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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of) FPPC No. 11/253
13)
14 AIDE CASTRO, FRIENDS TO ELECT AIDE) STIPULATION, DECISION and
CASTRO, AND MATT LEMCKE,) ORDER
15)
16 Respondents.)
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18 Complainant the Enforcement Division of the Fair Political Practices Commission, and
19 Respondents Aide Castro, Friends to Elect Aide Castro, and Matt Lemcke, Treasurer agree that this
20 Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next
21 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 administrative hearing to
24 determine the liability of Respondents, pursuant to Section 83116 of the Government Code.

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

1 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the
2 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
3 preside over the hearing as a hearing officer, and to have the matter judicially reviewed. It is further
4 stipulated and agreed that Respondents Aide Castro, Friends to Elect Aide Castro, and Matt Lemcke,
5 Treasurer violated the Political Reform Act by: failing to disclose information regarding contributions
6 and expenditures of \$100 or more, in violation of Section 84211, subdivisions (a), (b), (f), and (k), of the
7 Government Code (1 count). All counts are described in Exhibit 1, which is attached hereto and
8 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of
9 the facts in this matter.

10 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
11 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
12 of Three Thousand Five Hundred Dollars (\$3,500). A cashier's check from Respondents in said
13 amounts, made payable to the "General Fund of the State of California," is submitted with this
14 Stipulation as full payment of the administrative penalty, to be held by the State of California until the
15 Commission issues its decision and order regarding this matter. The parties agree that in the event the
16 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)
17 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered
18 by Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents
19 further stipulate and agree that in the event the Commission rejects the Stipulation, and a full evidentiary
20 hearing before the Commission becomes necessary, neither any member of the Commission, nor the
21 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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24 Dated: _____
25 Gary Winuk, Enforcement Chief,
26 on behalf of the
27 Fair Political Practices Commission
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Dated: _____

Aide Castro, Respondent,
Individually and on behalf of
Friends to Elect Aide Castro

Dated: _____

Matt Lemke, Respondent,
Individually and on behalf of
Friends to Elect Aide Castro

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Respondents Aide Castro, Friends to Elect Aide Castro, and Matt Lemcke,” FPPC No. 11/253, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chairman.

IT IS SO ORDERED.

Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

In September 2007, the City of Lynwood held a special election to recall four council members. Respondent Aide Castro was a replacement candidate in the September election. Respondent Friends to Elect Aide Castro (“Respondent Committee”) was her candidate controlled recipient committee and Respondent Matthew Lemcke was the treasurer, at all times relevant. Respondent Castro was unsuccessful in the recall election but subsequently was elected to office in the City of Lynwood November election and is currently serving as a city councilmember.

Respondents hired a campaign consultant, Mr. Chris Robles, and his company, The Pericles Group, for both campaigns. Mr. Robles and The Pericles Group were paid campaign consultants for both Respondent Committee and another committee, Voters Against Corruption (“VAC”), performing the same services for each of the two committees. VAC was formed on July 13, 2007 to support both the recall of the incumbent Lynwood City Council members and the replacement candidates in the recall election, including Respondent Castro. At all times relevant, Respondent Matthew Lemcke was the treasurer for both committees.

Respondents made monetary contributions to VAC, comprising of the majority of VAC’s funding during this period. VAC’s expenditures were approved by The Pericles Group (Mr. Robles) and treasurer Respondent Lemcke. As agents of Respondent Castro and Respondent Committee, the extensive involvement in the formation and running of VAC, as well as the large amount of financial support that Respondents provided to VAC caused VAC to become a controlled committee of Respondent Castro. As such, Respondents were required to have all expenditures and contributions go through one campaign bank account and be reported as expenditures and contributions of Respondent Committee.

As candidate controlled committees under the Political Reform Act¹ (the “Act”), Respondents have a duty to disclose particular information on Respondent Committee’s campaign statements. However, Respondents failed to disclose information regarding contributions and expenditures of \$100 or more.

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

COUNT 1: Respondents Aide Castro, Matthew Lemcke and Friends to Elect Aide Castro failed to disclose information regarding a contribution received and expenditures made of \$100 or more on a semi-annual campaign statement for the reporting

¹The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code as it was in effect at the time of the violations, 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 as in effect at the time of the violations, unless otherwise indicated.

period ending December 31, 2007, in violation of Section 84211, subdivisions (a), (b), (f), and (k), of the Government Code.

