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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA

10 In the Matter of:

11 ANDREW VALENCIA FOR  
12 SWEETWATER SCHOOL BOARD 2016  
13 AND ANDREW VALENCIA,

14 Respondents.

FPPC Case No. 16/20043

STIPULATION, DECISION AND ORDER

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16 INTRODUCTION

17 Andrew Valencia for Sweetwater School Board 2016 (“Committee”) was the candidate-  
18 controlled committee to elect Andrew Valencia (“Valencia”) to the Sweetwater Union High School  
19 District (“SUHSD”) Board of Trustees for District 2 during the November 8, 2016 General Election. The  
20 Committee violated the Political Reform Act (the “Act”)<sup>1</sup> by failing to timely file campaign statements  
21 and failing to make all expenditures from and deposit all contributions into the designated campaign bank  
22 account.

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27 <sup>1</sup> The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections  
28 81000 through 91014. 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. All regulatory references  
are to this source.

1 **SUMMARY OF THE LAW**

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

3 When enacting the Political Reform Act, the people of California found and declared that  
4 previous laws regulating political practices suffered from inadequate enforcement by state and local  
5 authorities.<sup>2</sup> Thus, it was decreed that the Act “should be liberally construed to accomplish its  
6 purposes.”<sup>3</sup> Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act  
7 will be “vigorously enforced.”<sup>4</sup>

8 **Pre-election Campaign Statements**

9 A controlled committee must file two pre-election campaign statements before the election in  
10 which the candidate is listed on the ballot.<sup>5</sup> A committee must file the first pre-election campaign  
11 statement for the period 45 days before the election, no later than 40 days before the election.<sup>6</sup> A  
12 committee must also file a second pre-election campaign statement for the period ending 17 days before  
13 the election no later than 12 days before the election.<sup>7</sup> Whenever the deadline falls on a Saturday,  
14 Sunday, or official state holiday, the filing deadline for a statement shall be extended to the next regular  
15 business day.<sup>8</sup>

16 **Semiannual Campaign Statements**

17 A committee must file two semi-annual campaign statements each year no later than July 31 for  
18 the period ending June 30 and no later than January 31 for the period ending December 31.<sup>9</sup> Whenever the  
19 deadline falls on a Saturday, Sunday, or official state holiday, the filing deadline for a statement shall be  
20 extended to the next regular business day.<sup>10</sup>

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<sup>2</sup> Section 81001, subdivision (h).

24 <sup>3</sup> Section 81003.

25 <sup>4</sup> Section 81002, subdivision (f).

26 <sup>5</sup> Section 84200.5.

27 <sup>6</sup> Section 84200.8, subdivision. (a).

28 <sup>7</sup> Section 84200.8, subdivision. (b).

<sup>8</sup> Regulation 18116, subdivision. (a).

<sup>9</sup> Section 84200, subdivision. (a).

<sup>10</sup> Regulation 18116, subdivision. (a).

1 **One Designated Campaign Bank Account**

2 Upon the filing of a statement of intention to run for office, a candidate must establish one  
3 designated campaign bank account.<sup>11</sup> All contributions or loans made to the candidate must be deposited  
4 in the account prior to expenditure.<sup>12</sup> Any personal funds a candidate intends to spend on campaign-related  
5 expenses must first be deposited in the campaign bank account before the expenditure is made.<sup>13</sup> A  
6 candidate-controlled committee must make all campaign expenditures from the committee’s designated  
7 bank account.<sup>14</sup>

8 **Campaign Reporting**

9 The Act provides that each campaign statement must contain certain information about the  
10 campaign’s financial activity, including total contributions, total expenditures, and identifying  
11 information about sources of contributions and recipients of expenditures.<sup>15</sup>

12 Campaign contributions include payments, forgiveness of a loan, payment of a loan by a third  
13 party, or an enforceable promise to make a payment, including non-monetary or in-kind contributions.<sup>16</sup>  
14 For contributions of \$100 or more, including loans, the statement must include the name, street address,  
15 occupation, employer, and amount received from each source.<sup>17</sup> For loans, the statement must include the  
16 original date and amount of each loan, the due date and interest rate of the loan, the cumulative payment  
17 made or received to date, the outstanding balance at the end of the reporting period, and the cumulative  
18 amount of contributions.<sup>18</sup>

19 Campaign expenditures include monetary payments, forgiveness of a loan, payment of a loan by a  
20 third party, or an enforceable promise to make a payment (also known as an accrued expense.)<sup>19</sup> For  
21 expenditures of \$100 or more, the statement must include the name of the payee, the street address, the  
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24 <sup>11</sup> Section 85201, subdivision (a).

