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FAIR POLITICAL PRACTICES COMMISSION

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7 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

8 **STATE OF CALIFORNIA**

9
10 In the Matter of) FPPC No. 08/668
11)
12) STIPULATION, DECISION and
13 TRACY MCMAHON, COMMITTEE TO) ORDER
ELECT TRACY MCMAHON, AND)
14 NOREEN CONSIDINE)
Respondents.)

15 Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission,
16 and Respondents Tracy McMahon, Committee to Elect Tracy McMahon, and Noreen Considine
17 (“Respondents”), hereby agree that this Stipulation will be submitted for consideration by the Fair
18 Political Practices Commission at its next regularly scheduled meeting.

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

23 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
24 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Section 18361.1
25 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
26 the right to personally appear at any administrative hearing held in this matter, to be represented by an
27 attorney at Respondents’ own expense, to confront and cross-examine all witnesses testifying at the
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1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondents violated the Political Reform Act by
4 accepting a cash contribution in excess of \$100, in violation of Government Code Section 84300
5 subdivision (a) (1 count) and by failing to sign and verify a campaign statement in violation of
6 Government Code Section 84100 (1 Count).

7 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
8 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
9 of Two Thousand Dollars (\$2,000). A cashier's check from Respondents in said amount, made payable
10 to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the
11 administrative penalty, to be held by the State of California until the Commission issues its Decision and
12 Order regarding this matter. The parties agree that in the event the Commission refuses to accept this
13 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
14 meeting at which the Stipulation is rejected, all payments tendered by Respondents in connection with
15 this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and agree that in the
16 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
17 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
18 disqualified because of prior consideration of this Stipulation.

19 Dated: _____

Roman G. Porter, Executive Director
Fair Political Practices Commission

22 Dated: _____

Tracy McMahan, individually and on behalf of Committee
to Elect Tracy McMahan

25 Dated: _____

Noreen Considine, individually and on behalf of
Committee to Elect Tracy McMahan

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Tracy McMahon, Committee to Elect
3 Tracy McMahon and Noreen Considine,” FPPC No. 08/668,” including all attached exhibits, is hereby
4 accepted as the final Decision and Order of the Fair Political Practices Commission, effective upon
5 execution below by the Chairman.
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7 IT IS SO ORDERED.
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9 Dated: _____

10 Dan Schnur, Chairman
Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent Tracy McMahon (Respondent McMahon) was an unsuccessful candidate for the Jarupa Unified School District Governing Board in the November 4, 2008 election in Riverside County, CA. Respondent Committee to Elect Tracy McMahon (“Respondent Committee”) was the committee established to support her candidacy. Respondent Noreen Considine (Respondent Treasurer) was the treasurer of Respondent Committee.

Additionally, Respondent Noreen Considine was a successful candidate for the Jarupa Unified School District Governing Board in the November 4, 2008 election in Riverside County, CA. Committee to Elect Noreen Considine was Respondent Considine’s candidate controlled committee, and Respondent Considine was the treasurer of Committee to Elect Noreen Considine. Committee to Elect Noreen Considine is not a Respondent in this matter.

In this matter, Respondents accepted a cash contribution in excess of \$100 and failed to verify a campaign statement as required by the Political Reform Act¹.

For the purposes of this Stipulation, Respondents’ violations of the Act are stated as follows:

COUNT 1: Respondents Tracy McMahon, Committee to Elect Tracy McMahon, and Noreen Considine, on or about October 3, 2008, received a cash contribution in excess of \$100, in violation of Government Code Section 84300, subdivision (a).

COUNT 2: Respondents Tracy McMahon, Committee to Elect Tracy McMahon, and Noreen Considine, on or about October 31, 2008, failed to verify and sign under penalty of perjury a campaign statement, in violation of Government Code Section 81004.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that receipts and expenditures in election campaigns be fully and truthfully disclosed in order that the voters may be fully informed and improper practices be inhibited.

¹ The Political Reform 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.

Cash Contribution Prohibition

Section 84300 of the Act provides that no contribution of one hundred dollars or more be made or received in cash.

Signing and Verifying Reports and Statements

All campaign reports and statements filed must be signed under penalty of perjury and verified by the filer. The verification must state that the filer has used all reasonable diligence in its preparation, and that to the best of her knowledge it is true and complete. A report or statement filed by a committee must also be signed and verified by the treasurer. Government Code Section 81004.

