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

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11 In the Matter of) FPPC No. 14/0327
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Respondents.

STIPULATION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and respondents Million More Voters, Sponsored by the California Labor Federation, AFL-CIO (Million More Voters), and Art Pulaski (Respondents) agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission (Commission) at its next regularly scheduled meeting.

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

Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of

1 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to, the right to
2 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
3 its own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena
4 witnesses to testify at the hearing, to have an impartial administrative law judge preside over the
5 hearing as a hearing officer, and to have the matter judicially reviewed.

6 It is further stipulated and agreed that Respondents violated the Political Reform Act by: failing
7 to report to the SOS within 24 hours independent expenditures of \$1,000 or more that Million More
8 Voters made during an election cycle in connection with a candidate for elective state office, in
9 violation of Government Code sections 85500, subdivision (a), and 84203.5 (3 counts); failing to file
10 supplemental independent expenditure reports with the SOS by January 31, 2011, for the October 17
11 through December 31, 2010, reporting period, in violation of Government Code section 84203.5 (1
12 count); and failing to report to the SOS by January 31, 2011, all expenditures of \$500 or more made by
13 an agent or independent contractor on behalf of Million More Voters during the October 17 through
14 December 31, 2010, reporting period, in violation of Government Code sections 84211, subdivision (k),
15 and 84303 (1 count). Each count is described in Exhibit 1, which is attached hereto and incorporated by
16 reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this
17 matter.

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Respondents agree to the issuance of the Decision and Order, which is attached hereto. Respondents also agree to the Commission imposing upon them an administrative penalty in the amount of \$16,000. A cashier’s check from Respondents in said amount, made payable to the “General Fund of the State of California,” is submitted with this Stipulation as full payment of the administrative penalty, to be held by the State of California until the Commission issues its decision and order regarding this matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen business days after the Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in connection with this Stipulation shall be reimbursed to it. Respondents further stipulate and agree that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither any member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

Dated: _____ Galena West, Chief of Enforcement, on behalf of
The Enforcement Division of the Fair Political Practices Commission

Dated: _____ Art Pulaski, Treasurer, individually and on behalf of
Million More Voters, Sponsored by the California Labor Federation,
AFL-CIO, Respondents

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Million More Voters, Sponsored by
3 the California Labor Federation, AFL-CIO, and Art Pulaski, Treasurer” FPPC No. 14/0327, including
4 all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices
5 Commission, effective upon execution below by the Chair.

6 IT IS SO ORDERED.

7
8 Dated: _____

9 Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Million More Voters, Sponsored by the California Labor Federation, AFL-CIO (Million More Voters) is, and has been at all relevant times, a sponsored state general purpose committee, and Respondent Art Pulaski has been, at all relevant times, Million More Voters' treasurer. As a state general purpose committee and its treasurer, Million More Voters and Pulaski had a duty under the Political Reform Act¹ (Act) to timely and accurately report contributions received and expenditures made.

This case arose from the Franchise Tax Board's (FTB) audit of Million More Voters for the January 1, 2009, through December 31, 2010, period, during which Million More Voters received contributions totaling \$5,637,278 and made expenditures totaling \$5,607,585. The FTB's audit and the subsequent investigation by the Fair Political Practices Commission's Enforcement Division (Enforcement Division) revealed that Million More Voters and Pulaski violated the Act by failing to report independent expenditures and subvendor payments on campaign statements, and failing to file 90-day independent expenditure reports and supplemental independent expenditure reports.

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.

Duty to File Campaign Statements

A person or combination of persons qualifies as a committee as soon as he or she receives contributions of \$1,000 or more during a single calendar year.² This type of committee is commonly referred to as a "recipient committee."

Under the Act, there are different kinds of recipient committees, defined by the type of election activity in which they engage. A recipient committee that is formed or exists primarily to support or oppose candidates or measures voted on in a state election, or in more than one county, is defined as a "state general purpose committee."³

Every state general purpose committee is required to file semiannual statements with the Secretary of State (SOS) each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31.⁴ Additionally, every state general purpose committee that made an independent expenditures of \$500 or more during the July 1

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations.

² Gov. Code § 82013, subd. (a).