25 <sup>12</sup> Section 85201, subdivision (c).

26 <sup>13</sup> Section 85201, subdivision (d) and Regulation 18524, subdivision (a).

27 <sup>14</sup> Section 85201, subdivision (e).

28 <sup>15</sup> Section 84211.

<sup>16</sup> Section 82015.

<sup>17</sup> Section 84211, subdivision (f).

<sup>18</sup> Section 84211, subdivision (g).

<sup>19</sup> Section 82025.

1 amount of each expenditure, and a brief description of each expenditure.<sup>20</sup> An accrued expense must be  
2 reported as of the date on which the goods or services are received and must be reported on subsequent  
3 statements until the debt is paid or forgiven.<sup>21</sup>

#### 4 **Joint and Several Liability of Committee and Treasurer**

5 It is the duty of a committee treasurer to ensure that the committee complies with the Act.<sup>22</sup> A  
6 treasurer may be held jointly and severally liable, along with the committee and candidate, for violations  
7 committed by the committee.<sup>23</sup>

#### 8 **SUMMARY OF THE FACTS**

9 Valencia was an unsuccessful candidate for District 2 of the SUHSD Board of Trustees during  
10 the November 8, 2016 General Election. Valencia served as the treasurer for his committee. Valencia  
11 previously ran in 2010 for District 5 of the same Board, but was also unsuccessful. This case was opened  
12 in response to a referral from the local filing officer, San Diego County Registrar of Voters, alleging that  
13 Valencia failed to file required campaign statements. The Enforcement Division's subsequent  
14 investigation found that the Committee and Valencia did not comply with several of the Act's campaign  
15 reporting requirements.

#### 16 Failure to Timely File Campaign Statements

17 Valencia filed an initial statement of organization with the Secretary of State, on or around  
18 September 26, 2016, indicating that the Committee qualified on September 1, 2016. The Committee  
19 timely filed the first pre-election statement on September 29, 2016 but failed to file any additional  
20 statements until the Committee was contacted by the Enforcement Division. The pre-election statement  
21 for the period of September 25 through October 22 was due on October 27, 2016. The semiannual  
22 campaign statement for the period of October 23 through December 31 was due on January 31, 2017. On  
23 March 22, 2017, the Committee filed a combined statement purporting to cover the period of September  
24 25, 2016 through December 31, 2016. Therefore, the disclosure for the pre-election period was almost  
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27 <sup>20</sup> Section 84211, subdivision (k).

<sup>21</sup> Regulation 18421.6.

28 <sup>22</sup> Sections 81004, 84100, and Regulation 18427.

<sup>23</sup> Sections 83116.5 and 91006.

1 five months late and the disclosure for the semiannual period was filed almost two months late. The  
2 Committee terminated on the same date.

3 One Bank Account Rule

4 The Enforcement Division attempted to reconcile the filed campaign statements, committee  
5 records, and the records for the designated campaign bank account. This reconciliation was incomplete  
6 due to failure to adequately maintain committee records,<sup>24</sup> reporting errors on campaign statements,  
7 prohibited cash expenditures,<sup>25</sup> and failure to deposit all contributions into and make all expenditures out  
8 of the designated campaign bank account.

