

1 GALENA WEST
Chief of Enforcement
2 CHRISTOPHER BURTON
Commission Counsel
3 Fair Political Practices Commission
1102 Q Street, Suite 3000
4 Sacramento, CA 95811

5 Telephone: (916) 322-5660

6 Attorneys for Complainant
Fair Political Practices Commission, Enforcement Division
7

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

11 In the Matter of:

12 HUMBOLDT DEPUTY SHERIFF'S
13 ORGANIZATION PAC, LESLIE S.
14 BORGES, AND SCOTT N. HICKS,

15 Respondents.

FPPC Case No. 15/1966

STIPULATION, DECISION AND ORDER

16 INTRODUCTION

17 The Humboldt Deputy Sheriff's Organization PAC (the "Committee") is a county general
18 purpose committee that filed its initial statement of organization on or about May 15, 2008. The
19 Committee is sponsored by the Humboldt Deputy Sheriff's Organization. During the pertinent time
20 period, Leslie S. Borges ("Borges") served as the treasurer and, as Respondents contend, Scott N. Hicks
21 ("Hicks") was responsible for fulfilling the Committee's reporting obligations on behalf of the sponsor.

22 Respondents committed numerous reporting violations of the Political Reform Act (the "Act")¹
23 dating back to 2012. The Committee failed to timely file any required semiannual campaign statements
24 during a five-year period spanning 2012 to 2016. Further, during that period of time, Respondents also
25 failed to timely file several pre-election campaign statements and 24-hour contribution reports required
26

27
28 ¹ The 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.

1 due to its pre-election activity supporting certain local candidates. These violations are summarized in
2 greater detail below.

3 **SUMMARY OF THE LAW**

4 The Act and its regulations are amended from time to time. The violations in this case occurred
5 between 2012 and 2017. For this reason, all legal references and discussions of law pertain to the Act's
6 provisions as they existed at that time.

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

8 When enacting the Act, the people of California found and declared that previous laws regulating
9 political practices suffered from inadequate enforcement by state and local authorities.² For this reason,
10 the Act is to be construed liberally to accomplish its purposes.³

11 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in
12 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
13 practices are inhibited.⁴ Along these lines, the Act includes a comprehensive campaign reporting system,
14 and certain disclosures are required for political advertisements.⁵ Another purpose of the Act is to
15 provide adequate enforcement mechanisms so that the Act will be "vigorously enforced."⁶

16 Mandatory Filing of Campaign Statements

17 At the core of the Act's campaign reporting system is the requirement that committees file
18 campaign statements and reports for certain reporting periods and by certain deadlines.⁷

19 The Act requires a recipient committee to file semiannual campaign statements twice per year
20 disclosing its campaign contributions and expenditures. A recipient committee must file a semiannual
21 statement by January 31 for the period ending December 31 and by July 31 for the period ending June
22 30, or the next business day if the deadline falls on a weekend or holiday.⁸

23 ///

24 _____
25 ² Section 81001, subd. (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subd. (a).

28 ⁵ Sections 84200, *et seq.*; and 84501, *et seq.*

⁶ Section 81002, subd. (f).

⁷ Sections 84200, *et seq.*

⁸ Section 84200, subd. (a); Regulation 18116, subd. (a).

1 Also, in an even-numbered year in which the statewide direct primary election is held on the first
2 Tuesday after the first Monday in June, a state or county general purpose committee shall file certain pre-
3 election campaign statements if it makes contributions or independent expenditures totaling \$500 or more
4 during the period covered by the pre-election statement.⁹ The Act provides that pre-election campaign
5 statements for the June election period shall be filed as follows: (1) for the period ending 45 days before
6 the election, a statement to be filed no later than 40 days before the election; and (2) for the period ending
7 17 days before the election, a statement to be filed no later than 12 days before the election.¹⁰

8 Duty to File 24-Hour Contribution Reports

9 Each candidate or committee that makes or receives a late contribution must file a report within
10 24 hours of making or receiving the contribution.¹¹ A “late contribution” includes a contribution
11 aggregating \$1,000 or more that is made or received by a candidate or his or her controlled committee
12 during the 90-day period preceding an election or on the date of the election.¹²

13 Joint and Several Liability of Committee and Treasurer

14 It is the duty of a committee treasurer to ensure that the committee complies with the Act.¹³ A
15 treasurer and any other person responsible for any violation may be held jointly and severally liable,
16 along with the committee, for violations committed by the committee.¹⁴

17 **SUMMARY OF THE FACTS**

18 This case was originally opened as a referral from the Secretary of State for the Committee’s
19 failure to pay certain annual fees. After requesting the Committee’s filing history, the Enforcement
20 Division discovered that the Committee had failed to file any campaign statements since 2011. Further,
21 the Committee produced a number of independent expenditure advertisements in 2016 which did not
22 include the proper disclosures.

