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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. 13/138
13)
14 JOSHUA MITCHELL, and JOSHUA) STIPULATION, DECISION and
MITCHELL FOR MAYOR 2012,) ORDER
15 Respondents.)
16)
17)

18 Complainant, the Fair Political Practices Commission, and respondents Joshua Mitchell and
19 Joshua Mitchell for Mayor 2012 (collectively “Respondents”) agree that this Stipulation will be
20 submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled
21 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.

4 It is further stipulated and agreed that Respondents violated the Political Reform Act by failing
5 to deposit eleven personal contributions, totaling \$295.08, into the committee's designated bank account
6 before using those funds for campaign expenditures, in violation of Government Code section 85201,
7 subdivisions (c), (d), and (e) (Count 1), and failing to timely report to the Sanger City Clerk by October
8 5, 2012, 39 contributions, totaling \$7,041.76, received between July 1 and September 30, 2012, in
9 violation of Government Code sections 84200.5 and 84211, subdivisions (a), (c), and (f) (Count 2). All
10 counts are described in Exhibit 1, which is attached hereto and incorporated by reference as though fully
11 set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

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

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15 Dated: _____

Gary Winuk, Enforcement Chief,
On behalf of the
Fair Political Practices Commission

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19 Dated: _____

Joshua Mitchell, Respondent,
Individually and on behalf of
Joshua Mitchell for Mayor 2012

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Joshua Mitchell and Joshua Mitchell
3 for Mayor 2012” FPPC No. 13/138, including all attached exhibits, is hereby accepted as the final
4 decision and order of the Fair Political Practices Commission, effective upon execution below by the
5 Chair.

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7 IT IS SO ORDERED.

8 Dated: _____

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10 Joann Remke, Chair
11 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent Joshua Mitchell for Mayor 2012 (“Respondent Committee”) was the candidate-controlled committee of Respondent Joshua Mitchell (“Respondent Mitchell”), who was the incumbent and successful candidate in the November 6, 2012, election for the Mayor of the City of Sanger (the “City”).

An investigation by the Fair Political Practices Commission’s (the “Commission”) Enforcement Division (the “Enforcement Division”) revealed that Respondent Mitchell cashed a check made out to the City with the intent to use that cash for campaign expenses, and that Respondent Mitchell and Respondent Committee (collectively “Respondents”), on eleven other occasions, used personal funds to make campaign expenditures without first depositing those funds into the campaign’s designated bank account, in violation of the Political Reform Act (the “Act”).¹ The investigation also found that Respondents failed to timely report contributions, including the eleven contributions from Respondent Mitchell that were not deposited into the committee’s designated bank account, on a preelection statement, in violation of the Act.

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

COUNT 1: Respondents Joshua Mitchell and his candidate-controlled committee Respondent Joshua Mitchell for Mayor 2012 failed to deposit eleven personal contributions totaling \$295.08 into the committee’s designated bank account prior to using the those funds to make campaign expenditures, in violation of Government Code section 85201, subdivisions (c), (d), and (e).

COUNT 2: Respondent Joshua Mitchell and his candidate-controlled committee Respondent Joshua Mitchell for Mayor 2012 failed to timely report to the Sanger City Clerk by October 5, 2012, 39 contributions, totaling \$7,041.76, received between July 1 and September 30, 2012, in violation of Government Code sections 84200.5 and 84211, subdivisions (a), (c), and (f).

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they

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.

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).)

Duty to File Preelection Statements

For all candidates being voted upon the first Tuesday after the first Monday in June or November of an even-numbered year, one preelection statement for the reporting period ending on September 30 must be filed no later than October 5.² (Sections 84200.5, subd. (a), 84200.7, subd. (b)(1).) Subsequently, another preelection statement for the reporting period ending 17 days before the election must be filed no later than 12 days before the election. (Sections 84200.5, subd. (a), 84200.7, subd. (b)(2).)

Required Reporting of Contributions Received

Section 84211, subdivisions (a) and (c), require committees to disclose on each campaign statement: (1) the total amount of contributions received during the period covered by the campaign statement and the total cumulative amount of contributions received, and; (2) the total amount of contributions received during the period covered by the campaign statement from persons who have given a cumulative amount of one hundred dollars (\$100) or more.

