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7

8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**
10

11 In the Matter of) FPPC No. 2016-19753
12)
13)
14) **STIPULATION, DECISION and ORDER**
15)
16)
17)
18)
19 Respondents.)

20 **STIPULATION**

21 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
22 Respondents Save Our Forest and Ranchlands Opposed to Measure B Sponsored by California Local
23 Energy Advancing Renewables (“Save Our Forest”), Jana Clark Sanders and Duncan McFetridge, hereby
24 agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission
25 at its next regularly scheduled meeting.

26 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this
27 matter and to reach a final disposition without the necessity of holding an additional administrative
28 hearing to determine the liability of Save Our Forest, Sanders and McFetridge.

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1 Save Our Forest, Sanders and McFetridge understand, and hereby knowingly and voluntarily
2 waive, any and all procedural rights set forth in Government Code Sections 83115.5, 11503 and 11523,
3 and in California Code of Regulations, title 2, Sections 18361.1 through 18361.9. This includes, but is
4 not limited to the right to personally appear at any administrative hearing held in this matter, to be
5 represented by an attorney at Save Our Forest's, Sanders's and McFetridge's own expense, to confront
6 and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing,
7 to have an impartial administrative law judge preside over the hearing as a hearing officer, and to have
8 the matter judicially reviewed.

9 It is further stipulated and agreed that Save Our Forest, Sanders and McFetridge violated the
10 Political Reform Act as described in Exhibit 1: Save Our Forest, Sanders and McFetridge failed to timely
11 file a statement of organization by the September 22, 2016 due date, violating Government Code section
12 84101, subdivision (a) (1 count); Save Our Forest, Sanders and McFetridge failed to timely file two 24-
13 hour contribution reports – by the September 13, 2016 due date for receiving a \$110,000 contribution on
14 September 12, 2016, and by the September 22, 2016 due date for making a \$45,000 contribution on
15 September 21, 2016 – violating Government Code section 84203, subdivisions (a) and (b) (1 count); and
16 Save Our Forest, Sanders and McFetridge failed to timely file a preelection campaign statement for the
17 reporting period of January 1 – September 24, 2016, by the September 29, 2016 due date, violating
18 Government Code sections 84200.5, subdivision (a), and 84200.8 (1 count).

19 Exhibit 1 is attached hereto and incorporated by reference as though fully set forth herein.
20 Exhibit 1 is a true and accurate summary of the facts in this matter.

21 Save Our Forest, Sanders and McFetridge agree to the issuance of the Decision and Order, which
22 is attached hereto. Save Our Forest, Sanders and McFetridge also agree to the Commission imposing an
23 administrative penalty in the total amount of Five Thousand Dollars (\$5,000). A cashier's check from
24 Save Our Forest, Sanders and McFetridge in said amount, made payable to the "General Fund of the State
25 of California," is submitted with this Stipulation as full payment of the administrative penalty, and shall
26 be held by the State of California until the Commission issues its Decision and Order regarding this
27 matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall
28 become null and void, and within fifteen (15) business days after the Commission meeting at which the

1 Stipulation is rejected, all payments tendered by Save Our Forest, Sanders and McFetridge in connection
2 with this Stipulation shall be reimbursed to Save Our Forest, Sanders and McFetridge. Save Our Forest,
3 Sanders and McFetridge further stipulate and agree that in the event the Commission rejects the
4 Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither any
5 member of the Commission, nor the Executive Director, shall be disqualified because of prior
6 consideration of this Stipulation.

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8 Dated: _____
9 Galena West, Chief, on Behalf of the Enforcement Division
10 Fair Political Practices Commission

11 Dated: _____
12 Jana Clarke Sanders, Respondent, individually and o/b/o Save
13 Our Forest and Ranchlands Opposed to Measure B Sponsored
14 by California Local Energy Advancing Renewables,
15 Respondent

16 Dated: _____
17 Duncan McFetridge, Respondent

18 **DECISION AND ORDER**

19 The foregoing Stipulation of the parties “In the Matter of Save Our Forest and Ranchlands
20 Opposed to Measure B Sponsored by California Local Energy Advancing Renewables, Jana Clark
21 Sanders and Duncan McFetridge,” FPPC Case No. 2016-19753, including all attached exhibits, is hereby
22 accepted as the final decision and order of the Fair Political Practices Commission, effective upon
23 execution below by the Chair.

