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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

12 JEROME HORTON, DEMOCRAT
13 JEROME HORTON FOR BOARD OF
EQUALIZATION, CITIZENS TO ELECT
14 HONEST OFFICIALS, and KINDE
DURKEE,

15 Respondents.

FPPC No. 08/286

STIPULATION, DECISION AND ORDER

16
17 **STIPULATION**

18 Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission,
19 and Respondents Jerome Horton, Democrat Jerome Horton for Board of Equalization, Citizens to Elect
20 Honest Officials, and Kinde Durkee agree that this Stipulation will be submitted for consideration by the
21 Fair Political Practices Commission at its next regularly scheduled meeting.

22 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
23 matter and to reach a final disposition without the necessity of holding an additional administrative
24 hearing to determine the liability of Respondents.

25 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
26 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
27 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
28 appear personally at any administrative hearing held in this matter, to be represented by an attorney at

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

4 As described in Exhibit 1, it is further stipulated and agreed that:

- 5 (i) Respondents Jerome Horton, Democrat Jerome Horton for Board of Equalization, and
6 Kinde Durkee failed to refund contributions to general election contributors in violation of
7 Government Code section 85318 (one count); and
8 (ii) Respondents Jerome Horton, Citizens to Elect Honest Officials, and Kinde Durkee failed
9 to properly identify the sender of three mass mailings in violation of Government Code
10 section 84305, subdivision (c) (three counts).

11 Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein,
12 is a true and accurate summary of the facts in this matter.

13 Respondents agree to the issuance of the Decision and Order, which is attached hereto, and
14 Respondents agree to the Commission imposing upon them an administrative penalty in the amount of
15 \$13,000, of which Respondents Jerome Horton and Kinde Durkee are jointly and severally liable for the
16 full amount, Respondent Democrat Jerome Horton for Board of Equalization is jointly and severally
17 liable for \$2,500, and Respondent Citizens to Elect Honest Officials is jointly and severally liable for
18 \$10,500. A cashier's check or money order from one or more Respondents totaling said amount, made
19 payable to the "General Fund of the State of California," is/are submitted with this Stipulation as full
20 payment of the administrative penalty and shall be held by the State of California until the Commission
21 issues its Decision and Order regarding this matter. The parties agree that in the event the Commission
22 refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days
23 after the Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents
24 in connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate
25 and agree that in the event the Commission rejects the Stipulation and a full evidentiary hearing before

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1 the Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
2 shall be disqualified because of prior consideration of this Stipulation.

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4 Dated: _____

Roman G. Porter, Executive Director
Fair Political Practices Commission

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7 Dated: _____

Jerome Horton, Individually and on Behalf of
Democrat Jerome Horton for Board of
Equalization and Citizens to Elect Honest
Officials, Respondents

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11 Dated: _____

Kinde Durkee, Respondent

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13 **DECISION AND ORDER**

14 The foregoing Stipulation of the parties “In the Matter of Jerome Horton, Democrat Jerome
15 Horton for Board of Equalization, Citizens to Elect Honest Officials, and Kinde Durkee,” FPPC No.
16 08/286, including all attached exhibits, is hereby accepted as the final decision and order of the Fair
17 Political Practices Commission, effective upon execution below by the Chairman.

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19 IT IS SO ORDERED.

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21 Dated: _____

Chair, Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

At all relevant times, Respondent Democrat Jerome Horton for Board of Equalization was Respondent Jerome Horton's candidate controlled committee, which was formed for his 2006 candidacy.

At all relevant times, Respondent Citizens to Elect Honest Officials was Respondent Jerome Horton's candidate controlled committee, which was primarily formed to support Alena Cindy Giardina for the Inglewood Unified School Board in 2009.

At all relevant times, Respondent Kinde Durkee was the treasurer for the committees described above.

Under the Political Reform Act (the "Act")¹, candidates and their controlled committees must refund general election contributions when the candidate loses in the primary election. Also, mass mailings must include proper identification of the sender.

