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3 **FAIR POLITICAL PRACTICES COMMISSION**
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
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12 In the Matter of) FPPC No. 14/335
13)
14 JOHN MCMAHON, JOHN MCMAHON FOR) STIPULATION, DECISION and
15 SAN BERNARDINO SHERIFF 2014, and) ORDER
16 MARVIN REITER,)
Respondents.)

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18 Complainant, Enforcement Division of the Fair Political Practices Commission, and
19 Respondents John McMahon, John McMahon for San Bernardino Sheriff 2014, and Marvin Reiter
20 agree that this Stipulation will be submitted for consideration by the Fair Political Practices
21 Commission at its next regularly scheduled 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 the Respondent, pursuant to Section 83116 of the Government Code.

25 John McMahon, John McMahon for San Bernardino Sheriff 2014, and Marvin Reiter
26 understand, and hereby knowingly and voluntarily waive, any and all procedural rights set forth in
27 Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1 through 18361.9
28 of Title 2 of the California Code of Regulations. This includes, but is not limited to, the right to

1 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
2 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
3 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
4 the hearing as a hearing officer, and to have the matter judicially reviewed.

5 It is further stipulated and agreed that John McMahon, John McMahon for San Bernardino
6 Sheriff 2014, and Marvin Reiter violated the Political Reform Act by receiving monetary contributions
7 of \$500 in the form of a cashier's check, and \$100 in the form of a money order, which were not drawn
8 from the bank account of the contributors, in violation of Government Code Section 84300, subdivision
9 (c) (1 count). This count is described in Exhibit 1, which is attached hereto and incorporated by
10 reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this
11 matter.

12 John McMahon, John McMahon for San Bernardino Sheriff 2014, and Marvin Reiter agree to
13 the issuance of the Decision and Order, which is attached hereto. John McMahon, John McMahon for
14 San Bernardino Sheriff 2014, and Marvin Reiter also agree to the Commission imposing upon them an
15 administrative penalty in the amount of \$1,500. A cashier's check from John McMahon, John
16 McMahon for San Bernardino Sheriff 2014, and Marvin Reiter in said amount, made payable to the
17 "General Fund of the State of California," is submitted with this Stipulation as full payment of the
18 administrative penalty, to be held by the State of California until the Commission issues its decision
19 and order regarding this matter. The parties agree that in the event the Commission refuses to accept
20 this Stipulation, it shall become null and void, and within fifteen (15) business days after the
21 Commission meeting at which the Stipulation is rejected, all payments tendered by John McMahon,
22 John McMahon for San Bernardino Sheriff 2014, and Marvin Reiter in connection with this Stipulation
23 shall be reimbursed to John McMahon, John McMahon for San Bernardino Sheriff 2014, and Marvin
24 Reiter. John McMahon, John McMahon for San Bernardino Sheriff 2014, and Marvin Reiter further
25 stipulate and agree that in the event the Commission rejects the Stipulation, and a full evidentiary
26 hearing before the Commission becomes necessary, neither any member of the Commission, nor the
27 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

Dated: _____

John McMahon, Respondent, individually, and on behalf of,
John McMahon for San Bernardino Sheriff 2014, Respondent

Dated: _____

Marvin Reiter, Respondent, individually, and on behalf of,
John McMahon for San Bernardino Sheriff 2014, Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of John McMahon, John McMahon for
3 San Bernardino Sheriff 2014, and Marvin Reiter,” FPPC No. 14/335, including all attached exhibits, is
4 hereby accepted as the final decision and order of the Fair Political Practices Commission, effective
5 upon execution below by the Chair.

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7 IT IS SO ORDERED.

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9 Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

John McMahon was a successful candidate for San Bernardino Sheriff/Coroner/Public Administrator in the June 3, 2014 election, and Friends of John McMahon for San Bernardino Sheriff 2014 is his candidate controlled committee. Marvin Reiter is the Committee's treasurer.

