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

11 In the Matter of:

12 **COMMUNITY TO SUPPORT MT.**
13 **PLEASANT ELEMENTARY SCHOOLS,**
14 **THERESA GILL, AND BOB RAMIREZ,**

15
16 Respondents.
17

FPPC No. 14/1157

STIPULATION, DECISION, AND ORDER

18 **STIPULATION**

19 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
20 respondents Community to Support Mt. Pleasant Elementary Schools, Theresa Gill, and Bob Ramirez
21 (Respondents) hereby agree that this Stipulation will be submitted for consideration by the Fair Political
22 Practices Commission (Commission) at its next regularly-scheduled meeting.

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

26 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
27 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
28 Regulations, title 2, sections 18361.1 through 18361.9. 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 Respondents violated the Political Reform Act by failing
6 to properly name a primary formed committee in violation of Government Code section 84107, failing
7 to timely file preelection statements in violation of Government Code sections 84200.5 and 84200.7, and
8 by failing to timely file late contribution reports in violation of Government Code section 84203, as
9 described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference as though fully set
10 forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

11 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
12 Respondents also agree to the Commission imposing an administrative penalty in the amount of Twenty-
13 One Thousand Dollars (\$16,000). Respondents submitted with this Stipulation a cashier's check in said
14 amount, made payable to the "General Fund of the State of California," as full payment of the
15 administrative penalty that shall be held by the State of California until the Commission issues its Decision
16 and Order regarding this matter. The parties agree that in the event the Commission refuses to accept this
17 Stipulation, the checks shall become null and void, and within fifteen (15) business days after the
18 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in
19 connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and
20 agree that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
21 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
22 shall be disqualified because of prior consideration of this Stipulation.

23
24 Dated: _____
25 Galena West, Chief, on behalf of the Enforcement
26 Division of the Fair Political Practices Commission

27 Dated: _____
28 Theresa Gill, Treasurer, individually and on behalf of

Community to Support Mt. Pleasant Elementary
Schools, Respondents

Dated: _____
Bob Ramirez, Treasurer, individually and on behalf of
Community to Support Mt. Pleasant Elementary
Schools, Respondents

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Community to Support Mt. Pleasant Elementary Schools, Theresa Gill, and Bob Ramirez,” FPPC No. 14/1157, 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

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EXHIBIT 1

INTRODUCTION

Respondent Committee for Mount Pleasant Facility Needs, later renamed Community to Support the Mt. Pleasant Elementary Schools (hereinafter the “Committee”), was a primarily formed ballot measure committee in support of Santa Clara County Measures L and K on the November 6, 2012 and June 3, 2014 ballots, respectively. At all relevant times, Respondent Theresa Gill was the Committee’s treasurer and Bob Ramirez was its principal officer.

The Political Reform Act¹ (the “Act”) requires a primarily formed committee to include the name of the ballot measures it supports in the committee name and to timely file campaign statements and reports, and to disclose the contributions it receives and the expenditures it makes. The Committee violated the Act by failing to include in its name the measures that it was primarily formed to support, and by failing to timely file three pre-election campaign statements and eleven late contribution reports. As the Committee’s treasurer and principal officer, respectively, Gill and Ramirez are jointly and severally liable, along with the Committee, for the Committee’s campaign filing and reporting violations.²

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed in from 2012 to 2014. Principal officer liability did not come into effect until January 1, 2013.³ Therefore, the Committee’s principal officer, Bob Ramirez, is liable only for violations that occurred after that date.

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 the previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.⁴ To that end, the Act must be liberally construed to achieve its purpose.⁵

Definition of Primarily Formed Ballot Measure Committee

Section 82013, subdivision (a), of the Act includes in the definition of “committee” any person or combination of persons who directly or indirectly receives contributions totaling \$1,000 or more in a calendar year. Such a committee is commonly known as a “recipient committee.”

¹ 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.

² §§ 83116.5 and 91006

³ Assembly Bill 481 (Gordon), Chapter 496, Statutes of 2012.

⁴ § 81001, subd. (h).

⁵ § 81003.

