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

11
12 In the Matter of) FPPC No. 12/831
13)
14 TONY BUSHALA,) STIPULATION, DECISION and
Respondent.) ORDER
15)
16)

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18 Complainant, the Fair Political Practices Commission, and respondent Tony Bushala
19 (“Respondent”) agree that this Stipulation will be submitted for consideration by the Fair Political
20 Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of Respondent, pursuant to Section 83116 of the Government Code.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondent’s own expense, to confront and cross-examine all witnesses testifying at the

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 Respondent: failed to timely file a preelection statement by
4 March 22, 2012, for the January 1, 2012, through March 17, 2012, reporting period, in violation of
5 Government Code section 84200.5, subdivision (i)(1) (1 count); failed to timely file a preelection
6 statement by May 24, 2012, for the March 18, 2012, through May 19, 2012, reporting period, in
7 violation of Government Code section 84200.5, subdivision (i)(1) (1 count); failed to timely file a
8 preelection statement by October 5, 2012, for the July 1, 2012, through September 30, 2012, reporting
9 period, in violation of Government Code section 84200.5, subdivision (i)(1) (1 count), and; failed to
10 timely file a preelection statement by October 25, 2012, for the October 1, 2012, through October 20,
11 2012, reporting period, in violation of Government Code section 84200.5, subdivision (i)(1) (1 count).

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

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1 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
2 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
3 of \$9,500. A cashier's check from Respondent in said amount, made payable to the "General Fund of
4 the State of California," is submitted with this Stipulation as full payment of the administrative penalty,
5 to be held by the State of California until the Commission issues its decision and order regarding this
6 matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall
7 become null and void, and within fifteen business days after the Commission meeting at which the
8 Stipulation is rejected, all payments tendered by Respondent in connection with this Stipulation shall be
9 reimbursed to Respondent. Respondent further stipulates and agrees that in the event the Commission
10 rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither
11 any member of the Commission, nor the Chief of Enforcement, shall be disqualified because of prior
12 consideration of this Stipulation.

13
14 Dated: _____
15 Gary Winuk, Enforcement Chief,
16 On behalf of Fair Political Practices Commission

17 Dated: _____
18 Tony Bushala, Respondent

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Tony Bushala” FPPC No. 12/831, 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 Chair.

IT IS SO ORDERED.

Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Tony Bushala (“Respondent”) is an individual residing in Fullerton, California. Between January 1, 2012, and October 20, 2012, Respondent made \$148,704 in contributions to the Committee Supporting the Recall of [Fullerton city council members] Pat McKinley, Don Bankhead and F. Richard “Dick” Jones (the “Recall Committee”), and to Fullerton Taxpayers for Reform, supporting the election of Fullerton city council candidates Greg Sebourn, Barry Levinson and Travis Kiger in the June 5, 2012, election, and supporting the election of Fullerton city council candidates Bruce Whitaker, Travis Kiger, and opposing the election of Fullerton city council candidate Jan Flory, in the November 6, 2012, election (the “Fullerton Taxpayers for Reform Committee”).

This matter arose out of a sworn complaint submitted to the Fair Political Practices Commission’s (the “Commission”) Enforcement Division (“Enforcement Division”) alleging Respondent was an active major donor committee and failed to file the required statements. The subsequent investigation by the Enforcement Division revealed that Respondent is an active major donor committee and failed to timely file four campaign statements required by Political Reform Act (the “Act”)¹.

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

- COUNT 1:** Respondent Tony Bushala, an active major donor committee in 2012, failed to timely file a preelection statement by March 22, 2012, for the January 1, 2012, through March 17, 2012, reporting period, in violation of Government Code section 84200.5, subdivision (i)(1).
- COUNT 2:** Respondent Tony Bushala, an active major donor committee in 2012, failed to timely file a preelection statement by May 24, 2012, for the March 18, 2012, through May 19, 2012, reporting period, in violation of Government Code section 84200.5, subdivision (i)(1).
- COUNT 3:** Respondent Tony Bushala, an active major donor committee in 2012, failed to timely file a preelection statement by October 5, for the July 1, 2012, through September 30, 2012, reporting period, in violation of Government Code section 84200.5, subdivision (i)(1).
- COUNT 4:** Respondent Tony Bushala, an active major donor committee in 2012, failed to timely file a preelection statement by October 25, 2012, for the

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.

October 1, 2012, through October 20, 2012, reporting period, in violation of Government Code section 84200.5, subdivision (i)(1).

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.

Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the 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).)

Section 82013, subdivision (c), includes within the definition of "committee" any person or combination of persons who directly or indirectly makes contributions, including loans, totaling \$10,000 or more in a calendar year to, or at the behest of, candidates or committees. This type of committee is commonly referred to as a "major donor committee".

All committees pursuant to Section 82013, subdivision (b) or (c), are "general purpose committees". (Section 82027.5, subd. (a).) A "city general purpose committee" is committee that supports and opposes candidates or measures voted on in only one city. (Section 82027.5, subd. (d).)

