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7
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**

10
11 In the Matter of:

12 **YOCHA DEHE WINTUN NATION,**
13 **Respondent.**

FPPC No. 14/528

STIPULATION, DECISION, AND ORDER

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17 **STIPULATION**

18 Complainant, the Fair Political Practices Commission (Commission), and respondent Yocha
19 Dehe Wintun Nation (Respondent) hereby agree that this Stipulation will be submitted for consideration
20 by the Fair Political 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 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 Respondent.

24 Respondent understands, and hereby knowingly and voluntarily waives, 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 Respondent's 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 Respondent violated the Political Reform Act by making a
4 cumulative contribution over the limit in violation of Government Code section 85301, subdivision (a),
5 and failing to timely disclose contributions made to candidate-controlled campaign committees in
6 violation of Government Code sections 84211, subdivision (k) and Section 86116, subdivision (g), all as
7 described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference as though fully set
8 forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

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

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

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27 Dated: _____
28 _____, on behalf of
Yocha Dehe Wintun Nation

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Yocha Dehe Wintun Nation,” FPPC
3 No. 14/528, including all attached exhibits, is hereby accepted as the final decision and order of the Fair
4 Political Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

_____ Joann Remke, Chair

9 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent Yocha Dehe Wintun Nation (“Respondent”)¹ was a major donor committee, as well as a lobbyist employer, at all times relevant in this matter. Under the Political Reform Act (the “Act”)² major donor committees and lobbyist employers cannot make campaign contributions that exceed applicable contribution limits. Also, major donor committees and lobbyist employers must disclose on campaign statements and lobbyist employer reports all contributions they make to campaign committees controlled by State legislators and candidates for State legislature. Respondent violated the Act by making a cumulative contribution that exceeded the contribution limit, and failing to timely disclose non-monetary contributions made to campaign committees of State legislators and candidates for the State legislature.

For purposes of this Stipulation, the proposed violations of the Act are as follows:

- COUNT 1: Respondent made cumulative contributions to Ronald Calderon for Senate 2010 that exceeded the applicable contribution limit in violation of Section 85301, subdivision (a) and Regulation 18545, subdivision (a)(1).
- COUNT 2: Respondent failed to timely disclose a non-monetary contribution it made to Coto for Senate 2012 in violation of Section 84211, subdivision (k) and Section 86116, subdivision (g).
- COUNT 3: Respondent failed to timely disclose a non-monetary contribution it made to California 2020 Senator Alex Padilla’s Ballot Measure Committee in violation of Section 84211, subdivision (k) and Section 86116, subdivision (g).
- COUNT 4: Respondent failed to timely disclose a non-monetary contribution it made to Adam Gray for Assembly 2012 in violation of Section 84211, subdivision (k) and Section 86116, subdivision (g).

SUMMARY OF THE LAW

Contributions and Contribution Limits

Under the Act, a “contribution” means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment for which full and adequate

¹ At times relevant in this matter, Respondent was also known as “Rumsey Indian Rancheria of Wintun Indians and Affiliated Entity Cache Creek Casino Resort” and “Rumsey Indian Rancheria of Wintun Indians”.

² 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.

consideration is not received by the giver. (Section 82015.) The definition of “contribution” includes any goods or services received by a candidate or committee at no charge or at a discount from fair market value. (Regulation 18215, subdivision (b)(3).) This type of contribution is commonly referred to as a “non-monetary” or “in kind” contribution.

A contributor cannot make a contribution to a candidate for the State legislature that exceeds the applicable contribution limit. (Section 85301, subdivision (a).) In 2009 – 2010, the limit on contributions to candidates for the State legislature, and their controlled committees, was \$3,900 per election. (Regulation 18545, subdivision (a)(1).)

