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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA
9

10 In the Matter of:

11 TOM WHEELER FOR SUPERVISOR
DISTRICT 5-2018, TOM WHEELER, and
12 NANCY D. BEAVERS,

13 Respondents.

FPPC Case No. 18/381

STIPULATION, DECISION AND ORDER

14
15 **INTRODUCTION**

16 Respondent Tom Wheeler (“Wheeler”) was a candidate for Madera County Supervisor in the
17 2018 Primary Election. Respondent “Tom Wheeler for Supervisor District 5-2018” (“Committee”) is
18 Wheeler’s candidate-controlled committee. Nancy D. Beavers (“Beavers”) is the treasurer. The
19 Committee, Wheeler, and Beavers violated the Political Reform Act¹ (“Act”) by failing to timely file a
20 pre-election campaign statement and failing to report employer and occupation information of
21 contributors.

22 **SUMMARY OF THE LAW**

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

24 When enacting the Political Reform Act, the people of California found and declared that
25 previous laws regulating political practices suffered from inadequate enforcement by state and local

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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 authorities.² Thus, it was decreed that the Act “should be liberally construed to accomplish its
2 purposes.”³

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

8 **Duty to File Campaign Statements**

9 The Act requires candidates and their controlled committees to file campaign statements at
10 specific times disclosing information regarding contributions received and expenditures made by the
11 campaign committees.⁷

12 **Duty to File Pre-Election Campaign Statements**

13 A candidate-controlled committee must file pre-election campaign statements prior to elections in
14 which the candidate appears on the ballot.⁸ Whenever the deadline falls on a Saturday, Sunday or official
15 state holiday, the filing deadline for a statement shall be extended to the next regular business day.⁹ For
16 the June 5, 2018 Primary Election, a candidate-controlled committee was required to file pre-election
17 campaign statements for the period ending April 21, 2018, no later than April 26, 2018, and for the
18 period ending May 19, 2018, no later than May 24, 2018.¹⁰

19 **Duty to File 24-Hour Contribution Reports**

20 Each candidate or committee that makes or receives a late contribution must file a report within
21 24 hours of making or receiving the contribution.¹¹ A “late contribution” includes a contribution, in total
22 or in the aggregate, of \$1,000 or more that is made or received by a candidate or his or her controlled
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24 ² Section 81001, subdivision (h).

25 ³ Section 81003.

26 ⁴ Section 81002, subdivision (a).

27 ⁵ Sections 84200, *et seq.*

28 ⁶ Section 81002, subdivision (f).

⁷ Section 84200, *et seq.*

⁸ Section 84200.5, subdivision (b).

⁹ Regulation 18116, subdivision (a).

¹⁰ Section 84200.8.

¹¹ Section 84203.

1 committee within the 90-day period preceding the date of the election, or on the date of the election in
2 which the candidate is to be voted on.¹² For the June 5, 2018 Primary Election the 90-day reporting
3 period was March 7, 2018 through June 5, 2018.

4 **Duty to Report Employer and Occupation Information of Contributors**

5 A committee’s campaign statement must disclose the name, street address, occupation,
6 employer, date, amount of contribution, and cumulative amount of contributions for each person who
7 contributes \$100 or more.¹³

8 **Joint and Several Liability of Committee, Candidate, and Treasurer**

9 It is the duty of a committee treasurer and the candidate to ensure that the committee complies
10 with the Act’s campaign reporting.¹⁴ A treasurer and candidate may be held jointly and severally liable
11 with the committee for violations committed by the committee.¹⁵

12 **SUMMARY OF THE FACTS**

13 Wheeler was first elected in 2006 and subsequently re-elected in 2010 and 2014 for the position
14 of County Supervisor in District 5 of Madera County. He recently won the Primary Election on June 5,
15 2018. He will continue to the General Election on November 6, 2018. The Committee was first
16 established in 2006 as Wheeler’s candidate-controlled committee. The Committee qualified on or about
17 March 2, 2006. The Committee has remained open and was re-designated “Tom Wheeler for Supervisor
18 District 5-2018” on December 18, 2017. Wheeler won the June 5, 2018 Primary Election with 50.99% of
19 the votes. According to campaign statements, the Committee received a total of \$42,811.50 in
20 contributions and made a total of \$75,405.39 in expenditures in the first half of 2018 for the Primary
21 Election.

