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

10  
11 In the Matter of:

12 JOHN MCPARTLAND FOR BART  
13 DIRECTOR 2012, JOHN  
MCPARTLAND, AND KENNETH PON,

14 Respondents.

FPPC No. 16/299

15 STIPULATION, DECISION, AND ORDER

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17 **STIPULATION**

18 Complainant, the Enforcement Division of the Fair Political Practices Commission and  
19 respondents John McPartland for BART Director 2012, John McPartland, and Kenneth Pon (Respondents)  
20 hereby agree that this Stipulation will be submitted for consideration by the Fair Political Practices  
21 Commission (Commission) at its next regularly scheduled meeting.

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

25 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural  
26 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of  
27 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to, the right to  
28 personally appear at any administrative hearing held in this matter, to be represented by an attorney at

1 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to  
2 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over  
3 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 to  
5 timely file a pre-election statement and a semi-annual statement in violation of Government Code sections  
6 84200, 84200.5, subdivision (b), and 84200.7, subdivision (b) (1 count), and violated the Political Reform  
7 Act by failing to timely file semi-annual statements in violation of Government Code section 84200 (1  
8 count), all as described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference as though  
9 fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

10 Respondents agree to the issuance of the Decision and Order, which is attached hereto.  
11 Respondents also agree to the Commission imposing an administrative penalty in the total amount of  
12 \$3,500. Respondents submitted with this Stipulation a cashier's check in said amount, made payable to  
13 the "General Fund of the State of California," as full payment of the administrative penalty that shall be  
14 held by the State of California until the Commission issues its Decision and Order regarding this matter.  
15 The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null  
16 and void, and within fifteen (15) business days after the Commission meeting at which the Stipulation is  
17 rejected, all payments tendered by Respondents in connection with this Stipulation shall be reimbursed to  
18 Respondents. Respondents further stipulate and agree that in the event the Commission rejects the  
19 Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither any member  
20 of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this  
21 Stipulation.

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23 Dated: \_\_\_\_\_  
24 Galena West, Chief, on behalf of the Enforcement  
25 Division of the Fair Political Practices Commission  
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Dated: \_\_\_\_\_  
John McPartland, individually and on behalf of John  
McPartland for BART Director 2012

Dated: \_\_\_\_\_  
Kenneth Pon, individually

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of John McPartland for BART Director  
3 2012, John McPartland, and Kenneth Pon,” FPPC No. 16/299, including all attached exhibits, is hereby  
4 accepted as the final decision and order of the Fair Political Practices Commission, effective upon  
5 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**

Respondent John McPartland (“McPartland”) was a successful candidate for the BART Board of Directors, District 5, in the November 6, 2012 election. Respondent John McPartland for BART Director 2012 (the “Committee”) is his candidate controlled committee. Kenneth Pon (“Pon”) is the Committee’s treasurer.

Under the Political Reform Act (the “Act”)<sup>1</sup> a controlled committee must timely file campaign statements disclosing the contributions it receives and the expenditures it makes. The Committee violated the Act by failing to timely file one pre-election statement and several semi-annual campaign statements. As the candidate and treasurer, McPartland and Pon are liable, along with the Committee, for the Committee’s campaign reporting violations.<sup>2</sup>

### **SUMMARY OF THE LAW**

An express purpose of the Act is to ensure that campaign contributions and expenditures are fully and truthfully disclosed so that voters are fully informed and improper practices are discouraged.

In furtherance of this purpose, the Act requires controlled committees to file pre-election statements during election years.<sup>3</sup> Before a general election, a committee must file a pre-election statement no later than 12 days before the election for the statement period ending 17 days before the election.<sup>4</sup> The Act also requires controlled committees to file two semi-annual statements each year by July 31 for the period ending June 30 and by January 31 for the period ending December 31.<sup>5</sup>

### **SUMMARY OF THE FACTS**

The Committee first qualified as a candidate controlled committee on February 22, 2012. The Committee timely filed its first semi-annual statement and its pre-election statement for the period of July 1, 2012 to September 30, 2012. However, the Committee then failed to timely file a pre-election statement for the period of October 1, 2012 to October 20, 2012 and semi-annual statements for the periods of October 21, 2012 to December 31, 2012, 2013, 2014, and 2015.

The Committee was referred by the Secretary of State’s office for not filing the \$50 annual fee. According to the Alameda County Registrar of Voters, it never contacted McPartland, Pon, or

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

<sup>2</sup> Sections 83116.5 and 91004.

<sup>3</sup> Section 84200.5, subdivision (a).

<sup>4</sup> Section 84200.7, subdivision (b).

<sup>5</sup> Section 84200.

the Committee regarding their duty to file campaign statements. On April 12, 2016, the Enforcement Division contacted the Committee regarding its failure to file campaign statements, as well as its failure to pay a \$50 annual fee to the Secretary of State for the years 2013 and 2014.