For purposes of this Stipulation, Respondents' violations of the Act are set forth as follows:

COUNT 1: Following Jerome Horton's defeat in the Democratic primary election that was held on June 6, 2006, Respondents Jerome Horton, Democrat Jerome Horton for Board of Equalization, and Kinde Durkee failed to refund approximately \$110,923 to general election contributors in violation of Section 85318.

COUNT 2: On or about March 27, 2009, Respondents Jerome Horton and Citizens to Elect Honest Officials sent a mass mailing opposing Alena Cindy Giardina's opponent for the Inglewood Unified School Board. Respondent Kinde Durkee was the treasurer for Respondent Citizens to Elect Honest Officials. The mass mailing did not identify Respondent Jerome Horton as the candidate controlling the committee that paid for the mass mailing, which was a violation of Section 84305, subdivision (c).

COUNT 3: On or about March 30, 2009, Respondents Jerome Horton and Citizens to Elect Honest Officials sent a mass mailing opposing Alena Cindy Giardina's opponent for the Inglewood Unified School Board. Respondent Kinde Durkee was the treasurer for Respondent Citizens to

¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Elect Honest Officials. The mass mailing did not identify Respondent Jerome Horton as the candidate controlling the committee that paid for the mass mailing, which was a violation of Section 84305, subdivision (c).

COUNT 4: On or about April 2, 2009, Respondents Jerome Horton and Citizens to Elect Honest Officials sent a mass mailing supporting Alena Cindy Giardina and opposing her opponent for the Inglewood Unified School Board. Respondent Kinde Durkee was the treasurer for Respondent Citizens to Elect Honest Officials. The mass mailing did not identify Respondent Jerome Horton as the candidate controlling the committee that paid for the mass mailing, which was a violation of Section 84305, subdivision (c).

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act's provisions as they existed at the time of the violations.

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

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited. (Section 81002, subd. (a).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced." (Section 81002, subd. (f).)

Definition of Controlled Committee

Section 82013, subdivision (a), defines a "committee" to include any person or combination of persons who receives contributions totaling \$1,000 or more in a calendar year. This type of committee is commonly referred to as a "recipient committee." Under Section 82016, a recipient committee which is controlled directly or indirectly by a candidate, or which acts jointly with a candidate in connection with the making of expenditures, is a "controlled committee." A candidate controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee. (Section 82016, subd. (a).)

Duty to Refund Contributions Received for General Election Following Defeat in Primary Election

A candidate for elective state office may raise contributions for a general election prior to the primary election if the candidate sets aside such contributions and uses these contributions for the general election. If the candidate is defeated in the primary election, the general election funds shall be refunded to the contributors on a pro rata basis less certain allowable expenses associated with the raising and administration of the contributions. (See Section 85318.)

Required Identification for Senders of Mass Mailings

A “mass mailing” is over 200 substantially similar pieces of mail sent in a calendar month, not including form letters or other mail sent in response to an unsolicited request, letter or other inquiry. (Section 82041.5; Regulation 18435, subd. (a).) The “sender” of a mass mailing is the candidate or committee who pays for the largest portion of expenditures attributable to the designing, printing or posting of the mailing. (Regulation 18435, subd. (b).) The phrase “pay for” means to make, to promise to make, or to incur an obligation to make, payment. (Regulation 18435, subd. (c).)

Section 84305, subdivisions (a) and (b), provides that no single candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing. If the sender is a candidate controlled committee, the name of the person controlling the committee shall be included as well. (Section 84305, subd. (c).)

Joint and Several Liability of Candidate, Committee and Treasurer

Under Sections 81004, 84100, 84213, and Regulation 18427, it is the duty of a candidate and the treasurer of his or her controlled committee to ensure that the committee complies with the Act. A candidate and the treasurer of his or her controlled committee may be held jointly and severally liable, along with the committee, for violations committed by the committee. (See Sections 83116.5 and 91006.)

SUMMARY OF THE FACTS

Respondent Jerome Horton ran unsuccessfully in 2006 for the California State Board of Equalization. From 1979 to 2000, he worked at the Board of Equalization, initially as a business tax auditor and ultimately as a legislative deputy specializing in business tax law, auditing and legislative policies. Also, from 1996 to 2000, he served on the Inglewood City Council, and from 2000 through 2006, he served as a member of the California State Assembly.