24 IT IS SO ORDERED.

25 Dated: _____
26 Joann Remke, Chair
27 Fair Political Practices Commission
28

EXHIBIT 1

INTRODUCTION

Respondent Save Our Forest and Ranchlands Opposed to Measure B Sponsored by California Local Energy Advancing Renewables (“Save Our Forest”) is a primarily formed sponsored committee opposing Measure B in San Diego County, CA, which is on the ballot for the November 8, 2016 election. Respondent Jana Clark Sanders is treasurer of Save Our Forest, and Duncan McFetridge is the principal officer of Save Our Forest.

Under the Political Reform Act (Act)¹, Save Our Forest, Sanders and McFetridge had a duty to file a statement of organization, campaign statements and campaign reports disclosing particular information. Save Our Forest, Sanders and McFetridge failed to timely file a statement of organization, two 24-hour contribution reports and a preelection campaign statement related to the November 8, 2016 election.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed in 2016.

Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

When enacting the Political Reform Act, 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.² To that end, the Act must be liberally construed to achieve its purposes.³

There are many purposes of the Act. One purpose 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.⁴ Another is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁵

Mandatory Filing of Campaign Statements and Reports

At the core of the Act’s campaign reporting system is the requirement that committees must file campaign statements and reports for certain reporting periods and by certain deadlines.⁶

¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² § 81001, subd. (h).

³ § 81003.

⁴ § 81002, subd. (a).

⁵ § 81002, subd. (f).

⁶ See § 84200, *et seq.*

Duty to File a Statement of Organization

The Act defines a “committee” to include any person (or combination of persons) who receives contributions totaling \$2,000 or more in a calendar year.⁷ This type of committee commonly is referred to as a “recipient committee.” A recipient committee that is formed or exists primarily to support or oppose a ballot measure, is a “primarily formed committee.”⁸

The Act requires a primarily formed ballot measure committee to file a statement of organization within ten days after it qualifies as a committee.⁹ The committee must file the original of the statement of organization with the Secretary of State, and a copy of the statement of organization with the local filing officer with whom the committee is required to file the originals of its campaign statements.¹⁰

Duty to File Preelection Campaign Statements

Committees primarily formed to support or oppose any measure appearing on the ballot for the November 8, 2016 election are required to file pre-election campaign statements (Form 460’s) with the local filing officer for the following reporting periods by the deadlines noted in the chart below:¹¹

Reporting Period	Filing Deadline
7/1/16 – 9/24/16	9/29/16
9/25/16 – 10/22/16	10/27/16

Duty to File 24-Hour Contribution Reports

When a committee makes or receives a late contribution, the committee must disclose the contribution in a late contribution report filed at each office with which the committee is required to file its next campaign statement, within 24 hours of making or receiving the contribution.¹² A “late contribution” means a contribution which totals in the aggregate \$1,000 or more that is made to or received by a committee formed or existing primarily to support or oppose a measure during the 90-day period preceding the date of the election, or on the date of the election, at which the measure is to be voted on.¹³

Treasurer and Principal Officer Liability

Every committee must have a treasurer.¹⁴ A committee’s principal officer has primary responsibility for approving the political activities of a committee.¹⁵ It is the duty of a committee’s

⁷ § 82013, subd. (a).

⁸ § 82047.5.

⁹ § 84101.

¹⁰ § 84215.

¹¹ §§ 84200.5, subd. (a), and 84200.8.

¹² §§ 84203, subd. (a) and (b), and 84215.

¹³ § 82036, subd. (a).

¹⁴ § 84100.

¹⁵ § 82047.6, and Reg. 18402.1, subd. (b).

treasurer and principal officer 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.¹⁶ A committee’s treasurer and principal officer may be held jointly and severally liable with the committee for any reporting violations.¹⁷

SUMMARY OF THE FACTS

Save Our Forest is a 501(c)(4) based in San Diego County, and opposes the local Measure B on the November 8, 2016 ballot. Measure B would amend the county's general plan, zoning ordinance, and code of regulatory ordinances to authorize the development of a 608-acre planned community.

Save Our Forest qualified as a committee under the Act on September 12, 2016, when it received a \$110,000 contribution from California Local Energy Advancing Renewables. On September 21, 2016, Save Our Forest made a \$45,000 contribution to Citizens and Taxpayers Opposed to Lilac Hills Ranch Measure B. This activity required Save Our Forest, Sanders and McFetridge to file a statement of organization, two 24-hour contribution reports, and a pre-election campaign statement.