23 On or about March 25, 2016, the Enforcement Division instructed the Committee to file its
24

25 ⁹ Section 84200.5, subd. (e) (2014 version); Section 84200.5, subd. (c) (2016 version).

26 ¹⁰ Section 84200.7, subd. (a) (2014 version – provides that, for the period ending March 17, a statement to be filed no
later than March 22); Section 84200.8, subds. (a) and (b) (2016 version).

27 ¹¹ Section 84203.

28 ¹² Section 82036 (2016). The 2014 version of Section 82036 describes the reporting period as “within 90 days before
the date of the election.”

¹³ Sections 81004, 84100, 84104, and 84213; Regulation 18427.

¹⁴ Sections 83116.5 and 91006.

1 missing campaign statements. On or about February 20, 2017, the Committee finally filed its missing
 2 campaign statements covering the time period of January 1, 2012 to December 31, 2016; however, the
 3 statements contained an abundance of reporting deficiencies that were later corrected in amended
 4 statements filed in conjunction with this settlement.

5 According to its late-filed campaign statements, the Committee received \$16,575 in contributions
 6 and made \$9,475 in expenditures in 2016. At the end of 2016, the Committee’s ending cash balance was
 7 \$47,595.89.

8 As mentioned, the Committee failed to timely file the following campaign statements:

| Statement/ Report Type | Reporting Period | Due Date | Date Filed | Days Late | Amount of Contributions/ Expenditures |
|---------------------------|-----------------------------------|-------------|---------------|-----------|--|
| Semiannual | 7/1/12 – 12/31/12 | 1/31/13 | 2/20/17 | 1,481 | \$10,465/\$0 |
| Semiannual | 1/1/13 – 6/30/13 | 7/31/13 | 2/20/17 | 1,300 | \$10,920/\$0 |
| Semiannual | 7/1/13 – 12/31/13 | 1/31/14 | 2/20/17 | 1,116 | \$10,738/\$15,035.25 |
| Pre-election | 1/1/14 – 3/17/14 | 3/24/14 | 2/20/17 | 1,064 | \$3,200/\$7,500 |
| Pre-election | 3/18/14 – 5/17/14 | 5/22/14 | 2/20/17 | 1,005 | \$3,200/\$10,000 |
| Semiannual | 5/18/14 – 6/30/14 | 7/31/14 | 2/20/17 | 935 | \$2,994/\$5,000 |
| Semiannual | 7/1/14 – 12/31/14 | 2/2/15 | 2/20/17 | 749 | \$8,320/\$10,000 |
| Semiannual | 1/1/15 – 6/30/15 | 7/31/15 | 2/20/17 | 570 | \$7,930/\$2,500 |
| Semiannual | 7/1/15 – 12/31/15 | 2/1/16 | 2/20/17 | 385 | \$8,125/\$0 |
| Pre-election | 1/1/16 – 5/21/16 ¹⁵ | 5/26/16 | 2/20/17 | 270 | \$6,000/\$8,570 |

15 Although the Committee filed separate campaign statements for the reporting periods of January 1 to April 23, 2016 and April 24 to May 21, 2016, the Committee was only required to file a pre-election statement for the reporting period of April 24 to May 21, 2016. Therefore, because it was not required to file the first pre-election statement, the required second pre-election statement would have necessarily encompassed the period of January 1 to May 21, 2016.

| | | | | | |
|------------|-------------------|---------|---------|-----|---------------|
| Semiannual | 5/22/16 – 6/30/16 | 8/1/16 | 2/20/17 | 203 | \$1,800/\$0 |
| Semiannual | 7/1/16 – 12/31/16 | 1/31/17 | 2/20/17 | 20 | \$8,775/\$905 |