At all relevant times, Respondent Democrat Jerome Horton for Board of Equalization was Respondent Jerome Horton’s candidate controlled committee, and Respondent Kinde Durkee was the committee treasurer.

Respondent Citizens to Elect Honest Officials used to be a general purpose committee for which Respondent Kinde Durkee served as the treasurer. In approximately December 2008, Respondent Kinde Durkee terminated the committee.

Thereafter, in approximately March 2009, Respondent Jerome Horton informed Respondent Kinde Durkee that he was interested in forming a committee to send the mass mailings that are the subjects of Counts 2 through 4 below. To this end, Respondent Kinde Durkee commenced treating Respondent Citizens to Elect Honest Officials as if it were reopened, and she resumed serving as the committee treasurer. Although Respondent Jerome Horton was not as of March 2009 an elected official and was not a candidate for future elective office, because he had a 2008 Senate committee open, he was still a “candidate” under the Act, and therefore, Respondent Citizens to Elect Honest Officials became Respondent Jerome Horton’s candidate controlled committee—primarily formed to support Alena Cindy Giardina for the Inglewood Unified School Board. Prior to this time, Respondent Jerome Horton had no affiliation with Respondent Citizens to Elect Honest Officials.

At all relevant times, Friends of Jerome Horton for Senate 2008 (formerly known as Friends of Jerome Horton) was Respondent Jerome Horton’s candidate controlled committee, and Respondent Kinde Durkee was the committee treasurer. Respondent Jerome Horton ultimately withdrew from the Senate election.

Count 1

Failure to Refund Contributions to General Election Contributors

In 2006, Respondent Jerome Horton was a candidate for the Board of Equalization. As stated above, Respondent Democrat Jerome Horton for Board of Equalization was his controlled committee, and Respondent Kinde Durkee was the committee treasurer.

Respondent Jerome Horton lost in the Democratic primary election that was held on June 6, 2006. Accordingly, following the election, Respondents Jerome Horton, Democrat Jerome Horton for Board of Equalization, and Kinde Durkee were required by Section 85318 to refund/repay approximately \$110,923 to general election contributors on a pro rata basis—but they did not do so. Instead, the funds were transferred to another one of Respondent Jerome Horton’s controlled committees, Friends of Jerome Horton for Senate 2008.

By failing to refund/repay the general election contributions as described above, Respondents Jerome Horton, Democrat Jerome Horton for Board of Equalization, and Kinde Durkee committed one violation of Section 85318.

Count 2

Failure to Properly Identify Sender of Mass Mailing

On or about March 27, 2009, Respondents Jerome Horton and Citizens to Elect Honest Officials (which was Respondent Jerome Horton’s candidate controlled committee) sent a mass mailing opposing Alena Cindy Giardina’s opponent for the Inglewood Unified School Board. Respondent Kinde Durkee was the treasurer for Respondent Citizens to Elect Honest Officials.

The mass mailing was sent to approximately 4,025 Inglewood District 1 voters at a cost of approximately \$3,210. It cast the opponent of Alena Cindy Giardina in a negative light, and it identified Respondent Citizens to Elect Honest Officials as the sender, but Respondent Jerome Horton was not identified as the candidate controlling the committee that sent the mass mailings.

By failing to identify Respondent Jerome Horton as the candidate controlling the committee that sent the mass mailings as described above, Respondents Jerome Horton, Citizens to Elect Honest Officials, and Kinde Durkee committed one violation of Section 84305, subdivision (c).

Count 3

Failure to Properly Identify Sender of Mass Mailing

On or about March 30, 2009, Respondents Jerome Horton and Citizens to Elect Honest Officials (which was Respondent Jerome Horton's candidate controlled committee) sent a mass mailing opposing Alena Cindy Giardina's opponent for the Inglewood Unified School Board. Respondent Kinde Durkee was the treasurer for Respondent Citizens to Elect Honest Officials.