Committees primarily formed to support or oppose a specific measure, meanwhile, are commonly referred to as “ballot measure committees.”⁶

Committee Naming Requirements

The Act requires a primarily formed ballot measure committee to include the letter or number of the measure in its name within 30 days after the letter or number is assigned.⁷

Duty to File Pre-Election Campaign Statements

The Act also requires primarily formed ballot measure committees to file pre-election statements during elections when the measure is on the ballot.⁸

Duty to File 24 Hour Reports

Under the Act, contributions of \$1,000 or more made or received within the 90-day period before an election (the “late contribution period”) are defined as “late contributions.”⁹ A committee that receives or makes a late contribution must disclose the contribution in a late contribution report (or “24 Hour 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.¹⁰

For the November 6, 2012 election, the late contribution reporting period was October 21, 2012 through November 5, 2012. For the June 3, 2014 election, the late contribution reporting period was March 5, 2014 through June 2, 2014.

Treasurer and Principal Officer Liability

A committee’s treasurer is responsible for ensuring that the committee complies with all of the requirements of the Act, including the committee’s receipt of expenditure of funds, and reporting of contributions.¹¹ Along with the committee, a committee’s treasurer may be held jointly and severally liable for any reporting violations committed by the committee.¹²

Since January 1, 2013, a committee’s principal officer—whose duty is to authorize the content and of the committee’s communications, authorize the committee’s expenditures, and determine its campaign strategy¹³—may also be held jointly and severally liable for any of the committee’s reporting violations.¹⁴

⁶ § 82047.5, subd. (b).

⁷ § 84107.

⁸ § 84200.5, subd. (a).

⁹ §82036.

¹⁰ §§84203, subd. (a) and (b), and 84215.

¹¹ §§81004, subd. (b), 84100, 84213; Regulation 18427, subd. (a), (b), and (c).

¹² §§83116.5 and 91006; Regulation 18316.6.

¹³ §82047.6 and Regulation 18402.1, subd. (b).

¹⁴ §§83116.5, 84213, and 91006.

SUMMARY OF THE FACTS

In June of 2012, the Committee qualified as a primarily formed ballot measure committee in support of Measure L, a successful local measure on the November 6, 2012 ballot in Santa Clara County. Measure L authorized the issuance and sale of \$25,000,000 in bonds to support of repairs to Mount Pleasant Elementary School District facilities; it passed with 75% of the vote. While the Committee’s Form 410 Statement of Organization indicated that it was primarily formed, the Committee did not identify its support of Measure L in its name.

In February of 2014, the Committee filed a form 410, changing its name to *Community to Support the Mt. Pleasant Elementary Schools*. The renamed Committee was formed primarily to support Measure K, another local ballot measure, this time on the June 3, 2014 Santa Clara County ballot. Measure K, which passed with 77% of the vote, authorized the renewal of the Mount Pleasant School District Parcel Tax. Once again, the Committee indicated that it was primarily formed on its Form 410, but did not identify its support of Measure K in its name.

In addition to failing to include Measures K and L in the Committee’s name, the Committee failed to file three Preelection Campaign Statements for the periods July 1, 2012 through September 30, 2012; January 1, 2014 through March 17, 2014; and March 18, 2014 through May 17, 2014.

The Committee never filed the missing Preelection Statements, but on February 15, 2013, the Committee filed a semi-annual campaign statement covering the period January 1, 2012 through September 30, 2012. During this period, the Committee reported \$80,000 in contributions and \$647.32 in expenditures. The Committee filed another semi-annual campaign statement on November 7, 2014 for the period January 1, 2014 through June 30, 2014; the Committee reported receiving \$70,700 in contributions and making \$71,799.28 in expenditures during this period.

