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

10 In the Matter of:

11 SOUTHWEST TEACHERS
ASSOCIATION PAC, BEN
12 SWEARINGEN, AND MICHELLE
GATES,

13 Respondents.
14

FPPC Case No. 17/403

STIPULATION, DECISION AND ORDER

15 INTRODUCTION

16 Southwest Teachers Association PAC (the “Committee”) is a county general purpose committee
17 that qualified in 1994. The principal officer of the Committee is Ben Swearingen (“Swearingen”), and
18 the treasurer of the Committee is Michelle Gates (“Gates”).

19 The Committee engaged in political activity in connection with the November 8, 2016 General
20 Election. However, despite such activity, Respondents failed to timely file one preelection campaign
21 statement and multiple 24-hour independent expenditure reports, and failed to comply with disclosure
22 requirements for political advertisements, in violation of the Political Reform Act (the “Act”).¹

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27 ¹ The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections
81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission
28 are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references
are to this source.

1 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. The violations in this case occurred
3 in 2016. For this reason, all legal references and discussions of law pertain to the Act’s provisions as
4 they existed at that time—unless otherwise noted.

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

6 When enacting the Political Reform Act, the people of California found and declared that
7 previous laws regulating political practices suffered from inadequate enforcement by state and local
8 authorities.² Thus, it was decreed that the Act “should be liberally construed to accomplish its
9 purposes.”³

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

15 Mandatory Filing of Campaign Statements

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

18 The Act requires that general purpose committees file certain preelection campaign statements if
19 they make contributions or independent expenditures totaling \$500 or more in connection with an
20 election during the period covered by the preelection statements.⁸ In particular, in connection with the
21 election held November 8, 2016, committees were required to file preelection campaign statements
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25 ² Section 81001, subd. (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subd. (a).

28 ⁵ Sections 84200, *et seq.*

⁶ Section 81002, subd. (f).

⁷ Sections 84200, *et seq.*

⁸ Section 84200.5, subd. (c).

1 (Form 460s) with the filing officer by the deadline of October 27, 2016 for the reporting period of
2 September 25, 2016 to October 22, 2016.⁹

3 Duty to File 24-Hour Independent Expenditure Reports

4 When a committee makes a late independent expenditure, the committee must disclose the
5 expenditure in a 24-hour independent expenditure report filed in the places where it would be required
6 to file campaign statements as if it were formed or existing primarily to support or oppose the candidate
7 or measure for or against which it is making the late independent expenditure within 24 hours of making
8 the late independent expenditure.¹⁰ A “late independent expenditure” means any independent
9 expenditure which totals in the aggregate \$1,000 or more and is made for or against any specific
10 candidate or measure involved in an election within 90 days before the date of the election or on the date
11 of the election.¹¹

12 Advertisement Disclosure

13 An “advertisement” under the Act means any general or public advertisement which is authorized
14 and paid for by a person or committee for the purpose of supporting or opposing a candidate for elective
15 office or a ballot measure(s).¹²

16 Under the Act, an independent expenditure advertisement that supports or opposes a candidate
17 must include a disclosure statement identifying the committee making the independent expenditure,
18 immediately preceded by the phrase “Paid for by.”¹³ In addition, an advertisement supporting or
19 opposing a candidate that is paid for by an independent expenditure must include a disclosure statement
20 that the advertisement is “not authorized or paid for by a candidate for this office.”¹⁴

21 In addition, disclosure statements on oversized print media advertisements must be at least five
22 percent of the height of the advertisement and printed in a contrasting color.¹⁵

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25 ⁹ Sections 84200.8, subd. (b); and 84215.

26 ¹⁰ Section 84204, subd. (c).

27 ¹¹ Section 82036.5.

28 ¹² Section 84501.

¹³ Section 84506, subd. (a)(1); Regulation 18450.4, subd. (b)(1).

¹⁴ Section 84506.5.

¹⁵ Regulation 18450.4, subd. (b)(3)(D).

1 Joint and Several Liability of Committee, Principal Officer, and Treasurer

2 It is the duty of a committee treasurer to ensure that the committee complies with the reporting
3 provisions of the Act.¹⁶ It is the duty of the committee’s principal officer to authorize the content of
4 communications made by the committee, authorize expenditures made by the committee, and determine
5 the committee’s campaign strategy.¹⁷ A treasurer and principal officer may be held jointly and severally
6 liable, along with the committee, for violations committed by the committee.¹⁸

7 **SUMMARY OF THE FACTS**

8 The Committee qualified on September 24, 1994 and remains active. The Committee is
9 registered as a county general purpose committee, operating in San Diego County. Per its statement of
10 organization filed on or about January 9, 2015, in 2016, the Committee existed to “support and/or oppose
11 local candidates and measures.” In a statement of organization filed on or about January 19, 2017, the
12 Committee changed its purpose to “elect school board candidates who value public education and
13 support school bond measures.”