This case arose from the Enforcement Division of the Fair Political Practices Commission's ("Commission") audit of Friends of John McMahon for San Bernardino Sheriff 2014, required by the Government Code Section 83123.5 and the County of San Bernardino Campaign Finance Reform Ordinance (the "Ordinance"). The Commission is authorized to be the civil prosecutor of the Ordinance. The audit covered the period January 1, 2013 through June 30, 2014, and the Committee reported \$316,105 in contributions received and \$322,022 in expenditures made for the time period. Respondents violated the Political Reform Act (the "Act")¹ by accepting contributions that were not drawn from the bank account of the contributor.

SUMMARY OF THE LAW

An express purpose of the Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited.² The Act therefore establishes a campaign reporting system designed to accomplish this purpose of disclosure.

Contributions Not Drawn on the Contributor's Bank Account

No contribution of \$100 or more, other than an in-kind contribution, shall be made unless in the form of a written instrument containing the name of the donor and the name of the payee and drawn from the account of the donor or intermediary.³

A cashier's check is similar to a money order in that it is not drawn from the account of the remitter. Rather, the remitter pays the bank to issue a cashier's check, which is guaranteed by the bank, but not drawn from the account of the remitter.⁴ In the case of a contribution made in the form of a cashier's check or money order, the remitter is referred to as the contributor.

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 18109 through 18997 of Title 2, California Code of Regulations.

² Section 81002, subdivision (a).

³ Section 84300, subdivision (c).

⁴ See, e.g., Cal. U. Com. Code, §§ 3103, subdivisions (a)(2), (3), and (11), and 3104, subdivisions (f) and (g).

Liability of Committee Treasurers

Every committee must have a treasurer.⁵ It is the duty of a committee's treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds and the reporting of such funds.⁶ A committee's treasurer may be held jointly and severally liable with the committee for any reporting violations.⁷

SUMMARY OF THE FACTS

The Enforcement Division's audit found that John McMahon, Friends of John McMahon for San Bernardino Sheriff 2014, and Marvin Reiter, by and large, complied with the Act and the Ordinance's campaign reporting requirements. However, the audit revealed that John McMahon, Friends of John McMahon for San Bernardino Sheriff 2014, and Marvin Reiter received and deposited into the campaign bank account a cashier's check in the amount of \$500 from Richard Tyler, on or about May 23, 2013, and a money order in the amount of \$100 from Ronald Van Luven, on or about June 20, 2013.

VIOLATION

Count 1: Receiving Contributions Not Drawn From the Bank Account of the Contributor

During the semi-annual reporting period ending June 30, 2013, John McMahon, Friends of John McMahon for San Bernardino Sheriff 2014, and Marvin Reiter, received a cashier's check in the amount of \$500 from Richard Tyler and a money order in the amount of \$100 from Ronald Van Luven, in violation of Government Code Section 84300, subdivision (c).

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of \$5,000.

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) 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.

⁵ Section 84100.

⁶ Section 84100 and Regulation 18427, subd. (a).

⁷ Sections 83116.5 and 91006.

The Commission also considers penalties in prior cases involving similar violations. A recent similar case involving the acceptance of a contribution in the form of cashier's checks or money orders is:

- *In the Matter of Paul Schrader, Elect Paul Schrader Sheriff/Coroner/Public Administrator 2014, and Judith Schrader; FPPC No. 14/046.* Schrader was an unsuccessful candidate for San Bernardino Sheriff/Coroner/Public Administrator in the June 3, 2014 election. Schrader received a cash contribution of \$900, on March 03, 2013. On May 21, 2015, the Commission approved a penalty of \$1,500 for the violation

In mitigation, McMahon and Reiter have not previously been found to have violated the Act. The contributions were properly reported on the semi-annual campaign statement. In addition, the Committee promptly refunded the contributions after notification during the audit and the refund was disclosed on the pre-election statement covering March 18, 2014 through May 17, 2014, filed on May 23, 2014. However, the public harm in receiving contributions via money order and cashier's check is that there is no audit trail to confirm who gave the contribution.

PROPOSED PENALTY

After review of the facts of this case, including consideration of the factors of Regulation 18361.5, the imposition of a penalty of \$1,500 is recommended.