³ Gov. Code § 82027.5, subd. (b).

⁴ Gov. Code § 84200, subd. (a).

through September 30, 2010, reporting period was required to file a preelection statement with the SOS by October 5, 2010, for that particular reporting period.⁵ If a state general purpose committee received contributions or made independent expenditures totaling \$500 or more during the October 1 through October 16, 2010, reporting period, it was required to file a preelection statement with the SOS by October 21, 2010, for that particular reporting period.⁶

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.⁷

In 2010, a state general purpose committee was required to file an original and a copy of all required campaign statements with the Secretary of State (SOS), a copy with the Registrar-Recorder of Los Angeles County, and a copy with the Registrar of Voters of the City and County of San Francisco.⁸

A committee is required to disclose on each campaign statements, among other things, the total amount of expenditures made during the reporting period to persons who have received \$100 or more as well as: (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; (5) in the case of an expenditure which is an independent expenditure to support or oppose a candidate, in addition to the information required in paragraphs (1) to (4) above, the date of the independent expenditure, the cumulative amount of independent expenditures made relative to the candidate; the full name of the candidate; the office or district for which the candidate seeks nomination or election; and the jurisdiction in which the candidate is being voted upon.⁹

An expenditure is a payment, forgiveness of a loan, 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.¹⁰ An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.¹¹

An independent expenditure is an expenditure made by any person in connection with a communication that expressly advocates the election or defeat of a clearly identified candidate or qualification, passage or defeat of a clearly identified candidate or qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a

⁵ Gov. Code §§ 84200.5, subd. (d), and 84200.7, subd. (b)(1).

⁶ Gov. Code §§ 84200.5, subd. (d), and 84200.7, subd. (b)(2).

⁷ Cal. Code Regs., tit. 2, § 18116.

⁸ Gov. Code § 84215, subd. (a).

⁹ Gov. Code § 84211, subd. (k).

¹⁰ Gov. Code § 82025.

¹¹ Gov. Code § 82025.

particular result in an election but which is not made to or at the behest of the affected candidate or committee.¹²

90-Day Independent Expenditure Reports

A committee that is required to file electronic reports pursuant to Government Code section 84605 and that makes independent expenditures of \$1,000 or more during an election cycle in connection with a candidate for elective state office must file online or electronically a report with the SOS within 24 hours of making the independent expenditure.¹³ The report must include the committee's full name and street address, as well as the name, office, and district of the candidate, and the amount and the date, as well as a description of goods or services for which the independent expenditure was made. This type of report is commonly referred to as a "90-day independent expenditure report."

In 2010, a committee was required to file electronic reports if it cumulatively received contributions or made expenditures totaling \$50,000 or more to support or oppose any candidate for elective state office or state measure.¹⁴ Once a committee is required to file electronically or online pursuant to Government Code section 84605, it is required to file all subsequent statements and reports electronically or online.¹⁵ An election cycle is the time commencing 90 days prior to an election and ending on the date of the election.¹⁶

Supplemental Independent Expenditure Reports

In addition to any other campaign statement required by the Act, if a committee makes independent expenditure totaling \$1,000 or more in a calendar year to support or oppose a candidate, a measure or qualification of a measurer, it must file independent expenditure reports at the same time, covering the same periods, and in the places where the committee would be required to file campaign statements, as if it were formed or existed primarily to support or oppose the candidate or measure or qualification of the measure.¹⁷ These reports are commonly referred to as "supplemental independent expenditure reports."

Required Reporting of Subvendor Information

No expenditure of \$500 or more shall be made, other than for overhead and normal operating expenses, by an agent or independent contractor, including, but not limited to, an advertising agency, on behalf of, or for the benefit of, any committee, unless the expenditure is reported by the committee as if the expenditure were made directly by the committee.¹⁸ This type of information reported by a committee is commonly referred to as "subvendor information."

¹² Gov. Code § 82031.

¹³ Gov. Code § 85500, subd. (a).

¹⁴ Gov. Code § 84605, subds. (a) and (b).

¹⁵ Gov. Code § 84605, subd. (g).

¹⁶ Gov. Code § 85204.

¹⁷ Gov. Code § 84203.5.