SUMMARY OF THE FACTS

Respondent McMahon was an unsuccessful candidate for the Jarupa Unified School District Governing Board in the November 4, 2008 election in Riverside County, CA. Respondent Committee was the committee established to support her candidacy. Respondent Treasurer was the treasurer of Respondent Committee. Noreen Considine is Tracy McMahon's step-mother. Considine and McMahon coordinated many of their campaign activities during the election, including printed materials that listed both of their candidacies.

Additionally, Respondent Noreen Considine was a successful candidate for the Jarupa Unified School District Governing Board in the November 4, 2008 election in Riverside County, CA. Committee to Elect Noreen Considine was Respondent Considine's candidate controlled committee, and Respondent Considine was the treasurer of Committee to Elect Noreen Considine. Committee to Elect Noreen Considine is not a Respondent in this matter.

Respondents raised a total of \$11,000 for the campaign. All the funding appears to be loans to the campaign by the Respondent McMahon. Respondent McMahon did not personally sign or verify any of the campaign disclosure statements filed by her committee. All that were signed and verified were done so by her treasurer, Noreen Considine. The statement filed on October 31, 2008 did not contain any signatures or verifications.

Respondents initial semi-annual statement, filed on October 7, 2008 did not list the source of any of the \$16,000 in contributions it reported as being received on the summary page of the report. Respondents filed an amended pre-election statement that reported \$10,000 in money received in the form of a loan to the campaign from Tracy McMahon. On the original statement filed on October 7, \$16,000 was reported, which was then amended on the amended statement to reflect \$10,000. However, a review of the committee's records indicated that only \$5,000 was deposited into the committee bank account during the pre-election period.

Respondents then filed a pre-election statement on October 31, 2008 which reported a \$6,000 loan to the campaign from Tracy McMahon. Investigation revealed that the form of the \$6,000 loan had two parts. First, four thousand dollars of the contributions were made from a checking account that listed Respondent McMahon's husband and father solely on the checks from the account. Respondent McMahon stated she was not a signatory to that account. Respondent McMahon also stated that the remaining \$2,000 of the loan was made in cash by her and deposited directly into the campaign checking account.

Additionally, on October 28, 2008, \$4,701.81 was transferred via check from Respondent Committee to The Committee to Elect Noreen Consadine. The Committee to Elect Noreen Consadine reported this transaction as a forgiven loan made by Noreen Considine to the committee. Respondent Committee did not report this transfer of funds on its campaign disclosure forms at all..

COUNT 1

(Receipt of Cash Contribution)

Respondents accepted a cash contribution of two thousand dollars on or about October 3, 2008. By accepting a cash contribution of \$100 or more, Respondents violated Section 84300, subdivision (a) of the Act.

COUNT 2

(Failure to Sign and Verify Campaign Statement)

Respondents failed to sign and verify a campaign statement filed on or about October 31, 2008. By failing to sign and verify a campaign statement, Respondents violated Section 81004 (a) of the Act.

CONCLUSION

This matter consists of two counts of violating the Act carrying a maximum administrative penalty of \$10,000.

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 context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

For Count 1, receiving a cash contribution, this can be a serious violation of the Act as it deprives the public of knowledge of campaign contributions and their sources. The administrative penalties for a violation of Section 84300 subdivision (a), depending on the facts of the case, have varied from the low to high range of available penalties.

For Count 2, failing to sign and verify a campaign statement, this can be a serious violation of the Act as it raises questions about whether the information contained in campaign disclosure forms is true and accurate and can result in a lack of accountability for those who would file statements with false information. The administrative penalties for a violation of Section 84100 have varied depending upon the circumstances of the case.

AGGRAVATING FACTORS

Respondents committed numerous violations of the Act that had the effect of depriving the public of timely accurate knowledge of the nature of the campaigns contributions and expenditures. Because of the mitigating factors listed below, however, only two violations were identified for enforcement action.

MITIGATING FACTORS

Respondents did not have experience with the Act and were first-time candidates. Additionally, Respondents have no prior history of violating the Act and cooperated with the investigation.

PENALTY

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of the agreed upon penalty of Two Thousand Dollars (\$2,000), One Thousand Dollars each for Count 1 and Count 2, respectively.