22 Failure to Timely File a Pre-election Campaign Statement

23 The Committee was referred to the Enforcement Division by the local filing officer for failure to
24 timely file the first pre-election statement due on April 26, 2018. The Enforcement Division made
25 contact with the Committee and the Committee filed the late statement shortly thereafter. The first pre-

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27 ¹² Section 82036, subdivision (a).

¹³ Section 84211, subdivision (f).

¹⁴ Sections 81004, 84100, 84104, and Regulation 18427.

¹⁵ Sections 83116.5 and 91006.

election campaign statement for the period of January 1, 2018 through April 21, 2018 was filed 7 days late on May 3, 2018. The Committee reported \$38,861.50 in contributions and \$37,096.89 in expenditures. The Committee timely filed both the second pre-election statement for the period ending May 19, 2018 and the semi-annual statement for the period ending June 30, 2018.

Failure to Timely Report Employer and Occupation Information of Contributors

The Committee also failed to report the employer and occupation of 24 individual contributors on the pre-election statements for the periods ending April 21, 2018, May 19, 2018, and on the semi-annual statement for the period ending June 30, 2018. The table below summarizes the reporting omissions:

Reporting Period	Name	Occupation	Employer	Type	Amount
1/1/18 – 4/21/18	Roger Tucker	Unknown	Unknown	Monetary	\$500
	John Crane	Unknown	Unknown	Monetary	\$200
	Richard Spencer	Unknown	Unknown	Monetary	\$5,000
	James Lee	Unknown	Unknown	Monetary	\$100
	John Sweeney	Unknown	Unknown	Monetary	\$100
	Geogr [sic] Sitts	Unknown	Unknown	Monetary	\$500
	Ashu Jain	Unknown	Unknown	Monetary	\$200
	Steve Bricker	Unknown	Unknown	Monetary	\$200
	R. Mitch Covington	Businessman	Unknown	Monetary	\$100
	Brandon Steele	Unknown	Unknown	Monetary	\$275
	Russell Ducanson	Unknown	Unknown	Monetary	\$215
	Robert Khan Jr.	Unknown	Unknown	Monetary	\$100
	David Lawson	Unknown	Unknown	Monetary	\$600
	Jesse Pence	Unknown	Unknown	Monetary	\$150
	Rhonda Salisbury	Businesswoman	Unknown	Monetary	\$470
	Charles Wieland	Unknown	Unknown	Monetary	\$100
	Bill Bunnell	Unknown	Unknown	Nonmonetary	\$167
	Brian Hillman	Unknown	Unknown	Nonmonetary	\$200
	Bill Ritchey	Unknown	Unknown	Nonmonetary	\$1,000

	Carol Moses	Unknown	Unknown	Monetary	\$100
4/22/18- 5/19/18	William Ritchey	Unknown	Unknown	Monetary	\$250
	Stephen Gabbard	Contractor	Unknown	Monetary	\$100
5/20/18- 6/30/18	Daniel Morris	Unknown	Unknown	Monetary	\$100
	Connley Clayton	Unknown	Unknown	Monetary	\$100
	Jack McGowan	Unknown	Unknown	Monetary	\$100
Total: \$10,927					

Contributions from these contributors constitute about 25% of the total contributions received by the Committee between January 1, 2018 and June 30, 2018.

24-Hour Reports

The Committee failed to timely file five 24-hour reports with respect to late contributions received. The following table summarizes the late contributions, as reported on pre-election campaign statements, that were not timely disclosed in a 24-Hour report.

Report	Contributor	Date Received	Due Date	Date Filed	Contribution
1	Richard Spencer	3/7/18	3/8/218	n/a	\$1,000
2	Precision Civil Engineering	3/8/18	3/9/18	3/27/18	\$1,000
		3/8/18	3/9/18	n/a	\$1,000
3	William Ritchey	3/9/18	3/12/18	5/8/18	\$1,000
4	Richard Spencer	3/21/18	3/22/18	n/a	\$1,000
5	Inspiro Brands	5/2/18	5/3/18	5/8/18	\$1,000
Total: \$6,000					

All of these contributions were reported prior to the election on the first or second pre-election statements. There was some additional disclosure for two of the contributions. Richard F. Spencer and Affiliates, a major donor, filed Form 497s on March 9, 2018 and March 22, 2018 to report two contributions of \$1,000 each to the Committee. In further consideration, the amount that was undisclosed was low relative to other violations, therefore the failure to file these reports will not be charged as a separate violation.