¹⁸ Gov. Code § 84303.

Expenditures of the type that must be reported include:

1. Expenditures for expert advice, expert analysis, or campaign management services, including but not limited to analysis, advice, or management services in connection with:
 - a. development of campaign strategy;
 - b. campaign management;
 - c. design or management of campaign literature or advertising;
 - d. campaign fund raising;
2. Expenditure for product or services which show how the campaign is conducted, including but not limited to expenditures for:
 - a. printed campaign literature;
 - b. advertising time or space;
 - c. campaign buttons and other campaign paraphernalia;
 - d. surveys, polls, signature gathering and door-to-door solicitation of voters;
 - e. facilities, invitations, or entertainment for fundraising events;
 - f. postage for campaign mailings; and
3. Expenditures to printers of mass mailings.¹⁹

A committee is required to disclose subvendor information as part of the contents of any campaign statement required to be filed by the committee.²⁰ Specifically, the committee must provide the following information on its campaign statements: (1) the subvendor's full name; (2) his or her street address; (3) the amount of each expenditure; and (4) a brief description of the consideration for which each expenditure was made.²¹

Treasurer Liability

A committee's treasurer has the duty to ensure compliance with all requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds.²² The treasurer of a committee may be held jointly and severally liable, along with the committee, for the committee's violations.²³

SUMMARY OF THE FACTS

In 2006, Million More Voters made independent expenditures totaling \$133,169 in support of Phil Angelides. Phil Angelides was a successful candidate for Governor in the June 6, 2006, primary election, and an unsuccessful candidate for Governor in the November 7, 2006, general election. Therefore Million More Voters reached the electronic filing threshold and qualified as an electronic filer in 2006.

¹⁹ Cal. Code Regs., tit. 2, § 18431, subd. (a).

²⁰ Gov. Code § 84211, subdivision (k)(6).

²¹ Gov. Code § 84211, subs. (k)(1)-(4) and (6).

²² Gov. Code §§ 81004, subd. (b), and 84100; Cal. Code Regs., tit. 2, § 18427, subd. (a).

²³ Gov. Code §§ 83116.5 and 91006.

Count 1: Failure to report an independent expenditure

On or about September 29, Million More Voters made an independent expenditure of \$7,500 in support of Jerry Brown. Jerry Brown was a successful candidate for Governor in the November 2, 2010, election. It was the only independent expenditure that Million More Voters made in support of Jerry Brown during the July 1 through September 30, 2010, reporting period. Million More Voters did not report making the independent expenditure to the SOS within 24 hours on a 90-day independent expenditure report or a supplemental independent expenditure report.

By failing to report that Million More Voters made, on or about September 29, 2010, a \$7,500 independent expenditure in support of Jerry Brown to the SOS on a 90-day independent expenditure report and on a supplemental independent expenditure report within 24 hours, Million More Voters and Pulaski violated Government Code sections 85500, subdivision (a), and 84203.5.

Count 2: Failure to report independent expenditures

On or about October 14, 2010, Million More Voters made independent expenditures of \$650,000 and \$434,000 in support of Jerry Brown. Million More Voters did not report making either independent expenditure to the SOS within 24 hours on a 90-day independent expenditure report or a supplemental independent expenditure report.

By failing to report that Million More Voters made, on or about October 14, 2010, independent expenditures of \$650,000 and \$434,000 in support of Jerry Brown to the SOS on a 90-day independent expenditure report and on a supplemental independent expenditure report within 24 hours, Million More Voters and Pulaski violated Government Code sections 85500, subdivision (a), and 84203.5.

Count 3: Failure to report independent expenditures

On or about October 20, Million More Voters made independent expenditures of \$9,000 and \$100,000 in support of Jerry Brown. Million More Voters did not report making either independent expenditure to the SOS within 24 hours on a 90-day independent expenditure report or a supplemental independent expenditure report.

By failing to report that Million More Voters made, on or about October 20, 2010, independent expenditures of \$9,000 and \$100,000 in support of Jerry Brown to the SOS on a 90-day independent expenditure report and a supplemental independent expenditure report within 24 hours, Million More Voters and Pulaski violated Government Code sections 85500, subdivision (a), and 84203.5.