Major Donor Committee Filing Obligations

A person, or combination of persons, that makes campaign contributions totaling ten thousand dollars or more in a calendar year qualifies as a major donor committee. (Section 82013, subdivision (c).) Major donor committees are required to file semi-annual campaign statements on or before July 31st for the January 1st through June 30th time period, and on or before January 31st for the July 1st through December 31st time period. (Section 84200, subdivision (b).) Campaign statements filed by major donor committees must disclose all contributions that the committee made to a candidate, elected official, or committee during the statement period. (Section 84211, subdivision (k).)

Lobbyist Employer Reporting Obligations

“Lobbyist employer” means any person, other than a lobbying firm, who: (a) employs one or more lobbyists for economic consideration, other than reimbursement for reasonable travel expenses, for the purpose of influencing legislative or administrative action, or (b) contracts for the services of a lobbying firm for economic consideration, other than reimbursement for reasonable travel expense, for the purpose of influencing legislative or administrative action.” (Section 82039.5.) Lobbyist employers are required to file periodic reports disclosing, amongst other information, the date, amount, and name of recipient for all campaign contributions of one hundred dollars or more made to an elected state officer, a state candidate, or committee controlled by an elected state officer or candidate. (Section 86116, subdivision (g).) Reports required by Section 86116 shall be filed during the month following each calendar quarter. (Section 86117.)

SUMMARY OF THE FACTS AND VIOLATIONS

Background

Respondent owns Cache Creek Casino Resort (“Cache Creek”). Cache Creek includes a golf course called Yocha Dehe Golf Club (“Golf Course”). On numerous occasions, various elected state officers and candidates held golf tournaments at the Golf Course as fundraising events for the benefit of their campaign committees. Often Respondent would not charge the campaign committees for the cost of the rounds of golf for the tournament participants. The free rounds of golf constituted non-monetary campaign contributions by Respondent to the committees of the officers/candidates. On three occasions detailed below, Respondent failed to

disclose the free rounds of golf as contributions on its campaign statements and lobbyist employer reports.

Count 1
Contribution Over the Limit

State Senator Ron Calderon held a golf tournament fundraiser for his campaign committee, Ronald Calderon for Senate 2010 (the “Calderon Committee”), at the Golf Course on March 27, 2009. The total cost of the event was \$10,195.98. Shortly after the event, the Calderon Committee received an invoice from Respondent in the amount of \$3,870.98, which covered the cost of food and beverages for the event. The invoice did not include the cost of golf for the tournament participants, which totaled \$6,325. The Calderon Committee paid the invoice amount but did not make any additional payment to Respondent for the fundraiser.

In January 2010, Respondent, through the lobbying firm it employed, asked the Calderon Committee to pay Respondent the unpaid balance from the golf fundraiser.³ An agent of the Calderon Committee objected to the request for payment, stating that the event was supposed to be hosted by Respondent. The agent for the Calderon Committee went on to state that at a minimum the Calderon Committee should receive a non-monetary contribution from Respondent up to the contribution limit of \$7,800. Respondent did not make any more attempts to collect additional payment from the Calderon Committee.

As a result, the \$6,325 unpaid balance of the cost of the tournament constituted a non-monetary contribution from Respondent to the Calderon Committee. In addition to the \$6,325 non-monetary contribution, Respondent made a \$3,000 monetary contribution to the Calderon Committee in September of 2010. In sum, the two contributions from Respondent to the Calderon Committee totaled \$9,325. The contribution limit for 2009 – 2010 was \$3,900 per election. So for the 2010 Primary and General elections combined, the maximum cumulative contribution Respondent could legally make to the Calderon Committee was \$7,800.

By making a cumulative contribution to the Calderon Committee that exceeded the contribution limit, Respondent violated Section 85301, subdivision (a) and Regulation 18545, subdivision (a)(1)

Count 2
Failure to Timely Disclose Contribution to Coto for Senate 2012

Assemblyman Joe Coto held a golf tournament fundraiser for his campaign committee, Coto for Senate 2012 (the “Coto Committee”), at the Golf Course on September 23, 2010. The cost of the event was \$4,935. The Coto Committee disclosed receiving non-monetary contributions from Respondent totaling \$3,900 in conjunction with the fundraiser.