9 The Committee reported receiving \$200 from Ginny McGill and \$250 from Annette Hernandez  
10 on September 1, 2016. Neither of these contributions were deposited in the campaign bank account. In  
11 addition, the Committee reported a \$25,000 loan to the Committee from Valencia. The loan amount was  
12 not deposited in the Committee account. Valencia admits that he used personal funds for campaign  
13 expenditures but did not deposit the funds into the campaign bank account first. The Committee made  
14 nearly all of the reported expenditures outside of the campaign bank account. Instead, the Committee  
15 withdrew cash from the campaign bank account and then made separate payments for expenditures using  
16 cash, personal credit or debit cards, and with money from third parties. The only activity in the campaign  
17 bank account was a cashier's check to pay a political consultant for \$1,250 and \$2,347 in cash  
18 withdrawals. A total of \$2,160 was withdrawn in cash in increments of \$100 or more.

19 Failure to Accurately Report All Campaign Contributions and Expenditures

20 The Committee reported two loans from the candidate. The first loan, reportedly made on  
21 September 19, 2016, was for \$9,000. The second installment, reportedly made on October 1, 2016, was  
22 for \$16,000. However, this loan was never made. The funds were never deposited in the campaign bank  
23 account. Valencia asserts that he did not understand the requirements of the Act and did not actually loan  
24 the funds or spend the funds.

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<sup>24</sup> Section 84104 requires all committees to maintain all records necessary to substantiate campaign statements.

<sup>25</sup> Section 84300 prohibits committees from accepting contributions in cash in amounts of \$100 or more and prohibits expenditures in cash in amounts of \$100 or more.

1 The Committee reported a campaign expenditure for literature paid to Fourth Turning Strategies  
2 as if it was paid for directly by the Committee. However, records show that this expenditure of \$6,661.15  
3 was paid from a joint account belonging to Anthony and Gloria Valencia, the candidate's parents. The  
4 Committee also reported a campaign expenditure of printing paid to Dimensional Silk Screen. However,  
5 records show that \$1,500 was paid for from the account of Anthony and Gloria Valencia. Both checks  
6 were signed by Gloria Valencia. Though reported erroneously as a committee expenditure, this  
7 contribution should have been reported as a nonmonetary contribution from the candidate's parents. The  
8 Committee did report a \$1,500 monetary contribution from Anthony and Gloria Valencia, but did not  
9 deposit the \$1,500 into the Committee bank account. The second contribution of \$6,661 was never  
10 reported.

11 The Committee made several additional reporting errors. An expenditure of \$425 was reported as  
12 paid to the payee Political Data Inc., however, the payment was never made to the vendor. Therefore, this  
13 should have been reported as an accrued expense. The Committee also reported a \$5,000 expenditure to  
14 the payee PQ Consulting on the statement covering September 25, 2016 through December 31, 2016.  
15 However, only \$3,250 was paid.

16 In consideration of settlement and given the size of the overall financial activity of this local  
17 campaign, this is not being charged as a separate count but will be considered as aggravation.

## 18 VIOLATIONS

### 19 Count 1: Late Filing of Campaign Statements

20 The Committee and Valencia failed to timely file a pre-election statement on or before October  
21 27, 2016 for the reporting period of September 25, 2016 through October 22, 2016 and failed to file a  
22 semiannual campaign statement on or before January 31, 2017 for the period of October 23, 2016  
23 through December 31, 2016, in violation of Sections 84200.5, 84200.8, and 84200.

### 24 Count 2: One Bank Account

25 The Committee and Valencia failed to make all expenditures from and deposit all contributions  
26 into a designated campaign bank account, in violation of Section 85201.

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1 **PROPOSED PENALTY**

2 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per  
3 count. Thus, the maximum penalty that may be imposed is \$15,000.<sup>26</sup>

4 In determining the appropriate penalty for a particular violation of the Act, the Commission  
5 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the  
6 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of  
7 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or  
8 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective  
9 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior  
10 record of violations.<sup>27</sup> Here, the violations show a negligent disregard for basic campaign accounting and  
11 reporting rules. However, Valencia does not have a prior history of violating the Act.