A contribution is a payment of any kind made for political purposes for which full and adequate consideration is not made to the donor. (Sections 82015, subd. (a), and 82044; Regulation 18215, subd. (a).) A payment is made for a political purpose if, for instance, it is: (1) for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate; or (2) it is received by or made at the behest of a candidate or controlled committee. (See Regulation 18215, subs. (a)(1) and (2).)

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.

Section 84211, subdivision (f), further requires that certain identifying information be provided for each person from whom a cumulative amount of contributions of \$100 or more has been received during the period covered by the campaign statement, including the following: (1) the person's full name; (2) his or her street address; (3) his or her occupation; (4) the name of his or her employer, or if self-employed, the name of the business; (5) the date and amount received for each contribution received during the period covered by the campaign statement and if the contribution is a loan, the interest rate for the loan; and (6) the cumulative amount of contributions.

One Bank Account Rule

To ensure full disclosure of campaign activity and to guard against improper use of campaign funds, the Act requires campaign funds to be kept in a single, designated bank account. (Section 85201.)

All contributions or loans made to the candidate's controlled committee must be deposited in the campaign bank account. (Section 85201, subd. (c).) Any personal funds that will be used to promote the election of the candidate must be deposited in the campaign bank account prior to expenditure. (Section 85201, subd. (d).) All campaign expenditures must be made from the campaign bank account. (Section 85201, subd. (e).)

Joint and Several Liability of the Candidate

Under Section 81004, subdivision (b), Section 84100 and Regulation 18427, subdivision (a), it is the duty of a candidate to ensure that his or her candidate-controlled committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. A candidate may be held jointly and severally liable, along with his or her candidate-controlled committee, for any reporting violations committed by the committee. (Sections 83116.5 and 91006.)

SUMMARY OF THE FACTS

On or about August 14, 2012, Respondent Mitchell, who at the time and all other relevant times was the Mayor of the City, solicited International Paper to make a \$1,000 contribution towards an upcoming community event. In response, International Paper wrote a check to the City for \$500 and delivered it to Respondent Mitchell.

On or about August 24, 2012, Respondent Mitchell endorsed the check from International Paper with "Mitchell for Mayor of City of Sanger" and cashed it at the Buy and Bye Market. Buy and Bye Market, assuming that the check was made out to either Respondent Mitchell or his campaign, issued Respondent Mitchell \$500 in cash.

Buy and Bye Market soon realized the check from International Paper was made out to the City and not to Respondent Mitchell or his campaign. They contacted Respondent Mitchell

who picked the check up and told Buy and Bye Market that he would ask International Paper to replace the check with a check made out to his campaign. Respondent Mitchell then returned the check to International Paper and requested that they reissue the check to his campaign, but International Paper declined.

Between July 1 and September 30, 2012, Respondent Mitchell, on 11 occasions, used personal funds, totaling \$294.08, to make small campaign expenditures without first depositing those funds into his campaign's designated bank account. During the same period, his campaign received 27 non-monetary contributions, totaling \$6,237.68, from Western Landscape Development, Inc., which, at the time, was wholly owned and operated by Respondent Mitchell.

On October 5, 2012, Respondents filed a preelection statement with the City Clerk for the July 1 through September 30, 2012, reporting period ("1st Preelection Statement"). The 1st Preelection Statement did not report the 11 personal contributions totaling \$294.08 that Respondent Mitchell spent on campaign expenditures without first depositing into his campaign's designated bank account, and 27 non-monetary contributions totaling \$6,237.68 that Respondent Committee received from Western Landscape Development, Inc., during the July 1 through September 30, 2012, reporting period. Nor did the preelection statement report the campaign expenditures made with the 38 contributions from Respondent Mitchell and Western Landscape Development.

On or about October 25, 2012, Respondents filed an amendment to the 1st Preelection Statement ("Amended Statement"). The Amended Statement did not report any of the aforementioned contributions from Respondent Mitchell and Western Landscape Development, Inc.

Buy and Bye Market contacted Respondent Mitchell several times regarding the \$500 he owed Buy and Bye Market, and, on October 31, 2012, reported the incident to the Sanger Police Department.