In response to the Enforcement Division's letter, the Committee filed its pre-election statement for the period of October 1, 2012 to October 20, 2012 on April 29, 2016, 1283 days late. The statement disclosed \$9,899.00 in contributions and \$15,122.58 in expenditures. Approximately half of the Committee's overall expenditures were made and approximately one-quarter of the Committee's overall contributions were received during this period.

The Committee filed its semi-annual statement for the period of October 21, 2012 to December 31, 2012, which reported \$1,437.41 in contributions and \$7,641.66 in expenditures, 1185 days late on April 29, 2016.

The Committee filed all its semi-annual statements for 2013, 2014, and 2015 on April 29, 2016. These statements did not disclose any contributions, but did disclose expenditures totaling \$1,112.42. During two of the periods in question, the Committee did not report any activity.

On April 29, 2016, the Committee paid the \$50 annual fee and \$150 penalty for each year from 2013 to 2016.

#### Count 1: Failure to Timely File a Pre-Election Statement and a Semi-Annual Statement

The Committee failed to timely file a pre-election statement for the period of October 1, 2012 to October 20, 2012 and a semi-annual statement for the period of October 21, 2012 to December 31, 2012, in violation of Sections 84200, 84200.5, subdivision (b), and 84200.7, subdivision (b).

#### Count 2: Failure to Timely File Semi-Annual Statements

The Committee failed to timely file six semi-annual statements for the periods of January 1, 2013 to June 30, 2013, July 1, 2013 to December 31, 2013, January 1, 2014 to June 30, 2014, July 1, 2014 to December 31, 2014, January 1, 2015 to June 30, 2015, and July 1, 2015 to December 31, 2015, in violation of Section 84200.

### **CONCLUSION**

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

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; whether there was a pattern of violations; and whether the violator, upon learning of the violations, voluntarily filed amendments.

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

#### Count 1

- *In the Matter of Patricia Lopez, Patty Lopez for Assembly 2014, and Carolina Perez*, FPPC Nos. 15/313 and 15/314. (Commission approved a stipulated decision on March 17, 2016.) The respondents, a successful candidate for Assembly District 39, her candidate controlled committee, and the committee treasurer, failed to timely file two pre-election statements and one semi-annual statement. During the periods in question, the committee received \$13,242.01 and expended \$10,965.95. The Commission imposed a penalty of \$2,500. This is similar to the case in question because the statements were filed after the election and the monetary amounts are comparable.
- *In the Matter of Fred Garcia, Fred Garcia for Sheriff 2014, and Jeff Davis*, FPPC No. 2014/299. (Commission approved a stipulated decision on July 21, 2016.) The respondents, an unsuccessful Monterey County Sheriff candidate, his controlled committee, and the treasurer, failed to timely file a semi-annual statement and a pre-election statement that disclosed approximately \$14,664 in contributions and \$12,777 in expenditures. The Commission imposed a penalty of \$2,500.

#### Count 2

- *In the Matter of John Brosnan and John Brosnan for District 3 Supervisor 2014*, FPPC No. 14/1387. (Commission approved a stipulated decision on March 17, 2016.) The respondents, an unsuccessful candidate Lake County Supervisor and his controlled committee, failed to timely file four pre-election statements and one semi-annual campaign statement. During these statement periods, the committee reported \$30,320.00 in contributions and \$22,325.27 in expenditures. The Commission imposed a penalty of \$2,500. This case is dissimilar to the current case because the Committee's total activity for the statements included in Count 2 is much lower than the activity in *Brosnan*.
- *In the Matter of Judith L. Dunlap, Dunlap for Mayor 2010, Dunlap 2009, and Friends to Elect Judy Dunlap*, FPPC No. 10/208. (Commission approved a stipulated decision on August 13, 2013.) The respondents, a successful candidate for Inglewood City Council and her controlled committees, failed to timely file two semi-annual statements. During the periods in question, the committee received approximately \$14,250 and expended approximately \$29,086. The Commission imposed a penalty of \$1,500. This case is not fully analogous because the Committee reported significantly less activity than the committee in *Dunlap*.

A central purpose of the Act is to ensure receipts and expenditures in election campaigns are fully and truthfully disclosed.<sup>6</sup> The Committee failed in multiple instances to timely disclose its contributions and expenditures. The public did not have notice of almost 50 percent of the

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<sup>6</sup> Section 81002, subdivision (a).

Committee's overall expenditures and over 24 percent of the Committee's overall contributions until 1,283 days after the deadline for the pre-election statement that would have disclosed this activity.

In mitigation, the Committee filed all past-due statements and paid its delinquent annual fees and penalties 13 business days after the Enforcement Division contacted the Committee. The filing officer confirmed that no notices were sent to the Committee regarding the missing filings. McPartland stated that the violations occurred because he had severe health problems beginning in June or July 2012. Pon stated he did not have access to campaign documents during McPartland's approximately two-year recovery.

### **PROPOSED PENALTY**

After considering the factors of Regulation 18361.5, the penalties imposed in prior cases, and other relevant information, a penalty of \$2,500 for Count 1 and a penalty of \$1,000 for Count 2 for a total penalty of \$3,500 is recommended.