After notice from the Enforcement Division, and as of the date of this settlement agreement, Save Our Forest, Sanders and McFetridge filed the following statements and reports:

Statement Type	Reporting Period	Due Date	Date Filed	Days Late
Statement of Organization	n/a	09/22/2016	10/12/2016	20
24-Hour Contribution Report	09/12/2016	09/13/2016	10/12/2016	30
24-Hour Contribution Report	09/21/2016	09/22/2016	10/12/2016	21
Preelection Campaign Statement	01/01 – 09/24/2016	09/29/2016	10/12/2016	13

VIOLATIONS

Count 1: Failure to Timely File Statement of Organization

Save Our Forest, Sanders and McFetridge failed to timely file a statement of organization by the September 22, 2016 due date, violating Government Code section 84101, subdivision (a).

Count 2: Failure to Timely File 24-Hour Contribution Reports

Save Our Forest, Sanders and McFetridge failed to timely file two 24-hour contribution reports – by the September 13, 2016 due date for receiving a \$110,000 contribution on September 12, 2016, and by the September 22, 2016 due date for making a \$45,000 contribution on September 21, 2016 – violating Government Code section 84203, subdivisions (a) and (b).

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¹⁶ §§ 82047.6 and 84100; Reg. 18402.1, subd. (b), and 18427.

¹⁷ §§ 83116.5 and 91006; Reg. 18316.6.

Count 3: Failure to Timely File Preelection Campaign Statements

Save Our Forest, Sanders and McFetridge failed to timely file a preelection campaign statement for the reporting period of January 1 – September 24, 2016, by the September 29, 2016 due date, violating Government Code sections 84200.5, subdivision (a), and 84200.8.

CONCLUSION

This matter consists of three counts of violating the Act, which carries a maximum administrative penalty of \$5,000 per count, totaling \$15,000.

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.

The Commission also considers penalties in prior cases involving similar violations. Recent cases with similar violations include:

Failure to Timely File a Statement of Organization

- *In the Matter of Warren P. Willis, and Warren Willis for Senate 2010*, FPPC No. 12/089. Respondent, a first-time candidate, and his controlled committee, failed to timely file a statement of organization within 10 days of qualifying as a committee. The statement of organization was not filed until after the primary election. On December 13, 2012, the Commission approved a \$2,500 penalty for this violation (1 count).

Failure to Timely File 24-Hour Contribution Report

- *In the Matter of Ruben Valencia, Valencia 4 City Council 2014, and Kathleen Christiansen*, FPPC No. 14/1234. The respondents failed to timely file eight late contribution reports disclosing nine contributions totaling \$17,000. Six of the contributions were timely reported on pre-election statements. On September 17, 2015, the Commission approved a \$1,500 penalty for this violation (1 count).

Failure to Timely File Preelection Campaign Statement

- *In the Matter of the United Food and Commercial Workers Active Ballot Club Yes on Prop. 30, No on Prop. 32 Committee, and Anthony Perrone*; FPPC No. 14/605. Respondents, a sponsored primarily formed ballot measure committee and its treasurer

failed to timely file a preelection campaign statement, which should have disclosed \$202,441 in receipts, and \$0 in expenditures. Disclosure was not made until after the relevant election. On January 15, 2015, the Commission approved a \$2,000 penalty for this violation (1 count).

A central purpose of the Act is to ensure receipts and expenditures in election campaigns are fully and truthfully disclosed.¹⁸ Save Our Forest, Sanders and McFetridge failed to timely file a statement of organization, two 24-hour contribution reports, and a preelection report. Consequently, Save Our Forest, Sanders and McFetridge deprived the public of important information about Save Our Forest’s contributors and financial activities, which included receiving a \$110,000 contribution and making a \$45,000 contribution within the 24-hour reporting period.

But, unlike the comparable cases above, Save Our Forest, Sanders and McFetridge promptly filed each of these late statements and reports after contact from the Enforcement Division, which provided full disclosure of Save Our Forest’s contributors and financial activities well before the November 8, 2016 election.

In mitigation, Save Our Forest, Sanders and McFetridge have no prior history of violating the Act.

PROPOSED PENALTY

After considering the factors listed in Regulation 18361.5, prior similar cases, and other relevant factors, the following penalty is recommended:

Counts	Description	Penalty per count
1	Failure to Timely File Statement of Organization	\$1,500
2	Failure to Timely File 24-Hour Contribution Reports	\$1,500
3	Failure to Timely File Preelection Campaign Statements	\$2,000
	Total Agreed Upon Penalty	\$5,000

* * * * *

¹⁸ § 81002, subd. (a).