Further, the Committee’s semi-annual campaign statements indicate that the Committee received a total of eleven contributions during the late contribution periods preceding the November 6, 2012 and June 3, 2014 elections, respectively, for which it failed to file 24-Hour Reports:

Contributor	Date received	Amount Received
Piper Jaffray	10/24/12	\$20,000
Total contributions received during late contribution period		\$20,000
Dryco Construction	3/6/14	\$5,000
Billy Feller	3/24/14	\$2,000
Sugimura Finney Architects	4/8/14	\$9,000
Harry Murphy,	4/8/14	\$10,000

Inc.		
IT Management Corp.	4/8/14	\$5,000
Fremont Millworks Co.	4/15/14	\$20,000
DFH Inspections	4/21/14	\$5,000
MPEA Political Action	5/20/14	\$1,500
Sugimura Finney Architects	5/20/14	\$6,000
TARC Construction, Inc.	5/20/14	\$5,000
Total contributions received during late contribution period		\$68,500

The Committee's campaign statements for the period January 1, 2014 through June 30, 2014 also show that the Committee paid approximately \$67,000 to consulting firm TBWB Strategies for mailers, post cards, flyers, door hangers and lawn signs. Because the Committee failed to include Measure K in its name, all of these mailers, post cards, flyers, door hangers, and lawn signs failed to meet the Act's advertising disclosure requirements.

VIOLATIONS

Count 1: Failure to Properly Name a Primarily Formed Committee

The Committee failed to include Measure L in the name of Community to Support Mount Pleasant Facility Needs within 30 days of the measure being assigned a letter, in violation of Section 84107.

Count 2: Failure to Properly Name a Primarily Formed Committee

The Committee failed to include Measure K in the name of Community to Support the Mt. Pleasant Elementary Schools within 30 days of the measure being assigned a letter, in violation of Section 84107.

Count 3: Failure to Timely File Preelection Campaign Statements

The Committee failed to timely file a pre-election statement for the period July 1, 2012 through September 30, 2012, in violation of Sections 84200.5 and 84200.7.

Count 4: Failure to Timely File Preelection Campaign Statements

The Committee failed to timely file a pre-election statement for the period January 1, 2014 through March 17, 2014, in violation of Sections 84200.5 and 84200.7.

Count 5: Failure to Timely File Preelection Campaign Statements

The Committee failed to timely file a pre-election statement for the period March 18, 2014 through May 17, 2014, in violation of Sections 84200.5 and 84200.7.

Count 6: Failure to Timely File 24-Hour a Contribution Report

The Committee failed to file a late contribution report for a contribution received on October 24, 2012, in violation of Government Code 84203.

Count 7: Failure to Timely File a 24-Hour Contribution Report

The Committee failed to file late contribution reports for ten contributions received in the 90 days preceding the June 3, 2014 election, in violation of Government Code 84203.

CONCLUSION

This matter consists of seven counts of violating the Act carrying a maximum administrative penalty of Five Thousand Dollars (\$5,000) per count, for a total of Thirty-Five Thousand Dollars (\$35,000).

In determining the appropriate penalty for a particular violation of the Act, the Fair Political Practices Commission (“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 Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): 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 the respondent, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

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

Failure to Properly Name a Primarily Formed Committee (Counts 1 and 2)

- ❖ *In the Matter of For the Children of West County and Kenneth Pon, Treasurer*, FPPC Case No. 14/403 (Commission approved a stipulated decision on November 17, 2016.) The Commission imposed a penalty of \$5,000 per violation for the

committee's failure to timely change its name (three times) to include the letter of the ballot measure that the committee was primarily formed to support, as well as the committee's failure to include a major donor in its name. In aggravation, respondents spent over half a million dollars on the production and placement of campaign mailers, fliers, and signs—all of which failed to properly identify the committee as primarily formed in support of a measure.

- ❖ *In the Matter of Friends of BAREC and Katherine Mathewson*, FPPC Case No. 10/170 (Commission approved a stipulated decision on October 14, 2010.) The Commission imposed a penalty of \$2,000 per violation for the committee's failure to comply with naming requirements for primarily formed ballot measure committees. In mitigation, the investigation found no intent to conceal and the respondents lacked a sophisticated understanding of the committee's obligations under the Act.

In this case, like in *For the Children of West County*, the Committee twice failed to include in its name the ballot measure which it was primarily formed to support. Like in *For the Children of West County*, technically, each campaign advertisement that identified the Committee without including reference to the ballot measure constitutes a violation of the Act. The total activity of the Committee in this case was substantially less than in *For the Children of West County*. In *For the Children of West County*, the committee was penalized \$5,000 per count for both the naming and advertising violations. Because this case involves similar circumstances, it is also appropriate to charge the naming violations for Counts 1 and 2, but not charge additional counts for the advertising violations.

