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7

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

11 In the Matter of ) FPPC No. 15/097  
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14 ) **STIPULATION, DECISION and ORDER**  
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ROGER GAYLORD III AND ROGER  
GAYLORD FOR FOLSOM CITY  
COUNCIL 2014,

Respondents.

**STIPULATION**

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondents Roger Gaylord III (“Gaylord”) and Roger Gaylord for Folsom City Council 2014 (the “Committee”), hereby agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

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

Gaylord and the Committee, hereby knowingly and voluntarily waives, any and all procedural

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

7         It is further stipulated and agreed that Gaylord and the Committee violated the Political Reform  
8 Act as described in Exhibit 1, counts 1 through 4. Gaylord and the Committee violated the Act by failing  
9 to report campaign activity on its campaign statements covering the periods of July 1 through September  
10 30, 2014, October 1, 2014 through October 18, 2014, October 19, 2014 through December 31, 2014, and  
11 January 1, 2015 through June 30, 2015, in violation of Government Code Section 84211, subdivisions  
12 (a), (b), (c), (d), (f)(5), (j), and (k) (2 counts). Gaylord and the Committee failed to comply with the  
13 advertising requirements of the Act, in violation of Government Code Section 84305, subdivision (a) and  
14 Reg. 18435 subdivision (d) (1 count). Gaylord and the Committee made cash expenditures of \$100 or  
15 more, in violation of Government Code Section 84300 subdivision (b) (1 count). Exhibit 1 is attached  
16 hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate  
17 summary of the facts in this matter.

18         Gaylord and the Committee agree to the issuance of the Decision and Order, which is attached  
19 hereto. Gaylord and the Committee also agree to the Commission imposing an administrative penalty in  
20 the total amount of Six Thousand Five Hundred Dollars (\$6,500). A cashier's check from Gaylord and  
21 the Committee in said amount, made payable to the "General Fund of the State of California," is  
22 submitted with this Stipulation as full payment of the administrative penalty, and shall be held by the  
23 State of California until the Commission issues its Decision and Order regarding this matter.

24         The parties agree that in the event the Commission refuses to accept this Stipulation, it shall  
25 become null and void, and within fifteen (15) business days after the Commission meeting at which the  
26 Stipulation is rejected, all payments tendered by Gaylord and the Committee in connection with this  
27 Stipulation shall be reimbursed. Gaylord and the Committee further stipulate and agree that in the event  
28 the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission becomes

1 necessary, neither any member of the Commission, nor the Executive Director, shall be disqualified  
2 because of prior consideration of this Stipulation.

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4 Dated: \_\_\_\_\_ Galena West, Chief, on Behalf of the Enforcement Division  
5 Fair Political Practices Commission

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7 Dated: \_\_\_\_\_ Roger Gaylord III, Respondent, individually and o/b/o Roger  
8 Gaylord for Folsom City Council 2014

**DECISION AND ORDER**

The foregoing Stipulation of the parties “In the Matter of Roger Gaylord and Roger Gaylord for Folsom City Council 2014”, FPPC Case No. 15/097, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joann Remke, Chair  
Fair Political Practices Commission

## **EXHIBIT 1**

### **INTRODUCTION**

Roger Gaylord III (“Gaylord”) was an unsuccessful candidate in the Folsom City Council election of 2014. Roger Gaylord for Folsom City Council 2014 (the “Committee”) was Gaylord’s controlled committee. At all times relevant to this matter, Gaylord served as treasurer of the Committee.

In early 2015, the Enforcement Division received a complaint alleging that Gaylord and the Committee failed to properly report financial activity on its campaign statements. During the investigation, the Enforcement Division identified that Gaylord and the Committee committed violations related to campaign reporting, advertising requirements, and cash expenditures of over \$100.

### **SUMMARY OF THE LAW**

All statutory references and discussions of law pertain to the Political Reform Act’s (the “Act”)<sup>1</sup> provisions as they existed in 2014 and 2015.

#### **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.<sup>2</sup> To that end, the Act must be liberally construed to achieve its purposes.<sup>3</sup>

#### **Contents of a Campaign Statement**

The Act requires committees to report the name, address, and occupation of each individual that contributes \$100 or more.<sup>4</sup> Additionally, the Act requires committees to report the total amount of expenditures made during the period to persons, along with his or her full name, his or her street address, the amount of each expenditure, and a brief description of the consideration for which the expenditure was made.<sup>5</sup> The Act also requires committees to report the total amount of expenditures made during the period who have received less than \$100.<sup>6</sup>

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<sup>1</sup> 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.