The Committee also failed to timely file the following 24-hour contribution reports in conjunction with contributions made to local candidates in 2014 and 2016:

| Statement/ Report Type | Contribution Date | Due Date | Date Filed | Amount of Contribution |
|---------------------------|----------------------|-------------|---------------|---------------------------|
| 24-Hour Contribution | 3/31/14 | 4/1/14 | N/A | \$2,500 |
| 24-Hour Contribution | 4/1/14 | 4/2/14 | N/A | \$2,500 |
| 24-Hour Contribution | 4/9/14 | 4/10/14 | N/A | \$2,500 |
| 24-Hour Contribution | 4/25/16 | 4/26/16 | N/A | \$1,500 |

Although the Committee failed to timely report the aforementioned contributions, the respective candidates disclosed the contributions on campaign statements and/or reports filed prior to the pertinent elections.

VIOLATIONS

Count 1: Failure to Timely File Semiannual Campaign Statements

As a recipient committee under the Act, the Committee was required to file a semiannual campaign statement for the period of July 1 to December 31, 2012, by January 31, 2013; a semiannual campaign statement for the period of January 1 to June 30, 2013, by July 31, 2013; and a semiannual campaign statement for the period of July 1 to December 31, 2013, by January 31, 2014; however, the Committee, Borges, and Hicks failed to do so, in violation of Section 84200, subdivision (a).

Count 2: Failure to Timely File Semiannual Campaign Statements

As a recipient committee under the Act, the Committee was required to file a semiannual campaign statement for the period of May 18, 2014 to June 30, 2014, by July 31, 2014; and a semiannual

1 campaign statement for the period of July 1, 2014 to December 31, 2014, by February 2, 2015; however,
2 the Committee failed to do so, in violation of Section 84200, subdivision (a).

3 Count 3: Failure to Timely File Semiannual Campaign Statements

4 As a recipient committee under the Act, the Committee was required to file a semiannual
5 campaign statement for the period of January 1, 2015 to June 30, 2015, by July 31, 2015; and a
6 semiannual campaign statement for the period of July 1, 2015 to December 31, 2015, by February 1,
7 2016; however, the Committee failed to do so, in violation of Section 84200, subdivision (a).

8 Count 4: Failure to Timely File Semiannual Campaign Statements

9 As a recipient committee under the Act, the Committee was required to file a semiannual
10 campaign statement for the period of May 22, 2016 to June 30, 2016, by August 1, 2016; and a
11 semiannual campaign statement for the period of July 1, 2016 to December 31, 2016, by January 31,
12 2017; however, the Committee failed to do so, in violation of Section 84200, subdivision (a).

13 Count 5: Failure to Timely File Pre-Election Campaign Statements

14 As a recipient committee under the Act, the Committee was required to file a pre-election
15 campaign statement for the period of January 1, 2014 to March 17, 2014, by March 24, 2014; and a pre-
16 election campaign statement for the period of March 18, 2014 to May 17, 2014, by May 22, 2014;
17 however, the Committee failed to do so, in violation of Sections 84200.5, subdivision (e); and 84200.7,
18 subdivision (a).

19 Count 6: Failure to Timely File Pre-Election Campaign Statements

20 As a recipient committee under the Act, the Committee was required to file a pre-election
21 campaign statement for the period of April 24, 2016 to May 21, 2016, by May 26, 2016; however, the
22 Committee failed to do so, in violation of Sections 84200.5, subdivision (a); and 84200.8, subdivision
23 (b).

24 Count 7: Failure to Timely File 24-Hour Contribution Reports

25 The Committee failed to timely file a 24-hour contribution report for four different contributions
26 made amounting to \$9,000, in violation of Section 84203.

27 ///

28 ///

1 **PROPOSED PENALTY**

2 This matter consists of seven counts. The maximum penalty that may be imposed is \$5,000 per
3 count. Thus, the maximum penalty that may be imposed is \$35,000.¹⁶

4 In determining the appropriate penalty for a particular violation of the Act, the Commission
5 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
6 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
7 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
8 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
9 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
10 record of violations.¹⁷ Additionally, the Commission considers penalties in prior cases involving similar
11 violations.