As for the penalty amount, this case is more analogous to *Friends of BAREC*, as opposed to *For the Children of West County*. The Committee in this case clearly indicated that it was primarily formed on its Form 410, but due to a lack of sophistication, failed to include the name of the measure it was primarily formed to support in its full name. In addition, before both elections, the Committee attempted to clearly identify the subject matter of the measure it supported in its name, but unfortunately failed to include the measure's assigned letter.

For these reasons, a \$2,500 penalty per count is appropriate for Counts 1 and 2.

Failure to Timely File Preelection Campaign Statements (Counts 3-5)

- ❖ *In the Matter of YES on Measure U – Kids Need U and Kelly Brown*, FPPC Case No. 16/19824 (Commission approved a stipulated decision on January 19, 2017.) The respondents failed to timely file a pre-election statement disclosing \$72,775.00 in contributions and \$66,366.56 in expenditures. The Commission imposed a penalty of \$2,000 for this violation.
- ❖ *In the Matter of Save Our Forest and Ranchlands Opposed to Measure B Sponsored by California Local Energy Advancing Renewables, Jana Clark Sanders and Duncan McFetridge, Treasurer*, FPPC Case No. 16/19753 (Commission approved a stipulated decision on November 17, 2016.) The respondents failed to timely file a

pre-election campaign statement disclosing \$110,000 in contributions and \$45,000 in expenditures. The Commission imposed a \$2,000 penalty for this violation.

One of the Act's primary purposes is to ensure that campaign committees fully and truthfully disclose campaign expenditures and receipts. In this case, like in *Yes on Measure U* and *Save Our Forest and Ranchlands*, the Committee failed to timely disclose a significant amount of contributions and expenditures received during the reporting period until well after the relevant elections, on its semi-annual campaign statements. As such, a \$2,000 penalty per count is warranted for Counts 3-5.

Failure to Timely File a 24-Hour Contribution Report (Counts 6 and 7)

- ❖ *In the Matter of YES on Measure U – Kids Need U and Kelly Brown*, FPPC Case No. 16/19824 (Commission approved a stipulated decision on January 19, 2017.) The respondents failed to timely file six 24-Hour Reports disclosing contributions and expenditures of \$72,775 and \$66,366.56, respectively prior to the November 2016 election. However, the committee eventually filed the 24-Hour Reports late but before the election, and the Commission therefore imposed a penalty of \$2,000 for this violation.
- ❖ *In the Matter of No On Government Waste, No On Measure B, Major Funding By Manwin USA; Diane Duke; Froytal Services Limited, and Mindgeek USA Incorporated FKA Manwin USA, Inc.*, FPPC Case No. 15/1133 (Commission approved a stipulated decision on December 17, 2015.) The respondents failed to timely file four 24-Hour Reports disclosing \$16,293 worth of non-monetary contributions, which the committee did not report until after the election on its year-end semi-annual campaign statement. The Commission approved a penalty of \$2,500 for this violation.

Another important purpose of the Act is to provide the public with information about the financial backers of campaign committees. In this case, the Committee failed to report \$20,000 in the late contribution period prior to the November 2012 election and \$68,500 in the 90 days leading up to the June, 2014 election. In so doing, the Committee deprived the public of important information in the final stages of two elections. Like the respondent in *No On Government Waste*, the Committee in this case failed to report the late contributions it received until after the elections in question, on its semi-annual campaign statements whereas in *YES on Measure U* the committee filed the 24 hour reports late but before the election. Also like *No On Government Waste*, the current case involved a large total amount of contributions spread out over multiple elections. For these reasons, a penalty for two counts at \$2,500 per count is warranted.

PROPOSED PENALTY

The factors listed in Regulation 18361.5, prior similar cases, and other relevant facts justify a total penalty of \$16,000:

Count	Description	Penalty per count	Total
1-2	Failure to Properly Name a Primarily Formed Committee	\$2,500	\$5,000
3-5	Failure to Timely File Pre-Election Campaign Statements	\$2,000	\$6,000
6-7	Failure to File Late Contribution Reports	\$2,500	\$5,000
Total Agreed Upon Penalty:			\$16,000