth: Right. Start the year off with a bang.

Commissioner Audero: Okay. Thank you.

Chair Remke: Okay. Thank You, Sukhi.

- 39. Appointments to Ad Hoc Committee Regarding Statement of Governance Principles. (Information Item)** At the October 19, 2017 meeting, the Commission voted to establish an ad hoc committee composed of two members of the Commission, appointed by the Chair, to review the Commission's Statement Of Governance Principles and prepare a report recommending any potential revisions. The following two members have been appointed and agreed to serve: Commissioner Hayward (Chair) and Commissioner Hatch.

Chair Remke: All right, item 39 was more informational, just to have public notice that the ad hoc committee has been appointed. Commissioner Hayward is the Chair and Commissioner Hatch, they both agreed to serve. I don't know if you have any update, Commissioner Hayward, on that.

Commissioner Hayward: Yeah, I just want to get people back up to speed about what we were thinking anyway, you know, it's important to have principles that people understand, that are being followed, and that are clear. The principles that we're working off of right now were adopted in 2001. They're the same age as my high school sophomore and I'm not... nobody's prejudging that there's anything wrong with them or just that we, as sort of a fiduciary responsibility of keeping this agency moving forward well, should be looking at them from time to time. So, I encourage feedback from the public, as well as former Commissioners and former staff of the Commission, we think that it would be good to hear from people who have been in this operation in the past just to see how practices might have changed why certain practices were rejected it's always good to learn the lessons of the past and not repeat them unnecessarily so we're going to be doing this over the next few months and probably roll something back to the Commission in the spring and look forward to a very educational and interesting process. Thank you.

2:00:05 Chair Remke: And, if you plan on having any public meetings, that will all be noticed and put out there, and we can actually even put it on the agenda as just notice, if you decided to do that.

Commissioner Hayward: Yeah. Right now, we are trying to figure out the universe of people we can talk to and that's where we are right now.

Chair Remke: Okay. Thank you. Anything from you, Commissioner Hatch, on that?

Commissioner Hatch: Oh, just thrilled to be on the Commission... on the Committee. Thank you.

Chair Remke: Okay. Thank you.

40. Executive Staff Reports. (Information Item)

Enforcement Division. Galena West, Enforcement Chief

Legal Division. Jack Woodside, General Counsel

External Affairs and Education. Courtney Miller, Manager

Chair Remke: All right. Executive Staff Reports, item 40. Any questions or comments from the Commissioners? Commissioner Hayward.

Commissioner Hayward: Yeah, on the Legal Division report, so, the Howard Jarvis ruling was dated August 23rd, but there's been no notice of entry of judgment. Is that correct?

Jack Woodside, General Counsel: Jack Woodside. I'll defer to John Feser, who's working with the Attorney General. I think he does have an update.

John Feser, Commission Counsel: Commissioner Hayward, John Feser. I... that's... it was a long delay, but it came across last week. There was an entry of judgment and the last day to file a notice of appeal would be January 12th, 2018.

Commissioner Hayward. Excellent. Thank you.

Chair Remke: We'll provide any further update in December as to whether we finally got it filed, what's going on, and that will be on the agenda.

Commissioner Hayward: And then, I had another question under Burgess, the briefing schedule listed at the end of it, shows that our opening brief would be... would have been due by November 6th. I take it that was filed?

John Feser: Yes, it was.

Commissioner Hayward: It's a... it's just, when these are written as though it was written earlier... I'm like, yeah that's very interesting, wonder what happened. I think that's all I had. Thank you.

Chair Remke: Any other questions or comments from the Commissioners on the Executive Staff Reports?

Commissioner Audero: So, maybe...

Chair Remke: Commissioner Audero

Commissioner Audero: So, maybe I'm behind the ball here, but I don't remember seeing the brief in Burgess. Did I miss it?

Jack Woodside: Sorry, Commissioner and, Oh, Jack Woodside, in the past we've tended to wait until we get all the briefs and then send them out at once but, if the commissioners would prefer to get them piecemeal, as they come in, we can do that also.

Commissioner Audero: I personally would.

Jack Woodside: Okay.

Commissioner Hatch: They're more easily digested that way.

Jack Woodside: Then we'll go ahead and send them out to the Commissioners, or John will send out the opening brief.

Chair Remke: Okay. Thank you. Any other questions or comments? Okay, the reports will be submitted.