12 In this case, the violations committed by Respondents are part of a long pattern of non-
13 compliance with the Act that dates back to 2012. Considering that Respondents failed to meet their
14 campaign filing requirements for five years, despite significant financial activity each reporting period,
15 the length of time for which Respondents failed to comply with the Act’s campaign reporting
16 requirements is an aggravating factor. However, despite Respondents’ actions, the Enforcement Division
17 found no evidence that Respondents intended to conceal, deceive, or mislead the public. Further,
18 Respondents do not have a prior history of violating the Act.

19 The public harm inherent in campaign reporting violations is that the public is deprived of
20 important, time-sensitive information regarding political contributions. Generally, these types of
21 violations are considered to be more serious where the public is deprived of information that was
22 required to be disclosed before an election because this has the potential to affect how votes are cast—so
23 greater public harm is involved, and a higher penalty is warranted. Another factor that influences the
24 amount of the penalty is whether the public harm was mitigated because some of the reportable activity
25 was disclosed to the public on another campaign filing.

26 Comparable cases in which a penalty was charged for failure to timely file semiannual campaign
27

28 ¹⁶ Section 83116, subd. (c).

¹⁷ Regulation 18361.5, subd. (d).

1 statements include the following:

- 2 • *In the Matter of Voto Latino Action Fund PAC and Maria Teresa Kumar*; FPPC No. 16/338.

3 Respondents, a recipient committee and its treasurer, failed to timely file a semiannual campaign
4 statement. Respondents eventually filed the statement, which reported \$65,771.14 in contributions and
5 the same amount in expenditures. In March 2017, the Commission approved a penalty of \$2,500 on one
6 count.

- 7 • *In the Matter of Fred Garcia, Fred Garcia for Sheriff 2014, and Jeff Davis*; FPPC No. 14/299.

8 Respondents, a candidate, his controlled committee, and its treasurer, failed to timely file one semiannual
9 and one pre-election campaign statement. Respondents eventually filed the statements, which reported a
10 total of \$14,664 in contributions and \$12,777.10 in expenditures. In July 2016, the Commission
11 approved a penalty of \$2,500 on one count.

12 As to Counts 1 through 4, Respondents are deserving of a penalty similar to those in the two
13 comparable cases. This case is analogous to *Garcia* as to the amount of financial activity reported on the
14 subject statements; therefore, a similar penalty is warranted. In *Voto Latino*, although the amount of
15 unreported financial activity on the single semiannual statement at issue, charged in one count, was much
16 higher (\$131,542.28) than the average amount per count here (\$23,659.93), the violations here are
17 aggravated due to the multiyear history of missing statements.

18 Comparable cases in which a penalty was charged for failure to timely file pre-election campaign
19 statements include the following:

- 20 • *In the Matter of Contra Costa Supervisor John Gioia 2010 Officeholder Account, Contra Costa*
21 *Supervisor John Gioia 2014 Officeholder Account, John Gioia, and Jennifer Peck*; FPPC Nos. 17/84 and
22 17/86. Respondents, a candidate, his candidate-controlled committee, and its treasurers, failed to timely
23 file two pre-election campaign statements. Once filed, it was revealed that a total of \$28,395 in
24 contributions and \$15,289 went unreported on the two statements. In August 2017, the Commission
25 approved a penalty of \$3,000 on one count.

26 As to Counts 5 and 6, the violations here are similar to those at issue in the comparable case, and
27 therefore warrant similar penalties. Count 6 is deserving of a slightly lower penalty given the fact that it
28 involves one pre-election statement disclosing a lower amount of financial activity.

1 Comparable cases in which a penalty was charged for violating Section 84203 include the
2 following:

3 • *In the Matter of Contra Costa Supervisor John Gioia 2010 Officeholder Account, Contra Costa*
4 *Supervisor John Gioia 2014 Officeholder Account, John Gioia, and Jennifer Peck*; FPPC Nos. 17/84 and
5 17/86. Respondents, a candidate, his candidate-controlled committee, and its treasurers, failed to timely
6 file 24-hour contribution reports for two different contributions received amounting to \$2,250 and three
7 different contributions made amounting to \$4,350. In August 2017, the Commission approved a penalty
8 of \$2,000 on one count.