³ The lobbying firm requested that the Calderon Committee pay \$2,454.02. The actual balance owed was \$6,325. The discrepancy in the amount requested and the amount owed appears to have been an error on the part of Respondent’s agents.

Respondent did not disclose making a non-monetary contribution to the Coto Committee on its semi-annual statement for the July 1, 2010 through December 31, 2010 statement period. It also did not disclose making the contribution on its lobbyist employer report for the third quarter of 2010. Respondent filed an amended semi-annual statement on February 18, 2014. The amended statement disclosed that Respondent made the \$3,900 non-monetary contribution to the Coto Committee. The contribution to the Coto Committee constituted approximately 1% of the amount of total contributions made by Respondent during the statement period.

By failing to timely disclose the non-monetary contribution it made to the Coto Committee, Respondent violated Section 84211, subdivision (k), and Section 86116, subdivision (g).

Count 3

Failure to Timely Disclose Contribution to California 2020, Senator Alex Padilla's Ballot Measure Committee

Senator Alex Padilla held a golf tournament fundraiser for his ballot measure committee, California 2020, Senator Alex Padilla's Ballot Measure Committee (the "Padilla Committee"), at the Golf Course on September 29, 2010. The total cost of the event was \$8,146.73. The Padilla Committee's campaign statement for that period disclosed receiving a non-monetary contribution valued at \$5,000 from Respondent in conjunction with the fundraiser. The Padilla Committee reported paying \$3,146.73 to "Cache Creek Casino Resort" on its campaign statement for the October 17 through December 31, 2010 statement period. Presumably, this payment was to Respondent for the balance owed for the golf tournament.

Respondent did not disclose making a non-monetary contribution to the Padilla Committee on its major donor statement filed on January 31, 2011 for the July 1, 2010 through December 31, 2010 statement period. It also did not disclose making the contribution on its lobbyist employer report for the third quarter of 2010. Respondent filed an amended semi-annual statement on February 18, 2014. The amended statement disclosed that Respondent made a \$4,990 non-monetary contribution to the Padilla Committee. The contribution to the Padilla Committee constituted approximately 1.4% of the amount of total contributions made by Respondent during the statement period.

By failing to timely disclose the non-monetary contribution it made to the Padilla Committee, Respondent violated Section 84211, subdivision (k), and Section 86116, subdivision (g).

Count 4

Failure to Timely Disclose Contribution to Adam Gray for Assembly 2012

Assembly Member Adam Gray held a golf tournament fundraiser for his campaign committee, Adam Gray for Assembly 2012 (the "Gray Committee"), at the Golf Course in early December of 2011. The total cost of the event was \$4,049.58. The Gray Committee paid \$2,149.58. The balance, \$1,900, constituted a non-monetary contribution by Respondent to the Gray Committee.

Respondent did not timely disclose making the non-monetary contribution to the Gray Committee on its semi-annual for the July 1, 2011 through December 31, 2011 statement period. Respondent also did not timely disclose the contribution on its lobbyist employer report for the fourth quarter of 2011. The Gray Committee did not disclosing receiving a non-monetary contribution from Respondent on its campaign statement for the period in question. Respondent filed an amended statement in July of 2014 disclosing the contribution to the Gray Committee.

During the statement period in question, Respondent disclosed making a total of \$15,000 in contributions. So the \$1,900 contribution to the Gray Committee equated to 11.2% of the total dollar amount of contributions made by Respondent during that statement period.

By failing to timely disclose the non-monetary contribution it made to the Gray Committee, Respondent violated Section 84211, subdivision (k), and Section 86116, subdivision (g).

CONCLUSION

This matter consists of four counts of violating the Act, which carry a maximum administrative penalty of twenty thousand dollars (\$20,000).

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 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.