1 **VIOLATIONS**

2 **Count 1**

3 Failure to Timely File a Pre-Election Statement

4 The Committee, Wheeler and Beavers failed to timely file a pre-election statement for the period
5 ending April 21, 2018 and due on April 26, 2018 in violation of Section 84200.5.

6 **Count 2**

7 Failure to Timely Report Employer and Occupation Information of Contributors

8 The Committee, Wheeler and Beavers failed to report the employer and occupation of persons
9 who had contributed \$100 or more during the calendar year in violation of Section 84211, subdivision
10 (f).

11 **PROPOSED PENALTY**

12 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per
13 count. Thus, the maximum penalty that may be imposed is \$10,000.¹⁶

14 In determining the appropriate penalty for a particular violation of the Act, the Commission
15 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
16 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
17 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
18 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
19 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
20 record of violations.¹⁷ Here, the actions of the Committee appear to be the result of negligence, but there
21 is no evidence of deliberate omission or attempts to conceal. The Committee has no prior enforcement
22 history.

23 Additionally, the Commission considers penalties in prior cases with comparable violations. *In*
24 *the Matter of Yes on Measure U – Kids Need U and Kelly Brown*, FPPC No. 16/19824 (The Commission
25 approved a stipulated decision on January 19, 2017.) *In Measure U* the Committee failed to timely file a
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27 _____
¹⁶ See Section 83116, subdivision (c).

28 ¹⁷ Regulation 18361.5, subdivision (d).

1 pre-election campaign statement. The statement was filed 5 days late and reported \$72,775 in
2 contributions. The Commission imposed a penalty of \$2,000.

3 With regard to Count 1, this case is analogous because like *Measure U*, the Committee filed other
4 statements on time, the pre-election statement was filed only a few days late and almost immediately
5 after the Committee was contacted by Enforcement and the disclosure was made prior to the election. For
6 these reasons, a penalty of \$2,000 is recommended.

7 With regard to Count 2, although the percentage and dollar amount of contributions was higher in
8 *Valencia*, the candidate here was more experienced. *Valencia* was a first-time candidate, whereas
9 Wheeler has been in office since 2006. Therefore, a penalty of \$1,500 is recommended.

10 After considering the factors listed in Regulation 18361.5 and penalties in prior similar cases, a
11 penalty of \$3,500 is recommended.

12 CONCLUSION

13 Complainant, the Enforcement Division of the Fair Political Practices Commission, and Tom
14 Wheeler for Supervisor District 5-2018, Tom Wheeler, and Nancy D. Beavers hereby agree as follows:

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

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

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

22 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all
23 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
24 This includes, but is not limited to the right to appear personally at any administrative hearing held in this
25 matter, to be represented by an attorney at Respondents' own expense, to confront and cross-examine all
26 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
27 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
28 reviewed.

1 5. Respondents agree to the issuance of the decision and order set forth below. Also,
2 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
3 \$3,500. One or more cashier’s checks or money orders totaling said amount—to be paid to the General
4 Fund of the State of California—is/are submitted with this stipulation as full payment of the
5 administrative penalty described above, and same shall be held by the State of California until the
6 Commission issues its decision and order regarding this matter.

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

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

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

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21 Dated: _____
22 Tom Wheeler, individually and on behalf of Tom Wheeler
23 for Supervisor District 5-2018

24 Dated: _____
25 Nancy D. Beavers, individually and on behalf of Tom
26 Wheeler for Supervisor District 5-2018
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1 The foregoing stipulation of the parties “In the Matter of Tom Wheeler for Supervisor District 5-
2 2018, Tom Wheeler, and Nancy D. Beavers,” FPPC Case No. 18/381 is hereby accepted as the final
3 decision and order of the Fair Political Practices Commission, effective upon execution below by the
4 Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

_____ Alice T. Germond, Chair
Fair Political Practices Commission