Count 4: Failure to file supplemental independent expenditure reports

During the October 17 through December 31, 2010, reporting period, Million More Voters made independent expenditures totaling \$2,140,748 in support of Jerry Brown and

\$747,650 in support of Kamala Harris. Kamala Harris was a successful candidate for Attorney General in the November 2, 2010, election.

Million More Voters reported each of the independent expenditures it made in support of Jerry Brown and Kamala Harris during the October 17 through December 31, 2010, reporting period, except for the two independent expenditures it made in support of Jerry Brown on October 20, 2010, to the SOS within 24 hours on 90-day independent expenditure reports. Million More Voters also reported each of the independent expenditures, except the two it made in support of Jerry Brown on October 20, 2010, on the semiannual statement it filed with the SOS on January 31, 2011. However, Million More Voters did not file supplemental independent expenditure reports with the SOS for the independent expenditures it made in support of Jerry Brown and Kamala Harris during the October 17 through December 31, 2010, reporting period.

By failing to file supplemental independent expenditure reports with the SOS by January 31, 2011, for all independent expenditures Million More Voters made in support of Jerry Brown and Kamala Harris during the October 17 through December 31, 2010, reporting period, Million More Voters and Pulaski violated Government Code section 84203.5.

Count 5: Failure to report subvendor information

During the October 17 through December 31, 2010, reporting period, AKPD Message & Media, acting as Million More Voters' agent or independent contractor, made five payments of \$500 or more, totaling \$1,236,750, on behalf of Million More Voters. Million More Voters did not report any of those payments on the semiannual statement it filed with the SOS on January 31, 2011, for the October 17 through December 31, 2010, reporting period.

By failing to report to the SOS by January 31, 2011, all expenditures of \$500 or more made by an agent or independent contractor of Million More Voter on behalf of Million More Voters during the October 17 through December 31, 2010, reporting period, Million More Voters and Pulaski violated Government Code sections 84211, subdivision (k), and 84303.

CONCLUSION

This matter consists of five counts of violating the Act, which carry a maximum administrative penalty of \$25,000.

In determining the appropriate penalty for a particular violation of the Act, the Fair Political Practices Commission (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) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether, upon learning of the violation, the violator voluntarily provided amendments to provide full disclosure.

In determining the appropriate penalty for a violation, the Commission also considers penalties in prior cases involving similar violations. Recent similar cases where the respondents failed to report independent expenditures include:

- *In the Matter of Brown for Governor 2010-Sponsored by the San Diego and Imperial Counties Labor Council: El Cambio Empieza El Martes to Support Jerry and Xavier Martinez*, FPPC No. 13/0087. In April 2014, the Commission imposed a \$2,500 penalty on a committee for failing to report independent expenditures totaling \$126,184 on a semiannual statement.
- *In the Matter of California Taxpayer Advocate and Catherine Anderson, Treasurer*, FPPC No. 14/0324. In October 2014, the Commission imposed a \$2,500 penalty on a committee for failing to file a 90-day independent expenditure report for independent expenditures totaling \$58,508. However, the committee had reported all of the independent expenditures prior to the pertinent election on a campaign statement.

In Count 1, Million More Voters and Pulaski failed to report an independent expenditure of \$7,500 to the SOS within 24 hours on a 90-day independent expenditure report and a supplemental independent expenditure report. They reported the payment Million More Voters made for the independent expenditure on the preelection statement they filed with the SOS on or about October 8, 2010, but failed to disclose that the payment was for an independent expenditure in support of Jerry Brown.

This violation is aggravated by the fact that the independent expenditure should have been reported prior to the pertinent election on a 90-day independent expenditure report, a supplemental independent expenditure report, and a preelection statement. This violation is mitigated by the following facts: the amount of the independent expenditure is low in comparison to the total amount Million More Voters spent; and they reported the payment Million More Voters made to pay for the independent expenditure on Million More Voters' preelection statement that was filed with the SOS prior to the pertinent election. Therefore a \$2,000 penalty is recommended for Count 1.

