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

10
11 In the Matter of

FPPC No. 12/867

12 KATHLEEN DEROSA and
13 COMMITTEE TO ELECT KATHLEEN
DEROSA FOR MAYOR

STIPULATION, DECISION, AND ORDER

14 Respondents.

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16 **STIPULATION**

17 Complainant, the Fair Political Practices Commission (Commission), and respondents Kathleen
18 DeRosa and Committee to Elect Kathleen DeRosa for Mayor (Respondents) hereby agree that this
19 Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next
20 regularly scheduled meeting.

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

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

1 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
2 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 failing
4 to timely disclose campaign expenditures in violation of Government Code section 84211, subdivision
5 (k), as described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference as though fully
6 set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

7 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
8 Respondents also agree to the Commission imposing an administrative penalty in the total amount of
9 Two Thousand Five Hundred Dollars (\$2,500). Respondents submitted with this Stipulation a cashier's
10 check from Respondents in said amount, made payable to the "General Fund of the State of California,"
11 as full payment of the administrative penalty that shall be held by the State of California until the
12 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the
13 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)
14 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered
15 by Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents
16 further stipulate and agree that in the event the Commission rejects the Stipulation, and a full evidentiary
17 hearing before the Commission becomes necessary, neither any member of the Commission, nor the
18 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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21 Dated: _____
22 Gary S. Winuk, on behalf of the Enforcement Division
23 Fair Political Practices Commission

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25 Dated: _____
26 Kathleen DeRosa, individually, and on behalf of
27 Committee to Elect Kathleen DeRosa for Mayor
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DECISION AND ORDER

The foregoing Stipulation of the parties “Kathleen DeRosa and Committee to Elect Kathleen DeRosa for Mayor” FPPC No. 12/867, 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: _____ Sean Eskovitz, Vice Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent Kathleen DeRosa (“Respondent DeRosa”) was re-elected mayor of Cathedral City in 2012. Respondent Committee to Elect Kathleen DeRosa for Mayor (“Respondent Committee”) was her candidate-controlled recipient committee.

The Political Reform Act (the “Act”)¹ requires candidates and committees to disclose campaign expenses when they accrue. Respondents violated the Act by failing to timely disclose campaign expenditures during the proper campaign statement periods.

For purposes of this Stipulation, the proposed violation of the Act is as follows:

COUNT 1: Respondents failed to timely disclose expenditures and accrued expenses for mailers, signs, banners, handouts, mailing services, and radio advertising on campaign statements for the July 1, 2012 through September 30, 2012, October 1, 2012 through October 20, 2012, and October 21, 2012 through December 31, 2012 statement periods in violation of Section 84211, subdivision (k).

SUMMARY OF THE LAW

Campaign Statements

The Act requires candidate-controlled committees to file two semi-annual campaign statements each year. (Section 84200.) Additionally, candidate-controlled committees must file two pre-election campaign statements before each election. (Section 84200.5.) For the 2012 general election, the first pre-election campaign statement covering the period from July 1 through September 30 had a filing deadline of October 5. The second pre-election statement covering the period from October 1 through October 20 had a filing deadline of October 25. (Section 84200.7.)

Disclosing Expenditures and Accrued Expenses

A candidate-controlled committee must disclose on a campaign statement each expenditure of \$100 or more made by the committee during that reporting period. (Section 84211, subd. (k).) An accrued expense is considered an “expenditure.” (Section 84211, subd. (k)(6).) A committee must disclose an accrued expense on a campaign statement as of the date

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.

on which the committee receives the goods or services, and must then list the accrued expense on each subsequent campaign statement until the debt is extinguished. (Regulation 18421.6.)

SUMMARY OF THE FACTS

The voters of Cathedral City re-elected Respondent DeRosa mayor in the 2012 General Election. Respondents filed all campaign statements for that election on time but failed to disclose on those statements a number of expenditures made during the campaign.

A week before the General Election, the Enforcement Division of the Fair Political Practices Commission (“Commission”) received a complaint alleging that Respondent DeRosa failed to disclose expenditures for mass mailers and radio advertising. The Enforcement Division sent Respondent DeRosa a letter informing her of the complaint. She responded in a letter dated November 8, 2012² in which she stated she inadvertently failed to disclose one invoice. She also provided the Enforcement Division with a number of other invoices for radio airtime buys and printing services. Subsequently, the Enforcement Division sent Respondent DeRosa a letter dated November 30th identifying a number of campaign statement reporting deficiencies and demanding that she file amended campaign statements. On December 14th, Respondents filed an amended pre-election campaign statement for the October 1st through October 20th statement period.

Respondents’ campaign statement reporting deficiencies consisted of the following:

First Pre-election Statement

Business Supplies Unlimited (“BSU”) provided Respondents four invoices all dated September 21st for mailers, signs, banners, and handouts provided to Respondents by BSU. The total amount for these four invoices was \$3,226.52. Respondents paid all four invoices on October 10th.

On September 24th, Respondents sent out a mass mailer using a company called High Tech Mailing Services (“High Tech”). High Tech sent Respondents an invoice dated September 24th for \$2,351.06 for its services related to the mailer. Respondents paid the invoice on October 18th.