The mass mailing was sent to approximately 2,384 Inglewood and Ladera Heights voters at a cost of approximately \$2,043. It cast the opponent of Alena Cindy Giardina in a negative light, and it identified Respondent Citizens to Elect Honest Officials as the sender, but Respondent Jerome Horton was not identified as the candidate controlling the committee that sent the mass mailings.

By failing to identify Respondent Jerome Horton as the candidate controlling the committee that sent the mass mailings as described above, Respondents Jerome Horton, Citizens to Elect Honest Officials, and Kinde Durkee committed one violation of Section 84305, subdivision (c).

Count 4

Failure to Properly Identify Sender of Mass Mailing

On or about April 2, 2009, Respondents Jerome Horton and Citizens to Elect Honest Officials (which was Respondent Jerome Horton's candidate controlled committee) sent a mass mailing supporting Alena Cindy Giardina and opposing her opponent for the Inglewood Unified School Board. Respondent Kinde Durkee was the treasurer for Respondent Citizens to Elect Honest Officials.

The mass mailing was sent to approximately 9,934 Inglewood voter households at a cost of approximately \$6,077. It cast the opponent of Alena Cindy Giardina in a negative light, and it identified Respondent Citizens to Elect Honest Officials as the sender, but Respondent Jerome Horton was not identified as the candidate controlling the committee that sent the mass mailings.

By failing to identify Respondent Jerome Horton as the candidate controlling the committee that sent the mass mailings as described above, Respondents Jerome Horton, Citizens

to Elect Honest Officials, and Kinde Durkee committed one violation of Section 84305, subdivision (c).

CONCLUSION

This matter consists of four counts of violating the Act, which carries a maximum administrative penalty of \$20,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in the context of the following factors set forth in Regulation 18361.5, subdivision (d)(1)-(6):

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

Administrative penalties for violations of the Act vary depending upon the specific facts of each case. In this case, the following aggravating and mitigating factors are present.

Factors in Aggravation

Respondents Jerome Horton and Kinde Durkee have a great deal of prior experience with the Act. Also, Respondent Kinde Durkee has been the subject of previous Fair Political Practices Commission enforcement matters.

Regarding Count 1, instead of repaying the funds in question to the general election contributors, the funds were used for the benefit of one of Respondent Jerome Horton's other controlled committees.

Regarding Counts 2 through 4, Respondent Jerome Horton caused the mass mailings to be paid for by way of contributions from Friends of Jerome Horton for Senate 2008 to Citizens to Elect Honest Officials.

Factors in Mitigation

Respondents cooperated with the Enforcement Division of the Fair Political Practices Commission in all phases of the audit and by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held.

Regarding Count 1, Respondents maintain that they sent letters to all of the contributors whose funds were transferred advising the donors of the transfer and permitting the donors to object. Also, in connection with this settlement, all of the funds in question have been moved back into a bank account for Respondent Democrat Jerome Horton for Board of Equalization and properly dispersed in accordance with the Act.

Regarding Counts 2 through 4, Respondent Jerome Horton maintains that he did not understand that his affiliation with Respondent Citizens to Elect Honest Officials made it a controlled committee and thus required his name to appear on mass mailings because the committee existed before Respondent Jerome Horton became involved with it and he did not hold elective office at the time of the mailings and was not seeking election to future elective office.

Respondents maintain that Respondent Durkee has agreed to pay the penalty imposed by this Stipulation.

Penalty

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of an agreed upon penalty as follows:

Count	Description	Named Respondents	Penalty
1	Failure to Refund Contributions to General Election Contributors	Jerome Horton, Democrat Jerome Horton for Board of Equalization, and Kinde Durkee	\$2,500
2	Failure to Properly Identify Sender of Mass Mailing	Jerome Horton, Citizens to Elect Honest Officials, and Kinde Durkee	\$3,500
3	Failure to Properly Identify Sender of Mass Mailing	Jerome Horton, Citizens to Elect Honest Officials, and Kinde Durkee	\$3,500
4	Failure to Properly Identify Sender of Mass Mailing	Jerome Horton, Citizens to Elect Honest Officials, and Kinde Durkee	\$3,500
Total:			\$13,000