12 The Commission considers penalties in prior cases with the same or similar violations and  
13 comparable facts. *In the Matter of Patricia López, Patty López, for Assembly 2014, and Carolina Perez,*  
14 *FPPC Nos. 15/313 and 15/314* (The Commission approved a stipulated decision on March 17, 2016.)  
15 Respondent, a first time, successful candidate for the Assembly, was charged with multiple violations of  
16 the Act. These violations included, but were not limited to, failing to timely file three campaign  
17 statements; failing to use a designated campaign bank account; receipt of and spending cash in amounts  
18 of \$100 or more; and failing to maintain supporting records. The Commission approved a stipulation in  
19 the amount of \$7,500 for five counts.

20 In *López*, respondents failed to timely file a semiannual campaign statement to report the  
21 conclusion of the primary election activity and failed to timely file two pre-election statements for the  
22 general election. The committee failed to timely disclose \$13,242 in contributions and \$10,965 in  
23 expenditures over the three statements. The committee was required to file locally and with the Secretary  
24 of State. The committee filed late in both places, the statements were filed close to the due date at the  
25 local level and provided some disclosure. The Commission imposed a \$2,500 penalty for this count.  
26 Here, for Count 1, the Committee failed to file a pre-election statement until after the election and filed  
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28 <sup>26</sup> See Section 83116, subdivision (c).

<sup>27</sup> Regulation 18361.5, subdivision (d).

1 the semiannual statement almost two months late. The count here is for two statements, compared to the  
2 three in *López*. Valencia has no prior enforcement history, whereas *López* had paid a prior penalty for  
3 failing to timely file statements. Therefore, a \$2,000 penalty is recommended for Count 1.

4 With regard to Count 2, the *López* respondents made campaign expenditures totaling \$4,698  
5 outside of the designated campaign bank account, failed to report two expenditures, and failed to deposit  
6 approximately \$800 in contributions. The Commission imposed a penalty of \$1,500 for this count. Here,  
7 almost all of the Committee's activity was outside of the bank account. The Committee made all but one  
8 campaign expenditures outside of the bank account. The Committee failed to deposit \$1,950 in  
9 contributions and failed to deposit the personal funds of the candidate into the campaign bank account  
10 prior to spending them on campaign-related expenses. Unlike the successful state candidate in *López*,  
11 Valencia ran in a local school board election and is not in office. Therefore, the Enforcement Division  
12 has elected not to include separate counts for violating the Act's prohibition on cash and for  
13 recordkeeping violations. In *López*, the Commission imposed a \$1,500 and \$1,000 penalty for these  
14 violations. Additionally, the Enforcement Division has elected not to include a separate count for failure  
15 to report contributions and expenditures. In consideration of the additional aggravating factors, a \$2,500  
16 penalty is recommended for Count 2.

17 After considering the factors listed in Regulation 18361.5, prior similar cases, and other relevant  
18 facts, a penalty of \$4,500 is recommended.

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1 **CONCLUSION**

2 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
3 Respondents Andrew Valencia for Sweetwater School Board 2016 and Andrew Valencia hereby agree as  
4 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. Respondents understand, and hereby knowingly and voluntarily waive, any and all  
13 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.  
14 This includes, but is not limited to the right to appear personally at any administrative hearing held in this  
15 matter, to be represented by an attorney at Respondents’ own expense, to confront and cross-examine all  
16 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial  
17 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially  
18 reviewed.

19 5. Respondents agree to the issuance of the decision and order set forth below. Also,  
20 Respondents agree to the Commission imposing against them an administrative penalty in the amount of  
21 \$4,500. One or more cashier’s checks or money orders totaling said amount—to be paid to the General  
22 Fund of the State of California—is/are submitted with this stipulation as full payment of the  
23 administrative penalty described above, and same shall be held by the State of California until the  
24 Commission issues its decision and order regarding this matter.

25 6. If the Commission refuses to approve this stipulation—then this stipulation shall become  
26 null and void, and within fifteen business days after the Commission meeting at which the stipulation is  
27 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to  
28 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing

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

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

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

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Galena West, Chief of Enforcement  
Fair Political Practices Commission

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

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Andrew Valencia, individually and on behalf of Andrew  
Valencia for Sweetwater School Board 2016,  
Respondents