41. Proposed Future Agenda Items.

Note: The Commission may not discuss or take action on any matter raised during public comment that is not included on this agenda, except to decide to place the matter on the agenda of a future meeting. (Government Code Sections 11125 & 11125.7(a).)

Chair Remke: And then, the final item is just anything from the Commissioners that they would like to have in a future agenda that has not already been discussed, noted, or talked about? Commissioner Hayward

Commissioner Hayward: Yes, Madam Chair. And, in light of the Bagley Keene training last month, I would like to have on a future agenda discussion of whether or not it would be appropriate for us to solicit an Attorney General's opinion to help clarify some of the advice we got. You know, we're looking at going into a packet of some, you know, fairly significant regulations, although, you know, there's not a lot of ambiguity. And, what the

disclose Act is requiring of us, I think there will be, at some point, some differing of opinion on to how best regulate. I don't want the public to feel chilled about talking to me in between meetings, or you, or anybody. And, I felt there was some vagueness in the advice we were getting that could lead to such a chill and I also don't want inconsistent approaches being adopted by different Commissioners, to the extent that, advice was vague, that's certainly a possibility. I am aware, under Garcetti, that public employees don't have the First Amendment protected right to free speech when they are engaging on official speech, but, I'm not sure how that applies to us, and I'm not sure anyone else knows. I'm not sure the Attorney General has been asked that question. So, it's been teed up for examination and so, I know we've got busy agenda with this month from the next, with the regs, but I also think that having some clarity here is really important too.

Chair Remke: Well, I would guess, I'd propose putting it on December for, as you say, the first discussion, so we could flush out some of the issues and concerns that we can, then come to a consensus on what we want asked, and then we can proceed from there.

Commissioner Hayward: Thank you.

Commissioner Audero: Madam Chair.

Chair Remke: Commissioner Audero:

Commissioner Audero: So, I am not going to be able to make it to the December meeting, nor will I be able to do it by phone, because I'm in a mediation, it's a date that I can't change, but I would like to participate in this. Coming up with a list of questions that we have for the Attorney General. So, I'm not suggesting that we delay it, and put it on the January agenda, but in what way can I participate in that absent... being absent in December?

2:05:20 Chair Remke: I would not see any problem with submitting a written statement as to what your requests are and we'll include that on the agenda with the discussion item and it will just be noted that, you know, in your absence, you would like these to be included in the discussion.

Commissioner Audero: Okay. Thank you.

Chair Remke: Okay. Any other proposed future items, other than what we've already discussed, it's already coming up?

Commissioner Hatch: (Inaudible).

Chair Remke: Commissioner Hatch.

Commissioner Hatch: I just... On Roberts's Rules of Order, thank you for the copy we received last month, on page 158, there's... It's describes a formal procedure for small

boards and it's, according to Robert's, boards under 12 members, obviously, that applies to us, that there may be other requirements that will be in conflict and I'd appreciate if, to the extent that... I'd like to find a way to clear it up. Perhaps we can have Counsel review and give us an opinion later as to whether we should follow that or whether they're conflicting to Bagley-Keene.

Chair Remke: Okay. John's going to... John's taking notes, and he will, and I would suggest, if it's a question you have in particular commissioner Hatch, regarding the rules, I would start with just talking with John and if you feel it's clear and you understand it, great. If you think it's an issue the entire Commission needs to rule on, or decide, we'll bring it back.

Commissioner Hatch: Well, just as example, it says that motions need not be seconded. Our practice has been to second motions. I don't know if we're doing that just because, or whether we think we're following the rules, or whether there's an APA or Bagley-Keene requirement.

Chair Remke: I would have to look at the page your referring to, and the item, so if you don't mind, again, I think, just because we don't want to get into a substantive discussion about Robert's Rules and what the answers are, because this is just for future discussion agenda items, but what would bring back again. I would ask that you start with speaking with John directly, and if you two decide that there is an issue that needs clarification, John will notify me, and I'll put it on the agenda.

Commissioner Hatch: Cool.

Chair Remke: Okay. Commissioner Audero.

Commissioner Audero: Yeah, I would like for us to revisit the streamline schedule.

Chair Remke: Right. That's on for January.

Commissioner Audero: Okay then. Very good.

Chair Remke: Anything else?

Chair Remke: I move to adjourn.

Commissioner Hayward: Second.

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.
The motion passed 4 to 0.

The meeting adjourned at 12:02 pm.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved December 11, 2017

Joann Remke, Chair
Fair Political Practices Commission