Duty to File Campaign Statements

Every city general purpose committee is required to file a preelection statement for each period in which it makes contributions or independent expenditures totaling \$500 or more. (Section 84200.5, subd. (i).) For the period ending March 17, a preelection statement must be filed no later than March 22.² Subsequently, another preelection statement for the reporting period 17 days before the June election must be filed no later than 12 days before the election. (Section 84200.7, subd. (a)(2).) For the period ending September 30, a preelection statement must be filed no later than October 5. (Section 84200.7, subd. (b)(1).) Subsequently, another

² Under Regulation 18116, whenever the Act requires that a statement or report (other than late contribution reports required by Section 84203, late independent expenditure reports required by Section 84204, or notice by the contributor of a late in-kind contribution required by Section 84203.3) be filed prior to or not later than a specified date or during or within a specified period, and the deadline falls on a Saturday, Sunday or official state holiday, the filing deadline for such a statement or report shall be extended to the next regular business day.

preelection statement for the reporting period ending 17 days before the November election must be filed no later than 12 days before the election. (Section 84200.7, subd. (b)(2).)

A city general purpose committee must file an original and a copy of all required campaign statements with the clerk of the city. (Section 84215, subd. (d).)

SUMMARY OF THE FACTS

Respondent qualified as a general purpose committee on August 10, 2011, by making a \$10,000 contribution to the Recall Committee. During the January 1, 2012, through March 17, 2012, reporting period, Respondent made contributions totaling \$14,531 to the Recall Committee. During the March 18, 2012, through May 19, 2012, reporting period, Respondent made contribution totaling \$46,304 to the Recall Committee and the Fullerton Taxpayers for Reform Committee. During the July 1, 2012, through September 30, 2012, reporting period, Respondent made contributions totaling \$38,500 to the Fullerton Taxpayers for Reform Committee. During the October 1, 2012, through October 20, 2012, reporting period, Respondent made contributions totaling \$37,000 to the Fullerton Taxpayers for Reform Committee.

The Recall Committee and the Fullerton Taxpayers for Reform Committee timely reported all contributions received from Respondent during the relevant periods.

Respondent failed to timely file a campaign statement for all four preelection periods leading up to the June 5, 2012, and November 6, 2012, elections. On November 12, 2012, after both pertinent elections and after being contacted by the Enforcement Division regarding this matter, Respondent filed all four of the delinquent campaign statements.

COUNT 1

Failure to Timely File a Preelection Statement

As a city general purpose committee that made contributions totaling \$14,531 during the January 1, 2012, through March 17, 2012, reporting period, Respondent had a duty to file a preelection statement with the Fullerton City Clerk by March 22, 2012. By failing to file a preelection statement for the January 1, 2012, through March 17, 2012, reporting period, with the Fullerton City Clerk by March 22, 2012, Respondent violated Section 84200.5, subdivision (i)(1).

COUNT 2

Failure to Timely File a Preelection Statement

As a city general purpose committee that made contributions totaling \$46,304 during the March 18, 2012, through May 19, 2012, reporting period, Respondent had a duty to file a preelection statement with the Fullerton City Clerk by May 24, 2012. By failing to file a preelection statement for the March 18, 2012, through May 19, 2012, reporting period, with the Fullerton City Clerk by May 24, 2012, Respondent violated Section 84200.5, subdivision (i)(1).

COUNT 3
Failure to Timely File a Preelection Statement

As a city general purpose committee that made contributions totaling \$38,500 during the July 1, 2012, through September 30, 2012, reporting period, Respondent had a duty to file a preelection statement with the Fullerton City Clerk by October 5, 2012. By failing to file a preelection statement for the July 1, 2012, through September 30, 2012, reporting period, with the Fullerton City Clerk by October 5, 2012, Respondent violated Section 84200.5, subdivision (i)(1).

COUNT 4
Failure to Timely File a Preelection Statement

As a city general purpose committee that made contributions totaling \$37,000 during the October 1, 2012, through October 20, 2012, reporting period, Respondent had a duty to file a preelection statement with the Fullerton City Clerk by October 25, 2012. By failing to file a preelection statement for the October 1, 2012, through October 20, 2012, reporting period, with the Fullerton City Clerk by October 25, 2012, Respondent violated Section 84200.5, subdivision (i)(1).

CONCLUSION

This matter consists of four counts of violating the Act, which carry a maximum administrative penalty of \$5,000 per count for a total 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 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(s) demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the respondent voluntarily filed amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

Counts 1-4: Failing to timely file a campaign statement is a serious violation of the Act as it deprives the public of important information about Respondent's financial activities.

In this matter, Respondent failed to timely file four preelection statements.

Recent fines approved by the Commission include:

In the Matter of Peter Sperling, FPPC No. 10/067. In October 2010, the Commission fined a mayor donor committee \$4,000 per campaign statement not timely filed. The fine was in the higher end of the range available because the committee failed to report approximately \$6,000,000 in contributions it made and had a prior enforcement action.

In the Matter of John C. Torjesen and John C. Torjesen, FPPC No. 06/1160. In December 2009, the Commission fined a major donor committee \$2,500 per campaign statement not timely filed. The fine was in the lower end of the range available because the committee failed to report \$16,000 in contributions made and did not have a prior enforcement action.

In this matter, Respondent has no prior enforcement action, has cooperated with the investigation, and filed the four pertinent statements as soon as he was contacted by the Enforcement Division. Additionally, all of Respondent's contributions during the relevant reporting periods were timely reported by the Recall Committee and the Fullerton Taxpayers for Reform Committee.

The violation in Count 1 involved \$14,531 of activity. Therefore a \$2,000 fine for Count 1 is recommended. The violations in Counts 2, 3, and 4 involved \$46,304, \$38,500, and \$37,000, of activity, respectively. Therefore a \$2,500 fine per count for Counts 2, 3, and 4 is recommended.

PROPOSED PENALTY

Accordingly, the imposition of a total administrative fine of \$9,500 is recommended.

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