<sup>2</sup> § 81001, subd. (h).

<sup>3</sup> § 81003.

<sup>4</sup> § 84211, subd. (f).

<sup>5</sup> § 84211, subd. (i) and (k).

<sup>6</sup> § 84211, subd. (j)

## Requirements for Mass Mailing

The Act prohibits candidates or committees from sending a mass mailing without the name, street address, and city of the candidate or committee on the outside of each piece of mail.<sup>7</sup> Additionally, the identification required in Section 84305 shall be preceded by the words “paid for by.”<sup>8</sup>

## Prohibited Cash Expenditures of \$100 or More

The Act prohibits an expenditure of one hundred dollars or more in cash.<sup>9</sup> The Act defines an “expenditure” as 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...<sup>10</sup>

## **SUMMARY OF THE FACTS**

Gaylord and the Committee failed to report campaign activity on two pre-election campaign statements. During the period of July 1 through September 30, 2014, Gaylord and the Committee failed to report the following: seven itemized expenditures totaling \$1,288.85, unitemized expenditures totaling \$319.54, and contributions totaling \$390. Additionally, Gaylord and the Committee under reported loans from Gaylord of \$7,400 by \$3,590, failed to report that \$3,300 of Gaylord’s loans to the Committee were repaid, over reported expenditures by \$201.91, and under reported expenditures by \$85.89.

Gaylord and the Committee also made cash expenditures of \$100 or more. The following cash withdrawals from the campaign bank account occurred during the July 1 through September 30, 2014 reporting period: September 15, 2014 \$203, September 17, 2014 \$523, September 18, 2014 \$323, and September 23, 2014 \$1,200. Additionally, there is no evidence that these expenditures were reported on the Committee’s campaign statement.

On the pre-election statement covering the period of October 1, 2014 through October 18, 2014, Gaylord and the Committee failed to report two itemized expenditures of \$200, failed to report un-itemized expenditures of \$73.89, under reported loans from Gaylord of \$11,187.63 by \$2,815.28, over reported expenditures by \$1,406. 12, and failed to report that \$680.99 of Gaylord’s loans to the Committee were re-paid.

Gaylord and the Committee failed to report campaign activity on semi-annual campaign statements covering two periods. During the period of October 19, 2014 through December 31, 2014, Gaylord and the Committee failed to report the following: three itemized expenditures totaling \$420.92, unitemized expenditures totaling \$67.60, itemized contributions totaling \$400, and unitemized contributions totaling \$125. Gaylord and the Committee also over reported loans

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<sup>7</sup> § 84305, subd. (a).

<sup>8</sup> Cal. Code Regs. 18435 subd. (d).

<sup>9</sup> § 84300, subd. (b).

<sup>10</sup> § 82025.

from Gaylord of \$6,600 by \$513, failed to report that \$2,870.30 of Gaylord's loans to the Committee were repaid, and under reported \$1,118.02 in expenditures.

On the semi-annual statement covering the period of January 1, 2015 through June 30, 2015, Gaylord and the Committee failed to report the following: two itemized expenditures totaling \$1,063.86 and un-itemized expenditures totaling \$69. Gaylord and the Committee also failed to report Gaylord loaned the Committee \$1,100.

All statements in connection with this matter have been amended to include the aforementioned campaign activity.

Gaylord and the Committee sent out several thousand mailers that did not comply with the advertising requirements of the Act. On October 8, 2014, Gaylord sent out 8,245 mailers. On October 9, 2014, Gaylord sent out 1,785 mailers. None of these mailers contained the language "Paid for by" or the Committee's address of record.

## **VIOLATIONS**

### Count 1: Failure to Report Financial Activity on Pre-Election Campaign Statement

Gaylord and the Committee failed to properly report campaign activity on the pre-election statements covering the periods of July 1, 2014 – September 30, 2014 and October 1, 2014 – October 18, 2014, in violation of Government Code Section 84211, subdivisions (a), (b), (c), (d), (f)(5), (j), and (k).

### Count 2: Failure to Report Financial Activity on Semi-Annual Campaign Statement

Gaylord and the Committee failed to properly report campaign activity on the semi-annual statements covering the periods of October 19, 2014 – December 31, 2014 and January 1, 2015 – June 30, 2015, in violation of Government Code Section 84211, subdivisions (a), (b), (c), (d), (f)(5), (j), and (k).