Count 1

Typically, violations for making or receiving a contribution that exceeds a contribution limit results in a penalty in the \$3,000 to \$4,000 range. For example, *In the Matter of Voters for a New California and Joaquin Ross*, FPPC No. 10/470 (Commission approved stipulation on April 25, 2013) concerned a non-monetary contribution by a general purpose committee to a candidate for State Assembly that exceeded the contribution limit of \$3,900 per election. In that case, the committee sent out three mass mailers in support of the candidate that cost a total of \$28,892. The mass mailers were sent in coordination with the candidate's campaign therefore they were non-monetary contributions, not independent expenditures. The Commission imposed a penalty of \$3,000 for the violation.

In the Matter of Joel Anderson and Tax Fighters for Anderson 2010, FPPC No. 09/694 (Commission approved stipulation on December 10, 2009) concerned a candidate for State Assembly who received five monetary contributions of \$9,500 that exceeded the \$3,900

contribution limit. The respondents in that case paid a penalty of \$4,000 per count for five counts of receiving contributions over the limit.

Contribution limits exist to prevent contributors from exerting disproportionate influence over elected officials. A contribution limit violation is one of the more serious violations of the Act. In this case, Respondent's over the limit contribution resulted mainly from its failure to adequately account for the non-monetary contribution. It does not appear Respondent intended to make a contribution over the limit. But Respondent was aware when it made the monetary contribution to the Calderon Committee in September of 2010 that it had previously provided rounds of golf for which the Calderon Committee had not paid, resulting in a non-monetary contribution. The circumstances of this case justify a penalty at the lower end of the range for contributions over the limit.

Counts 2, 3, and 4

The Commission recently approved stipulated agreements in a couple cases with violations similar to Counts 2, 3, and 4 where a committee failed to timely disclose contributions made to candidate-controlled committees. *In the Matter of Oceanside Firefighters Association Political Action Committee, Eric Hanson, and Timothy Scott*, FPPC No. 12/435 (Commission approved stipulation on April 17, 2014) concerned a general purpose committee that failed to timely disclose a \$1,600 contribution to a mayoral candidate in Oceanside. The failure to disclose was inadvertent and the respondents filed an amended statement when they became aware of the mistake. The Commission imposed a penalty of \$2,000 for the violation.

Similarly, *In the Matter of Marin Professional Firefighters Political Action Committee*, FPPC No. 06/255 (Commission approved stipulation on April 8, 2010) concerned a general purpose committee that made non-monetary contributions to two slates of candidates for fire protection districts that the committee failed to timely disclose. The undisclosed non-monetary contributions consisted of door hangers and window signs expressing support for one slate of candidates that cost a total of \$3,025, and a mailer on behalf of another slate of candidates that cost \$1,976. The non-monetary contributions that the committee did not timely disclose made up approximately 37% of the total amount of contributions made by the committee during the disclosure period. Evidence showed the committee's failure to timely disclose the contributions was inadvertent and it amended the statements upon realizing the mistake. The Commission approved a penalty of \$2,000 per count for two counts of violating Section 84211, subdivision (k).

A central purpose of the Act is to ensure receipts and expenditures in election campaigns are fully and truthfully disclosed (Section 81002, subdivision (a).) In this case, Respondent failed to timely disclose substantial contributions made to committees controlled by State officers/candidates on multiple occasions. However, Respondent has a long history of filing timely major donor and lobby reports and it appears its failure to disclose the contributions were an oversight. Also, to Respondent's credit, it has filed amended statements disclosing the contributions and cooperated with the Commission in resolving this matter. Since the amounts of Respondent's undisclosed contributions are similar to the amounts in the comparable cases, and the violations were also apparently not intentional, a similar penalty is justified.

PROPOSED PENALTY

After considering the factors of Regulation 18361.5, and the penalties imposed in prior cases, a penalty of \$3,000 for Count 1 and \$2,000 per count for Counts 2, 3, and 4, for a total penalty of \$9,000, is recommended.