9 As to Count 7, Respondents are deserving of the same penalty as was imposed in the comparable
10 case. First, the amount of unreported contributions here (\$9,000) is relatively similar to the amount at
11 issue in *Gioia* (\$6,600). Second, as in *Gioia*, the subject contributions were not otherwise reported prior
12 to the elections.

13 In aggravation of all violations, Respondents not only failed to timely file campaign statements
14 for five years, but those campaign statements also included certain discrepancies in the reporting of
15 receipts and expenditures that required corrective amendments made at the request of the Enforcement
16 Division in conjunction with this settlement.

17 In mitigation, Respondents do not have a prior enforcement history and have cooperated with the
18 Enforcement Division during its investigation in this case. Respondents also assert that the Committee
19 sponsor delegated reporting responsibilities to a volunteer Board member, and was led to believe that its
20 disclosure obligations were being fulfilled timely and completely, so there was no intent to conceal
21 campaign contribution and expenditure activity. Further, representatives of the Committee who are
22 currently responsible for campaign reporting attended a campaign training in October 2017.

23 Based on the foregoing, the following penalties are recommended:

24

| Count | Violation | Proposed Penalty |
|-------|---|------------------|
| 1 | Failure to Timely File Semiannual Campaign Statements | \$2,500 |
| 2 | Failure to Timely File Semiannual Campaign Statements | \$2,500 |
| 3 | Failure to Timely File Semiannual Campaign Statements | \$2,500 |

25
26
27
28

| | | |
|---|---|----------|
| 4 | Failure to Timely File Semiannual Campaign Statements | \$2,500 |
| 5 | Failure to Timely File Pre-election Campaign Statements | \$3,000 |
| 6 | Failure to Timely File Pre-election Campaign Statements | \$2,500 |
| 7 | Failure to Timely File 24-Hour Contribution Reports | \$2,000 |
| | TOTAL: | \$17,500 |

CONCLUSION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondents, Humboldt Deputy Sheriff’s Organization PAC, Leslie S. Borges, and Scott N. Hicks, hereby agree as follows:

1. The Respondents violated the Act as described in the foregoing pages, which are a true and accurate summary of the facts in this matter.
2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose of reaching a final disposition without the necessity of holding an administrative hearing to determine the liability of the Respondent pursuant to Section 83116.
4. Respondents have consulted with their attorney, Richard R. Rios, Olson Hagel & Fishburn LLP, and understand, and hereby knowingly and voluntarily waive, all procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not limited to the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at Respondents’ own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially reviewed.
5. The Respondents agree to the issuance of the decision and order set forth below. Also, the Respondents agree to the Commission imposing against them an administrative penalty in the amount of \$17,500. One or more cashier’s checks or money orders totaling said amount—to be paid to the General

1 Fund of the State of California—is/are submitted with this stipulation as full payment of the
2 administrative penalty described above, and same shall be held by the State of California until the
3 Commission issues its decision and order regarding this matter.

4 6. If the Commission refuses to approve this stipulation—then this stipulation shall become
5 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
6 rejected, all payments tendered by the Respondents in connection with this stipulation shall be
7 reimbursed to the Respondents. If this stipulation is not approved by the Commission, and if a full
8 evidentiary hearing before the Commission becomes necessary, neither any member of the Commission,
9 nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

10 7. The parties to this agreement may execute their respective signature pages separately. A
11 copy of any party’s executed signature page including a hardcopy of a signature page transmitted via fax
12 or as a PDF email attachment is as effective and binding as the original.

13
14 Dated: _____
15 Galena West, Chief of Enforcement
16 Fair Political Practices Commission

17 Dated: _____
18 Leslie Borges, individually and on behalf of Humboldt
19 Deputy Sheriff’s Organization PAC

20 Dated: _____
21 Scott N. Hicks

1 The foregoing stipulation of the parties “In the Matter of Humboldt Deputy Sheriff’s Organization PAC,
2 Leslie S. Borges, and Scott N. Hicks,” FPPC Case No. 15/1966 is hereby accepted as the final decision
3 and order of the Fair Political Practices Commission, effective upon execution below by the Chair.
4

5 IT IS SO ORDERED.
6

7 Dated: _____
8 Joann Remke, Chair
9 Fair Political Practices Commission
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28