### Count 3: Failure to Include Proper Sender Identification on Mass Mailers

Gaylord and the Committee failed to include the proper sender identification on mass mailers sent out in connection with the campaign, in violation of Government Code Section 84305, subdivision (a) and Reg. 18435 subdivision (d).

### Count 4: Cash Expenditures of \$100 or More

Gaylord and the Committee made cash expenditures of \$100 or more totaling \$2,249, in violation of Government Code Section 84300, subdivision (b).

## CONCLUSION

This matter consists of four counts of violating the Act, which carries a maximum administrative penalty of \$5,000 per count, totaling \$20,000.

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.

Gaylord and the Committee's violations of the Act have resulted in pattern of violations covering four reporting periods in 2014. Gaylord and the Committee have cooperated with the Enforcement Division to resolve this matter.

Recent penalties approved by the Commission concerning similar violation of the Act included:

### Contents of a Campaign Statement

- ❖ *In the Matter of Arthur "Art" C. Brown, Art Brown for Orange County 4th District Supervisor 2010, Art Brown for City Council 2012, and Christie "Chris" L. Brown, FPPC No. 12/224 (approved Nov. 20, 2014), the Commission imposed a penalty of \$2,500 per count because the respondent failed to disclose information regarding contributions he received and expenditures he made during several reporting periods covering the 2014 calendar year. The respondents failed to report the following campaign activity over the course two election cycles: approximately \$6,774 in contributions and \$9,178 in expenditures.*

Regarding counts 1 and 2, Gaylord and the Committee failed to report or properly report approximately \$24,349 in campaign activity during two pre-election reporting periods and two semi-annual reporting periods. The amount of unreported or properly reported campaign activity in Gaylord's case is comparable to the amount of unreported campaign activity in *Art Brown* where the candidate and his committee were fined \$2,500 per count (2 Counts) for failing to report approximately \$15,952 during the course of two election cycles (five reporting periods). By failing to report \$24,349 in campaign activity, Gaylord and the Committee denied the residents of Folsom important financial information about his campaign.

A factor that aggravates Gaylord's reporting violations is that he had previous experience with campaign reporting during his bid for the Folsom City Council in 2012. Thus he was aware of the Committee's filing obligations under the Act.



Although the amount of unreported activity is similar, Gaylord’s case is distinguishable from *Art Brown* and mitigated by the fact that Gaylord does not have a history of violating the Act and cooperated with the Enforcement Division during the investigation. Whereas *Art Brown* had previous violations of the Act and his cooperation with the Enforcement Division was described in the stipulation as being sporadic. Therefore, a penalty of \$2,000 is recommended for count 1. A lesser penalty of \$1,500 is recommended for count 2 because the semi-annual statements are filed after the election whereas pre-election statements provide disclosure to voters prior to the election.

Mass Mailer Identification

*In the Matter of Norman Hsu*; FPPC Case No. 13/1108 (approved on May 21, 2015), the Commission imposed a penalty of \$3,000 for sending three mass mailings without including the proper sender identification.

Regarding count 3, Gaylord sent out one mass mailer without including the language “paid for by” or the Committee’s address of record. However, Gaylord posted a picture of himself with the mailers on Facebook making it distinguishable from the case above where *Hsu* sent out three mass mailers that did not identify the sender or the address of the committee and there were no circumstances mitigating the public harm. A penalty of \$1,500 is recommended.

Cash Expenditures \$100 or More

❖ *In the Matter of Patricia Lopez, Patty Lopez for Assembly 2014, and Carolina Perez*, FPPC Case Nos. 15/313 and 15/314 (approved Mar. 17, 2016), the Commission imposed a penalty of \$1,500 because the respondents accept cash contributions of \$100 or more, totaling \$1,300 and made cash expenditures of \$100 or more, totaling \$1,220.

Regarding count 4, Gaylord and the Committee made \$2,249 in cash expenditures. This is comparable to the amount of cash expenditures and contributions made and received in *Lopez* where the Commission imposed a penalty of \$1,500.

**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	Contents of a Campaign Statement	\$2,000
2	Contents of a Campaign Statement	\$1,500
2	Mass Mailer Identification	\$1,500
4	Cash Expenditures Over \$100	\$1,500
	<b>Total Penalty</b>	<b>\$6,500</b>

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