14 In 2016, the Committee received \$5,438 in contributions and made a total of \$6,616.27 in
15 expenditures. According to its reporting, the Committee received \$795 in contributions and made
16 \$4,453.22 in independent expenditures during the reporting period of September 25, 2016 to October 22,
17 2016. These independent expenditures were made in support of Kevin Drolet and Cheryl Quinones,
18 candidates for the South Bay Union School District School Board, and included poster supplies, a
19 billboard, mailers, post cards, a newspaper ad, yard signs, banners, and door hangers. Drolet was
20 unsuccessful in the election, receiving approximately 11.9 percent of the vote, while Quinones was
21 successfully elected with 36.7 percent of the vote.

22 Campaign Filing and Reporting

23 As a result of its activity, the Committee was required to timely file a preelection campaign
24 statement covering the reporting period of July 1, 2016 to October 22, 2016. However, the Committee
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27 ¹⁶ Sections 81004, 84100, 84104, and 84213; Regulation 18427.

28 ¹⁷ Section 82047.6; Regulation 18402.1, subd. (b).

¹⁸ Sections 83116.5 and 91006.

1 did not file a statement covering this period until February 1, 2017, when it filed a campaign statement
2 covering the period of July 1, 2016 to December 31, 2016.

3 The Committee also failed to timely file 24-hour independent expenditure reports for the
4 following independent expenditures it made in support of Drolet and Quinones:

5 Statement/Report Type	Date of Expenditure(s)	Due Date	Date Filed	Supported/Opposed Candidate	Amount of Expenditure(s)
7 24-Hour Independent Expenditure	9/28/16	9/29/16	n/a	Kevin Drolet	\$1,054
9 24-Hour Independent Expenditure	9/28/16	9/29/16	n/a	Cheryl Quinones	\$1,054
11 24-Hour Independent Expenditure	10/15/16	10/16/16	n/a	Kevin Drolet	\$1,106
13 24-Hour Independent Expenditure	10/15/16	10/16/16	n/a	Cheryl Quinones	\$1,106
Total:					\$4,320

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18 Advertisement Disclosure

19 Respondents also committed certain advertising disclosure violations. First and foremost, the
20 Committee paid for a billboard advocating for Drolet and Quinones which failed to include any
21 disclosure whatsoever on the advertisement, despite the requirement that the Committee print the phrase
22 "Paid for by" and the committee name, and a disclaimer that the advertisement was not authorized or
23 paid for by a candidate. Further, the Committee paid for a large banner that failed to meet the Act's
24 advertising disclosure requirements. Although the banner included the required "Paid for by" phrase and
25 committee name, the print was too small. Specifically, the height of the disclosure text measured
26 approximately one percent of the advertisement, as opposed to the required five percent.

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1 **VIOLATIONS**

2 Count 1: Failure to Timely File Preelection Campaign Statement

3 The Committee, Swearingen, and Gates failed to timely file a preelection campaign statement for
4 the reporting period of July 1, 2016 to October 22, 2016, in violation of Sections 84200.5, subdivision
5 (c); and 84200.8, subdivision (b).

6 Count 2: Failure to Timely File 24-Hour Independent Expenditure Reports

7 The Committee, Swearingen, and Gates failed to timely report four late independent expenditures
8 totaling \$4,320 on 24-hour independent expenditure reports, in violation of Section 84204.

9 Count 3: Failure to Comply with Disclosure Requirements for Political Advertisements

10 The Committee and Swearingen failed to include the required “Paid for by” phrase and
11 committee name on a billboard advertisement; and failed to print a disclosure statement that measured at
12 least five percent of the height of the advertisement on a banner advertisement, in violation of Sections
13 84506 and 84506.5, and Regulation 18450.4.

14 **PROPOSED PENALTY**

15 This matter consists of three counts. The maximum penalty that may be imposed is \$5,000 per
16 count. Thus, the maximum penalty that may be imposed is \$15,000.¹⁹

17 In determining the appropriate penalty for a particular violation of the Act, the Commission
18 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
19 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
20 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
21 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
22 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
23 record of violations.²⁰

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¹⁹ See Section 83116, subd. (c).

28 ²⁰ Regulation 18361.5, subd. (d).

1 Here, the actions of the Committee appear to be the result of negligence, as there is no evidence
2 of deliberate omission or attempts to conceal. Further, Respondents do not have a prior history of
3 violating the Act.

4 Additionally, the Commission considers penalties in prior cases with comparable violations.
5 Comparable cases in which a penalty was charged for failure to timely file preelection campaign
6 statements include the following:

- 7 • *In the Matter of Alicia Cruz 4 School Board 2016 and Alicia Cruz*; FPPC No. 17/620.

8 Respondents, a candidate and her controlled committee, failed to timely file one preelection and one
9 semiannual campaign statement, in violation of Sections 84200, 84200.5, and 84200.8. The subject
10 statements were not filed until well after the pertinent election, and reported \$4,126 in contributions and
11 \$5,668 in expenditures. In August 2018, the Commission approved a penalty of \$2,000 on one count.

12 As to Count 1, a penalty comparable to that approved in *Cruz* is warranted here given the similar
13 nature of the violations.