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 are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act, therefore, establishes a campaign reporting system designed to accomplish this purpose of disclosure.

Any person or combination of persons who directly or indirectly receives contributions totaling \$1,000 or more in a calendar year qualifies as a “committee”. (Section 82013, subd. (a).) A controlled committee is a committee that is controlled directly or indirectly by a candidate. 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 of the committee. (Section 82016, subd. (a).)

Controlled Committee

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act, therefore, establishes a campaign reporting system designed to accomplish this purpose of disclosure. Section 82013, subdivision (a), defines a “committee” as any person or combination of persons who directly or indirectly receives contributions totaling \$1,000 or more in a calendar year. This type of committee is commonly referred to as a “recipient committee.”

Pursuant to the Act, a committee, which qualifies as a committee under Section 82013, subdivision (a), shall file specific, required campaign statements. (See Sections 84200 – 84209.) 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 Deposit Campaign Funds into a Single, Designated Campaign Bank Account Prior to Expenditure

Section 84211 prescribes that certain information must be disclosed on campaign statements filed by a committee, including information about the contributions received and the expenditures made by the committee. To ensure full disclosure of campaign activity and to guard against improper use of campaign funds, the Act requires campaign funds to be segregated from nonpolitical, personal accounts and kept in a single, designated campaign bank account. (Section 85201.) To achieve this end, Section 85201, subdivision (c), requires candidates to establish a single campaign bank account into which all contributions or loans made to a candidate, to a person on behalf of the candidate, or the candidate’s controlled committee must

be deposited. Section 85201, subdivision (e), requires that all campaign expenditures be made from the campaign bank account.

Duty to Disclose Contributions and Expenditures on Campaign Statements

Section 82015 defines a contribution as a payment made for political purposes. A contribution is made for political purposes when it is made to influence or attempt to influence the action of the voters for or against the nomination or election of a candidate(s) or it is received by or made at the behest of either a candidate or controlled committee, or any agent thereof. (Regulation 18215, subd. (a).) Section 82015, subdivision (b)(2), provides that a payment made at the behest of a candidate is a contribution. Regulation 18225.7 defines “made at the behest” as “made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of” and subdivision (f), states that “the terms ‘candidate’ and ‘committee’ include their agents, when the agent is acting within the course and scope of his or her agency.

Section 84211, subdivision (a), requires committees to disclose the total amount of contributions received during the period covered by the campaign statement. Additionally, Section 84211, subdivision (f), requires a committee to disclose on each of its campaign statements the following information about a person if the cumulative amount of contributions received from that person is \$100 or more during the reporting period covered by the campaign statement: (1) the contributor’s full name; (2) the contributor’s street address; (3) the contributor’s occupation; (4) the name of the contributor’s employer, or if self-employed, the name of the contributor’s business; (5) the date and amount of each contribution received from the contributor during the reporting period; and (6) the cumulative amount of contributions received from the contributor. “Cumulative amount” means the amount of contributions received in the calendar year. (Section 82018, subd. (a).) All contributions received by a person acting as an agent of a committee are required to be reported to and disclosed by the committee’s treasurer no later than the closing date of the next campaign statement the committee is required to file. (Regulation 18421.1, subd. (c).)

A monetary contribution is “received” on the date the committee, or the agent of the committee, obtains possession or control of the check or other negotiable instrument by which the contribution is made. (Regulation 18421.1, subd. (c).) A non-monetary contribution is “made” by the contributor, and “received” by the committee, on the earlier of the following dates: (1) the date the funds are expended by the contributor for goods or services, if the specific expenditure is made at the behest of the committee; or (2) the date the committee or its agent obtains possession or control of the goods or services, or the date the committee otherwise receives the benefit of the expenditure. (Regulation 18421.1, subd. (f).)

Section 82025 defines “expenditure” as a payment, forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure can be either a monetary or nonmonetary payment made for political purposes. (Section 82025, subd. (a) and Regulation 18225, subd. (a).)

