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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA

10  
11 In the Matter of:

12 JOHN LINDNER AND FRANKLIN-  
13 MCKINLEY FOR OUR KIDS—YES ON  
MEASURE J 2010,

14 Respondents.

FPPC Case No. 16/286

STIPULATION, DECISION AND ORDER

15  
16 **STIPULATION**

17 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
18 Respondents John Lindner and Franklin-McKinley for Our Kids—Yes on Measure J 2010, hereby agree  
19 that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its  
20 next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this  
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to  
23 determine the liability of Respondents pursuant to Government Code section 83116.

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

1 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over  
2 the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondents violated the Political Reform Act as set forth  
4 in Exhibit 1, which is a true and accurate summary of the facts in this matter—and which is incorporated  
5 by reference as though fully set forth herein.

6 Respondents agree to the issuance of the Decision and Order, which is attached hereto. Also,  
7 Respondents agree to the Commission imposing against it an administrative penalty in the amount of  
8 \$18,500. A cashier's checks or money order totaling said amount—to be paid to the General Fund of the  
9 State of California—is submitted with this Stipulation as full payment of the administrative penalty  
10 described above, and same shall be held by the State of California until the Commission issues its  
11 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to  
12 accept this Stipulation, it shall become null and void, and within fifteen business days after the  
13 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in  
14 connection with this Stipulation shall be reimbursed to Respondents.

15 Respondents further stipulate and agree that in the event the Commission rejects the Stipulation  
16 and a full evidentiary hearing before the Commission becomes necessary, neither any member of the  
17 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this  
18 Stipulation.

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

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Galena West, Chief of Enforcement  
Fair Political Practices Commission

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

\_\_\_\_\_  
John Lindner, individually and on behalf of Franklin-  
McKinley for Our Kids—Yes on Measure J 2010,  
Respondents

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of John Lindner and Franklin-McKinley  
3 for Our Kids—Yes on Measure J 2010,” FPPC Case No. 16/286, including all attached exhibits, is  
4 hereby 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: \_\_\_\_\_

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11 Joann Remke, Chair  
12 Fair Political Practices Commission  
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## EXHIBIT 1

### INTRODUCTION

Respondent John Lindner has been a member of the Franklin-McKinley School District since 2004. Lindner was recently re-elected in the November 8, 2016 Election. Respondent Franklin-McKinley for our Kids—Yes on Measure J 2010 (“Committee”) was a ballot measure committee primarily formed to support Measure J, a successful school bond measure, in the November 2, 2010 Election. At all relevant times, Lindner was the treasurer of the Committee. The Committee was terminated on or about December 31, 2015.

The Act<sup>1</sup> requires candidates, their controlled committees, and the treasurers of those committees file campaign statements at specific times disclosing information regarding expenditures made by their committees and prohibits the use of campaign funds for personal purposes.

The Enforcement Division initiated the administrative action against Lindner and the Committee by serving them with a Report in Support of Probable Cause on January 5, 2017, effectively tolling the five-year statute of limitations.<sup>2</sup> Further, as treasurer, Lindner fraudulently concealed the personal use of campaign funds by failing to disclose Committee expenditures on Committee campaign statements.

### SUMMARY OF THE LAW

All legal references and discussions of law pertain to the Act’s provisions as they existed at the time of the violations in question.

#### 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>3</sup> To that end, the Act must be liberally construed to achieve its purposes.<sup>4</sup>

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

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<sup>1</sup> The Political Reform 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.

<sup>2</sup> §§ 83115.5, and 91000.5, subd. (a).

<sup>3</sup> § 81001, subd. (h).

<sup>4</sup> § 81003.

improper practices are inhibited.<sup>5</sup> Another is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”<sup>6</sup>

### Fraudulent Concealment

No administrative action alleging a violation of any provisions of the Act shall be commenced more than five years after the date on which the violations occurred, unless the person alleged to have violated the Act engaged in fraudulent concealment of his or her acts or identity, the five-year period shall be tolled for the period of concealment.<sup>7</sup> A person is engaged in fraudulent concealment when that person knows of material facts related to his or her duties under the Act and knowingly conceals them in performing or omitting to perform those duties, for the purpose of defrauding the public of information to which it is entitled under the Act.<sup>8</sup>

### The Duty to Timely Disclose Information Regarding Expenditures Made

Recipient committees are required to file campaign statements at specific times and disclose on each campaign statement:

(1) the total amount of expenditures made during the period covered by the campaign statement;

(2) the total amount of expenditures made during the period covered by the campaign statement to persons who have received \$100 or more;<sup>9</sup>

(3) the total amount of expenditures made by the committee to persons who have received less than \$100 during the period covered by the campaign statement;<sup>10</sup>

(4) identifying information for each person to whom an expenditure of \$100 or more has been made during the period covered by the campaign statement, including the following:

- a. the recipient’s full name;
- b. the recipient’s street address;
- c. the amount of each expenditure; and
- d. the description of the consideration for which each expenditure was made.<sup>11</sup>

The Act defines “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. “An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.”<sup>12</sup>

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<sup>5</sup> § 81002, subd. (a).