Subsequently, but before the November 6, 2012, general election, Respondent Mitchell returned the \$500 in cash to Buy and Bye market.

Respondent Mitchell was successful in the November 6, 2012, general election. He received approximately 60% of the vote.

On or about April 5, 2013, Respondents filed a second amendment to the 1st Preelection Statement (2nd Amended Statement). The 2nd Amended Statement included the 11 contributions received by Respondent Committee from Respondent Mitchell during the July 1 through September 30, 2012, reporting period, and the campaign expenditures made with those funds. However, the report did not report the \$500 contribution related to the check made out to the City. The 2nd Amended Statement included the 27 non-monetary contributions from Western Landscape Development, Inc., that Respondent Committee received during the July 1 through

September 30, 2012, reporting period, and the campaign expenditures made with those contributions.

Accordingly, Respondents committed two violations of the Act, as follows:

Count 1

Failure to Deposit Funds into the Designated Campaign Bank Account

Respondents failed to deposit eleven personal contributions totaling approximately \$294.08 into the Respondent Committee's designated bank account before using those funds to make campaign expenditures, in violation of Section 85201, subdivisions (c), (d), and (e).

Count 2

Failure to Timely Report Contributions Received

Respondents failed to timely report to the City Clerk by October 5, 2012, 39 contributions, totaling \$7,041.76, received between July 1 and September 30, 2012, in violation of Sections 84200.5 and 84211, subdivisions (a), (c), and (f).

CONCLUSION

This matter consists of two counts of violating the Act, which carry a maximum administrative penalty of \$5,000 per count for a total 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(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.

When a campaign's activity is not limited solely to the single, designated campaign bank account, it becomes more difficult to detect whether other violations of the Act may have been committed. Recent fines approved by the Commission for failing to use a single, designated bank account for expenditures include:

In the Matter of Stuart Waldman, Friends of Stuart Waldman, and Kinde Durkee; FPPC No. 10/643. The Commission approved a \$3,000 penalty against an unsuccessful state assembly candidate for failing to deposit personal campaign contributions, totaling approximately \$76,000,

into the campaign's designated bank account before using the personal contributions for expenditures.

In the Matter of Dan Hamburg, Dan Hamburg for Supervisor 2010, and Geoffrey Baugher, FPPC No. 10/751 and 10/981. The Commission approved a \$3,000 penalty against a successful candidate for county supervisor for failing to deposit contributions, totaling approximately \$16,000, into the campaign's designated bank account before using the contributions for expenditures.

In this matter, Respondent made direct expenditures for his campaign with his personal funds without first deposited them into the committee's designated bank account and then failed to report those contributions on the committee's campaign statements.

In addition, he received a \$500 check made payable to the City, cashed it with the intention of using the funds for his campaign, and did not timely report receiving the \$500 contribution. However, Respondent Mitchell has stated that he did not know that the check was made payable to the City nor that cashing a contribution check was not permissible. Also, he returned the check to the maker, returned the cash to the store where he cashed it and did not use any of the funds for campaign purposes. Given the significance of these violations, a \$4,000 penalty for Count 1 is recommended.

Failure to timely report contributions on a preelection statement is a serious violation of the Act as it deprives the public of important information about a committee's financial activities. Recent fines approved by the Commission for failing to timely report contributions on a preelection statement include:

In the Matter of Joe Yee, Friends of Joe Yee for City Council 2012, and Lynda Otto, FPPC No. 12/820. The Commission approved a \$2,000 penalty against an unsuccessful candidate for city council for failing to timely report contributions totaling \$1,200 on a preelection statement.

In the Matter of Friends of Rosalinda Avitia For Tulare Local Healthcare District Area 2 Director, Rosalinda Avitia, and Robert Montion, FPPC No. 12/965. The Commission approved a \$2,000 penalty against a successful candidate in a local election for failing to timely report contributions totaling \$2,200 on a preelection statement.

In this matter, Respondents failed to report contributions totaling \$7,041.76. Therefore a \$3,000 penalty for Count 2 is recommended.

PROPOSED PENALTY

Accordingly, the imposition of a total administrative penalty of \$7,000 is recommended.

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