In Count 2, Million More Voters and Pulaski failed to report two independent expenditures totaling \$1,084,000 to the SOS within 24 hours on a 90-day independent expenditure report and a supplemental independent expenditure report. They reported all payments Million More Voters made for both independent expenditures on the preelection statement they filed with the SOS on or about October 25, 2010, but failed to disclose that the payments were for independent expenditures in support of Jerry Brown.

This violation is aggravated by the following facts: the independent expenditures should have been reported to the SOS prior to the pertinent election; and the independent expenditures were very large. This violation is mitigated by the fact that they reported the payments Million More Voters made to pay for the two independent expenditures on Million More Voters' preelection statement that was filed with the SOS prior to the pertinent election. Therefore a \$4,000 penalty is recommended for Count 2.

In Count 3, Million More Voters and Pulaski failed to report two independent expenditures totaling \$109,000 on a 90-day independent expenditure report and a supplemental independent expenditure report. They did report all payments Million More Voters made for both independent expenditures on the semiannual statement they filed with the SOS on or about January 31, 2011, but failed to disclose that the payments were for independent expenditures in support of Jerry Brown.

This violation is aggravated by the fact that the independent expenditures should have been reported prior to the pertinent election. This violation is mitigated by the following facts: the independent expenditures were not large in comparison to the total amount Million More Voters spent; and they reported the payments Million More Voters made to pay for both independent expenditures on Million More Voters' semiannual statement. Therefore a \$3,000 penalty is recommended for Count 3.

Recent penalties approved by the Commission for failing to file supplemental independent expenditure reports include:

- *In the Matter of Citizens for a Clean and Honest Local Government and Brian Hews*, FPPC No. 13/071. In April 2014, the Commission imposed a \$3,000 penalty on a committee for failing to timely file three supplemental independent expenditure reports for independent expenditures totaling \$11,455.
- *In the Matter of Redwood City Chamber of Commerce*, FPPC No. 09/266. In April 2011, the Commission imposed a \$3,000 penalty on a committee for failing to timely file a supplemental independent expenditure report for independent expenditures totaling \$24,785.

In Count 4, the Million More Voters and Pulaski failed to file two supplemental expenditure reports after the pertinent election for ten independent expenditures totaling \$2,888,398. This violation is aggravated by the fact that the total amount of independent expenditures that should have been reported in the supplemental independent expenditure reports is an extremely large amount and accounts for about half of Million More Voters' activity during the entire audit period. This violation is mitigated by the following facts: eight of the ten independent expenditures, or 96% of the total amount not reported on the supplemental independent expenditure reports, were reported to the SOS prior to the pertinent election on 90-day independent expenditure reports and after the pertinent election on Million More Voters' semiannual statement. Therefore a \$3,000 penalty is recommended for Count 4.

Recent penalties approved by the Commission for failing to report subvendor information include:

- *In the Matter of Doreen Farr, Re-elect Doreen Farr Supervisor 2012, and Susan Bott, Treasurer*, FPPC No. 14/852. In March 2015, the Commission imposed a \$2,500 penalty on a candidate and her controlled committee for failing to report subvendor payments totaling \$149,318, which accounted for approximately 63% of the committee's reportable subvendor payments, and about 31% of the committee's total expenditures during the relevant reporting periods.

- *In the Matter of Adam Hill, Friends of Adam Hill, County Supervisor 2012, and Sharon A. McMahan, Treasurer, FPPC No. 14/595.* In February 2015, the Commission imposed a \$2,500 penalty on a candidate and his controlled committee for failing to report subvendor payments totaling \$68,059, which accounted for all of the committee's reportable subvendor payments for the audited period, and 51% of the committee's total expenditures during the audit period.

In Count 5, Million More Voters and Pulaski failed to report subvendor payments totaling \$1,236,750, which accounted for all subvendor payments Million More Voters was required to report during that particular reporting period and 36% of all payments Million More Voters made during that particular reporting period. This violation is aggravated by the fact that the amount not reported was very large and accounted for all subvendor payments Million More Voters was required to report for that particular reporting period. Therefore a \$4,000 penalty for Count 5 is recommended.

PROPOSED PENALTY

After considering the factors listed in Regulation §18361.5, prior similar cases, and other relevant factors, a total penalty of \$16,000 is recommended.

* * * * *