14 Comparable cases in which a penalty was charged for failure to timely file 24-hour reports
15 include the following:

- 16 • *In the Matter of Gregory Kelly Meagher*; FPPC No. 16/236. Respondent, a state general purpose
17 major donor committee, failed to timely file a 24-hour independent expenditure report for three late
18 independent expenditures amounting to \$8,811; and a 24-hour contribution report for a \$2,000 late
19 contribution, in violation of Sections 84203 and 84204. While the late contribution was disclosed prior
20 to the election on the recipient's campaign statement, the independent expenditures were not disclosed by
21 respondent prior to the election. In September 2017, the Commission approved a penalty of \$2,000 on
22 one count.

23 As to Count 2, the violations here are deserving of a penalty lower than that approved in the
24 *Meagher* case given the lower amount of financial activity at issue. Further, in mitigation, the
25 Committee attempted to file one 24-hour independent expenditure report prior to the election, but the
26 document was not sent to the appropriate filing officer.

27 Comparable cases in which a penalty was charged for failure to comply with disclosure
28 requirements for political advertisements include the following:

1 • *In the Matter of Save Public Parking, No on H, Yes on I and Michael Powers*; FPPC No. 16/652.
2 Respondents, a primarily formed ballot measure committee and its treasurer, failed to include a
3 disclosure statement on five advertising banners and failed to include a disclosure statement of at least
4 five percent of the height of the advertisement on 300 yard signs, in violation of Section 84504,
5 subdivision (c); and Regulation 18450.4, subdivision (b). In May 2017, the Commission approved a
6 penalty of \$2,500 on one count.

7 As to Count 3, although the nature of the combined violations are similar, a penalty higher than
8 what was approved in *Save Public Parking* is warranted. In *Save Public Parking*, the banner
9 advertisements included some disclosure, in that they revealed the website of the committee. Further, the
10 committee in *Save Public Parking* reported the expenditures related to the pertinent advertising on
11 timely-filed campaign statements; therefore, the public had some information that the committee was
12 responsible for the ads. Here, the billboard advertisement had no identifying information whatsoever,
13 and the Committee failed to report the pertinent advertising activity on timely-filed campaign statements.

14 In further aggravation, the Committee committed additional advertising disclosure violations that
15 are not being charged herein. In particular, the Committee paid for a mailer and newspaper
16 advertisement that did not state the full independent expenditure disclosure required under Section
17 84506.5. However, in the interest of settlement, these additional violations are not being charged herein.

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

Count	Violation	Proposed Penalty
1	Failure to Timely File Preelection Campaign Statement	\$2,000
2	Failure to Timely File 24-Hour Independent Expenditure Reports	\$1,500
3	Failure to Comply with Disclosure Requirements for Political Advertisements	\$3,000
TOTAL:		\$6,500

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1 **CONCLUSION**

2 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
3 Respondents, Southwest Teachers Association PAC, Ben Swearingen, and Michelle Gates hereby agree
4 as follows:

5 1. Respondents violated the Act as described in the foregoing pages, which are a true and
6 accurate summary of the facts in this matter.

7 2. This stipulation will be submitted for consideration by the Fair Political Practices
8 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

9 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
10 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
11 liability of Respondents pursuant to Section 83116.

12 4. Respondent Southwest Teachers Association PAC having consulted with its attorney
13 Aaron Lawrence, Reich, Adell & Cvitan, Respondents understand, and hereby knowingly and voluntarily
14 waive, any and all procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations
15 18361.1 through 18361.9. This includes, but is not limited to the right to appear personally at any
16 administrative hearing held in this matter, to be represented by an attorney at Respondents’ own expense,
17 to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at
18 the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer,
19 and to have the matter judicially reviewed.

20 5. Respondents agree to the issuance of the decision and order set forth below. Also,
21 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
22 \$6,500. One or more cashier’s checks or money orders totaling said amount—to be paid to the General
23 Fund of the State of California—or credit/debit card payment for said amount is/are submitted with this
24 stipulation as full payment of the administrative penalty described above, and same shall be held by the
25 State of California until the Commission issues its decision and order regarding this matter.

26 6. If the Commission declines to approve this stipulation—then this stipulation shall become
27 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
28 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to

1 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing
2 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
3 Director, shall be disqualified because of prior consideration of this Stipulation.

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

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Dated: _____
Galena West, Chief of Enforcement
Fair Political Practices Commission

Dated: _____
Ben Swearingen, individually and on behalf of Southwest
Teachers Association PAC

Dated: _____
Michelle Gates, individually and on behalf of Southwest
Teachers Association PAC

1 The foregoing stipulation of the parties “In the Matter of Southwest Teachers Association PAC, Ben
2 Swearingen, and Michelle Gates,” FPPC Case No. 17/403 is hereby accepted as the final decision and
3 order of the Fair Political Practices Commission, effective upon execution below by the Chair.
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5 IT IS SO ORDERED.
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7 Dated: _____

_____ Alice T. Germond, Chair
8 Fair Political Practices Commission
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