<sup>6</sup> § 81002, subd. (f).

<sup>7</sup> Section 91000.5, subd. (b).

<sup>8</sup> Id.

<sup>9</sup> § 84211, subd. (b) and (i).

<sup>10</sup> § 84211, subd. (j).

<sup>11</sup> §§ 84200 and 84211, subd. (k).

<sup>12</sup> § 82025.

## Prohibitions Against the Personal Use of Campaign Funds

Any expenditure by a committee that confers a substantial personal benefit on any individual or individuals with authority to approve the expenditure of campaign funds held by the committee, shall be directly related to a political, legislative, or governmental purpose of the committee.<sup>13</sup> A substantial personal benefit means an expenditure of campaign funds which results in a direct personal benefit with value of more than \$200 to a candidate, elected officer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee.<sup>14</sup>

## Treasurer and Candidate Liability

It is the duty of a committee's treasurer and candidate 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.<sup>15</sup> A committee's treasurer and candidate may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee.<sup>16</sup>

## **VIOLATIONS**

Lindner has been a member of the Franklin-McKinley School District since 2004. Lindner was recently re-elected in the November 8, 2016 Election. The Committee was a ballot measure committee primarily formed to support Measure J, a successful school bond measure, in the November 2, 2010 Election. After Measure J passed, the Committee had money left over and remained open until approximately December 31, 2015. At all relevant times, Lindner was the treasurer of the Committee.

In 2016, the Enforcement Division reviewed the Committee's termination campaign statement, which disclosed many \$90 civic donations made totaling over \$13,000, with no additional information included. Review of the Committee bank records did not reveal any civic donations made at or around the date of the Committee's termination.

After Measure J passed in November 2010, according to Committee bank statements and in an interview with Lindner, he used the Committee bank account to pay for his personal travel expenses and transferred Committee money into his personal account. Lindner and the Committee failed to disclose many expenditures relating to the personal use of Committee funds made from the Committee bank account on required semi-annual campaign statements, further concealing the personal use of campaign funds.

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<sup>13</sup> § 89512.5, subd. (b).

<sup>14</sup> § 89511, subd. (b)(3).

<sup>15</sup> §§ 81004, subdivision (b), 84100, and 84213, and Regulation 18427, subdivisions (a), (b) and (c).

<sup>16</sup> §§ 83116.5 and 91006; Regulation 18316.6.

Lindner has been on the Franklin-McKinley School Board since 2004 and has experience with reporting requirements of political committees. Lindner failed to disclose all of the financial activity in connection with the Committee, to conceal his personal use of the campaign funds. In fact, when Lindner terminated the Committee, in an interview conducted by FPPC Investigator, Lindner explained that in 2016, he provided \$90 civic donations to approximately 140 non-profits and schools, but was unable to tell us the name of a single non-profit or school that received a donation. In this interview and subsequently in an email, he explained that he placed \$90 cash into each envelope and sent the donations anonymously to non-profits and schools. However, according to the Committee bank records, there was no withdrawal of \$13,000, or any amount close, from the Committee bank account at any time when Lindner allegedly made these civic donations. In fact, the balance of the Committee bank account in 2015 and 2016 was approximately \$35. The majority of the Committee money had previously been spent by Lindner for personal purposes, which was purposely and fraudulently concealed by failing to disclose how the money was spent, as required by the Act.

**Counts 1-3: Personal Use Prohibitions**

According to the Committee bank statements and an interview with Lindner, the transfers to his personal bank account were for his “family benefit” and he intended to repay campaign money used for personal travel. As treasurer, Lindner fraudulently concealed the following expenditures by failing to disclose these Committee expenditures on Committee campaign statements.