Section 84211, subdivision (b), requires candidates and their controlled committees to disclose the total amount of expenditures made during the period covered by the campaign statement. In addition, Section 84211, subdivision (k), contains a reporting requirement for each person to whom an expenditure of \$100 or more has been made during the reporting period covered by the campaign statement. Section 84211, subdivision (k), requires the disclosure of (1) the recipient's full name; (2) the recipient's street address; (3) the amount of each expenditure; (4) the description of the consideration for which each expenditure was made. Regulation 18225.7, subdivision (c)(2), provides in pertinent part that an expenditure is presumed to be "made at the behest of" the affected candidate or committee, and therefore attributable to that candidate or committee and reportable as such, when it is "[m]ade by or through any agent of the candidate or committee in the course of the agent's involvement in the current campaign."

Liability of Committee Treasurers

As provided in Section 84100, every committee shall have a treasurer. Under Section 84100 and Regulation 18427, subdivision (a), it is the duty of a committee's treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds and the reporting of such funds. Under Sections 83116.5 and 91006, a committee's treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee.

SUMMARY OF THE FACTS

On September 25, 2007, the City of Lynwood held a special election to recall four council members. Respondent Aide Castro ("Respondent Castro") was a replacement candidate in that election. According to campaign statements filed, Respondent Friends to Elect Aide Castro ("Respondent Committee") was her candidate-controlled recipient committee and Respondent Matthew Lemcke ("Respondent Lemcke") was the treasurer, at all times relevant. In addition, campaign statements and committee records show that Mr. Chris Robles, and his company, The Pericles Group, were paid for performing services of the campaign manager for Respondent Committee. According to statements made by Respondent Castro, Respondent Lemcke and Mr. Robles were in charge of everything except fundraising, walking precincts, and calling voters for the campaign, which were her duties. Respondent Castro was unsuccessful in the recall election but subsequently was elected to office in the November 6, 2007, election and is currently serving as a city councilmember.

According to campaign statements, Voters Against Corruption ("VAC") was a general purpose committee formed on July 13, 2007, which supported both the recall of the incumbent Lynwood City Council members and the replacement candidates in the recall election, including Respondent Castro. According to campaign statements filed with the California Secretary of State's office and the Lynwood City Clerk, as well as committee records, VAC hired Mr. Chris Robles, and his company, The Pericles Group, as its campaign consultant and Matthew Lemcke of Durkee & Associates, as its treasurer, for the September 25, 2007 Recall Election. According to invoices, emails and an interview of Respondent Castro, between VAC's formation and the November 6, 2007, election of Respondent Castro to city council, Respondent Castro's agents,

Mr. Robles and Respondent Lemcke, had significant influence on the actions and decisions of Respondent Committee and VAC by directing expenditures, authorizing payments, determining which committee would pay for which expenditures, coordinating mailers and other advertisements, and determining how the funds raised would be spent.

Respondent Castro asserts that since she was not involved in the specifics regarding the mailers and expenditures of either committee and only had knowledge of the fundraising aspects of Respondent Committee, the activities of VAC should be considered independent and VAC's expenditures, including mailings promoting the recall of incumbent candidates and the replacement of them with Respondent Castro and three other candidates, were correctly reported on VAC's campaign statements. However, Section 85201 states that all money received and expended by the candidate or committee for political purposes must go through the campaign bank account. To mark the distinction between the campaign expenditures of persons acting independently of any candidate versus campaign expenditures coordinated with a candidate, the Act focuses on the concept of when something is "independent." An expenditure is not "independent," as defined by the Act, if it is "made at the behest of" the affected candidate or committee. Regulation 18225.7 defines expenditures "made at the behest of" a candidate or committee. Subdivision (c) states that an expenditure is presumed to be made at the behest of a candidate or committee if it is made by or through any agent of the candidate or committee in the course of the agent's involvement in the current campaign. (Regulation 18225.7, subd. (c)(2).)

Since Respondent Lemcke and Chris Robles were agents of Respondent Committee and made the expenditures in the course of their involvement in Respondent Castro's campaign, these expenditures are *presumed* to be expenditures of the Respondent Castro and Respondent Committee. The money was required to be deposited into the campaign bank account of Respondent Committee before being expended and was required to be reported as expenditures made by the Castro campaign.