Respondents’ pre-election campaign statement for the July 1st through September 30th statement period filed on October 1st did not disclose as accrued expenses the goods received from BSU or the services from High Tech. Respondents’ pre-election campaign statement for the October 1st through October 20th statement period filed on October 25th also failed to disclose the accrued expenses related to BSU and High Tech. That statement did disclose Respondents’ payment to BSU on October 10th but did not disclose the payment to High Tech made on or about October 18th. Respondents eventually disclosed the payment to High Tech on an amended pre-election campaign statement for the October 1st through October 20th statement period filed on December 14th. Respondents disclosed total expenditures for July 1st through September 30th

² All dates refer to the year 2012 unless otherwise indicated.

reporting period of \$5,479.43³ so the undisclosed accrued expenses for the goods from BSU, and the mailer services from High Tech, constituted approximately 50% of the total amount of all expenditures for that period.

Second Pre-election Statement

On or about October 1st, Respondents entered into an agreement with BSU to procure radio airtime for advertisements supporting Respondent DeRosa. Respondents agreed to pay BSU \$7,020. The first advertisement ran on October 15th and the ads continued to run up until the election. Respondents received an invoice from BSU dated October 1st for \$7,020. Respondents paid that invoice on October 23rd.

On October 11th, Respondents sent out a mass mailer using services provided by High Tech. High Tech sent Respondents an invoice dated October 11th for \$2,006.06 for its services. Respondents paid the invoice on October 22nd.

Respondents' pre-election campaign statement for the October 1st through October 20th statement period filed on October 25th did not disclose the radio advertising costs, or the cost of the services rendered by High Tech, as accrued expenses. Respondents eventually disclosed the BSU radio advertising costs and the cost of the services rendered by High Tech as accrued expenses, and the payment of those expenses, on an amended pre-election campaign statement for the October 1st through October 20th statement period filed on December 14th. On that amended statement, Respondents reported total expenditures for the October 1st through October 20th period of \$14,965.03, so the undisclosed accrued expenses for the radio advertising and the mass mailer constituted approximately 60% of the total amount of all expenditures for that period.

Semi-annual Statement

On October 29th, Respondents sent out another mass mailer using High Tech. High Tech sent Respondents an invoice dated October 31st for \$2,006.06 for its services. Respondents paid the invoice on November 6th.

Respondents' semi-annual campaign statement for the October 21st through December 31st statement period did not disclose the payment of the invoice from High Tech. Respondents reported total expenditures of \$15,435.47 for that period so the undisclosed expenditure constituted approximately 13% of the total amount of all expenditures for that period.

COUNT 1

Failure to Timely Disclose Expenditures

Respondents failed to timely disclose campaign expenditures and accrued expenses for mailers, signs, banners, handouts, mailing services, and radio advertising on campaign statements for the July 1, 2012 through September 30, 2012, October 1, 2012 through October 20, 2012, and October 21, 2012 through December 31, 2012 statement periods in violation of Section 84211, subdivision (k).

³ This total does not include the amount of the four invoices from BSU and the mailing services provided by High Tech because Respondents did not report those items as accrued expenses on the campaign statement at issue.

CONCLUSION

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

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 the 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 conceal, deceive or mislead; whether the violation was deliberate, negligent, or inadvertent; whether the Respondents demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

Penalties for failure to disclose expenditures, whether the expenditures are payments or accrued expenses, are typically in the range of \$2,000 to \$2,500 per count. *In the Matter Joseph Graham Davis, Jr., Californians Against the Costly Recall of the Governor et al., J. Ari Swiller, and Stephen J. Kaufman*, FPPC No. 05/366 (Stipulation approved by the Commission on August 14, 2008) resulted in a penalty of \$2,000 for respondents' failure to disclose accrued expenses. In that case, the undisclosed accrued expenses occurred over two reporting periods and constituted approximately 2% of the total amount of expenditures by the respondents over those two periods. All of these accrued expenses were for money owed to respondents' attorney.

Similarly, *In the Matter of Michael Ramos, Committee to Reelect Mike Ramos San Bernardino County District Attorney – 2010, Marvin Reiter*, FPPC No. 10/269 (Stipulation approved by the Commission on January 28, 2011) resulted in a penalty of \$2,500 for one count of failure to disclose expenditures of \$100 or more in violation of Section 84211, subdivision (k). In that case, the respondents failed to disclose nine expenditures of \$100 or more made during a single reporting period. The total amount of the unreported expenditures was \$8,619, which constituted 7.9% of all expenditures made during the reporting period.

Lastly, *In the Matter of Mike Stoker, Stoker for Assembly 2012, and Trent Benedetti*, FPPC No. 12/090 (Stipulation approved by the Commission on December 13, 2012) resulted in a penalty of \$2,500 for one count of failure to disclose campaign expenditures of \$100 or more in violation of Section 84211, subdivision (k). In that case, a total of 12 expenditures over three reporting periods were not timely disclosed. The total amount of these expenditures was \$19,256.09, which constituted 4.6% of the total amount of expenditures by the respondents for the entire year.

In the case at issue, the five expenditures that Respondents failed to timely disclose, while not large in dollar amount, equated to approximately 51% of the campaign's total expenditures for the year. Respondents eventually disclosed the expenditures on subsequent statements and amended statements, however all but one of these disclosures occurred after the election so the voters did not have the benefit of knowing how Respondents were spending campaign funds. Respondents claim that not disclosing the expenditures was unintentional.

PROPOSED PENALTY

After considering the factors listed in Regulation §18361.5, as well as other relevant factors, the recommended penalty is \$2,500.

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