Date of Transfer from the Committee Bank Account to Lindner’s Personal Bank Account	Amount of the Transfer
12/30/11	\$1,300
1/12/12	\$400
1/17/12	\$1,200
1/25/12	\$300
1/27/12	\$200
2/13/12	\$1,000
3/13/12	\$1,000
4/12/12	\$500
4/14/12	\$350
5/20/12	\$145
Date of Cash Withdrawals	Amount of the Withdrawal
3/12/12	\$300

3/12/12	\$200
3/13/12	\$100
3/17/12	\$400
4/5/12	\$500
4/12/12	\$103
Date of Expenditure for a Personal Purpose	Amount of Expenditure
1/30/12	\$48 to Avis Car Rental
1/30/12	\$30 to Westin Hotel
1/31/12	\$672 to Westin Hotel
5/9/12	\$553.43 Personal Credit Card Bill
Total:	\$9,301.43

By transferring cash from the Committee bank account into his personal bank account, along with cash withdrawals and other expenditures for personal purposes, totaling \$9,301.43 which conferred a substantial personal benefit, for purposes not directly related to a political, legislative or governmental purpose, Lindner violated Section 89512.5. For settlement purposes, three counts are being charged for this conduct.

In making personal use of campaign funds as described above, Lindner committed 3 violations of Section 89512.5.

**Count 4: Failure to Disclose Expenditures**

Lindner and the Committee were required to disclose expenditures of the Committee on campaign statements. Expenditures are required to be itemized if made in the amount of \$100 or more. The failure to disclose these required expenditures served to conceal the personal use of the Committee campaign funds. The following is a table of expenditures of \$100 or more made by the Committee that were not itemized on the relevant campaign statements.

Date	Expenditure	Amount
12/30/2011	Transfer to John Lindner	\$1,300.00
01/12/2012	Transfer to John Lindner	\$400.00
01/17/2012	Transfer to John Lindner	\$1,200.00
01/25/2012	Transfer to John Lindner	\$300.00
01/27/2012	Transfer to John Lindner	\$200.00
01/31/2012	Westin Hotel	\$672.02
02/13/2012	Transfer to John Lindner	\$1,000.00



03/13/2012	Transfer to John Lindner	\$1,000.00
04/12/2012	Transfer to John Lindner	\$500.00
04/14/2012	Transfer to John Lindner	\$350.00
05/09/2012	ACH American Express	\$553.43
05/20/2012	Transfer to John Lindner	\$145
08/23/2013	Withdrawal by Check	\$395.00
09/03/2013	Withdrawal by Check	\$1,306.54
02/28/2014	Withdrawal by Check	\$650.00
	<b>TOTAL:</b>	\$9,972

By failing to disclose and itemize expenditures of \$100 or more on campaign statements, Lindner and the Committee violated Section 84211, subdivision (k).

### CONCLUSION

This settlement consists of 4 counts of violating the Act, which carries a maximum administrative penalty of \$5,000 per count, for a total maximum administrative penalty of \$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.

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

#### Personal Use Prohibitions

*In the Matter of Scott Mann*, FPPC Case No. 14/193. On December 15, 2016, the Commission approved a penalty of \$5,000 per count for 11 counts of personal use. In the *Mann* case, Mann used campaign funds for personal purposes involving approximately 147 separate ATM cash withdrawals, bank transfers, and other expenditures, totaling approximately \$44,894. From this, Mann re-paid approximately \$17,152 to one of his committees.

In the current case, Lindner used campaign funds for his personal use and did not pay back the Committee for these personal expenditures. The Committee was a primarily formed ballot measure committee supporting Measure J in a 2010 election and is now terminated. Additionally, other violations were found in this case that are not charged for settlement purposes, involving an

impermissible loan, use of cash and misuse of campaign funds. Many of these violations were well past the statute of limitations at the time of discovery but are noted as aggravating information. In this matter, a penalty in the amount of \$5,000 per Count for Counts 1-3 is recommended.

Campaign Disclosure

*In the Matter of Coto for Senate 2012, Joe Coto and Vote Matters*, FPPC Case No. 12/305. On August 20, 2015, the Commission approved penalties in the range of \$3,000 to \$3,500 per count for multiple reporting violations involving reporting contributions totaling approximately \$117,493 that were improperly disguised as independent expenditures to circumvent contribution limits.

In this matter, the failure to report expenditures served to fraudulently conceal the personal use of campaign funds. In this matter, a penalty in the amount of \$3,500 for Count 4 is recommended.

**PROPOSED PENALTY**

After consideration of the factors of Regulation 18361.5, it is respectfully requested that the Commission impose the following penalty upon Lindner and the Committee:

<b>Count</b>	<b>Respondents</b>	<b>Description</b>	<b>Penalty per ct</b>	<b>Total</b>
1 – 3	Lindner	Personal Use Prohibition	\$5,000	\$15,000
4	Lindner and the Committee	Campaign Disclosure	\$3,500	\$3,500
		<b>Total Penalty Against Lindner (Individually)</b>		<b>\$15,000</b>
		<b>Total Penalty Against the Committee and Lindner</b>		<b>\$3,500</b>
		<b>Total Proposed Penalty</b>		<b>\$18,500</b>