COUNT 1
Failure to Disclose Information
Regarding Contributions and Expenditures of \$100 or More

Respondents had a duty to itemize and disclose specific information regarding contributions received and expenditures made of \$100 or more. Since VAC was a controlled committee of Respondent Castro, all its contributions received and expenditures made of \$100 or more were required to be itemized and disclosed on the campaign statements of Respondent Committee. All contributions and expenditures for a candidate's campaign are required to go through a single campaign bank account and be disclosed on the campaign statements of that committee. According to statements made by Respondent Castro during her interview conducted on February 23, 2012, as well as bank records and committee records, on or about November 7, 2007, VAC received a \$3,000 contribution from Associated Construction Services Group, which it deposited into VAC's bank account. This contribution was not deposited into Respondent Committee's campaign bank account before expenditure, nor was it reported on Respondent Committee's semi-annual campaign statement for the period ending December 31, 2007. In

addition, VAC received \$3,000 on October 29, 2007, and \$2,500 on November 1, 2007, from Respondent Committee.²

According to bank records and committee records, the following expenditures were made from VAC's bank account and reported as expenditures of VAC, not as expenditures of Respondent Committee:

<u>Date of Expenditure</u>	<u>Check #</u>	<u>Amount</u>	<u>Payee</u>	<u>Purpose</u>
10/26/2007	1036	\$ 1,589.00	The Pericles Group	Design and Printing of Mailer
10/29/2007	1037	\$ 45.00	Veronica Dowdy	Translation
10/30/2007	1038	\$ 2,057.52	The Pericles Group	Postage
11/01/2007	1039	\$ 1,613.00	The Pericles Group	Design and Printing of Mailer
11/05/2007	1042	\$ 2,057.52	The Pericles Group	Postage
11/08/2007	1043	\$ 2,113.17	Durkee & Associates	Accounting
11/21/2007	1044	\$ 532.96	Political Data, Inc.	Mailing lists
11/21/2007	1045	\$ 456.85	Durkee & Associates	Accounting
12/11/2007	1046	\$ 60.00	Veronica Dowdy	Translation
Total		\$10,525.02		

By failing to disclose the information regarding contributions of \$100 or more and failing to disclose the information regarding expenditures of \$100 or more on Respondent Committee's semi-annual campaign statement, Respondents violated Section 84211, subdivisions (a), (b), (f) and (k) of the Government Code.

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of five thousand dollars (\$5,000).

In determining the appropriate penalty for a particular violation of the Act, the Commission 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 Commission 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,

² These funds were transferred as contributions from Respondent Committee to VAC, both controlled committees of Respondent Castro. The funds were required to be transferred back into Respondent Committee's campaign bank account before expenditure, but were not and were part of the funding for the prohibited expenditures.

negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

A candidate who controls a committee in order to make expenditures without the disclosure of that control inhibits the public's knowledge of who is participating in the elective process and misleads them into thinking someone else is responsible for mailers and other advertisements, rather than the candidate running for office. In addition, the public harm inherent in campaign reporting violations is that the public is deprived of important information such as the amounts expended by the campaign, the identities of the recipients of such expenditures, and the reasons for such expenditures. A recent stipulation involving violation of Section 84211, imposed a penalty of \$3,500 for a similar circumstance. (See *In the Matter of Voters for a New California and Joaquin Ross*, "FPPC No. 10/470, approved April 25, 2013. In that case as in the current case, Respondents coordinated with a third party committee to make expenditures that were not reported on the campaign statements of the candidate facilitated through the actions of an agent of the campaign. In that case, the activity also caused a violation of the contribution limits.

Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$3,500 is justified. A higher penalty is not being sought because Respondents cooperated with the Enforcement Division of the Fair Political Practices Commission by agreeing to an early settlement of this matter. Respondent Castro contends that she did not know of the requirements prohibiting the agents of her candidate committee from running a separate committee for the same election, was unaware of the extent of their actions and trusted the wrong people. Also, Respondents do not have a history of violating the Act.

PROPOSED PENALTY

After review of the facts of this case, including consideration of the factors of Regulation 18361.5, and the factors discussed above, it is respectfully submitted that imposition of the an administrative penalty in the amount of \$3,500 is appropriate.

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