GALENA WEST
Chief of Enforcement
BRIDGETTE CASTILLO
Senior Commission Counsel
Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, CA 95811
Telephone: (916) 323-6424
Facsimile: (916) 322-1932

Attorneys for Complainant

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of: Committee to Elect Gus Kramer and Gus Kramer, Respondents.	FPPC Case No. 17/142 STIPULATION, DECISION AND ORDER

INTRODUCTION

Gus Kramer has been the Contra Costa County Assessor since 1994 and was re-elected in the June 3, 2014 Primary Election. Kramer was unopposed in this election. Committee to Elect Gus Kramer ("Committee") was Kramer's candidate controlled committee. At all relevant times, Kramer was the treasurer of the Committee.

This case arose from an audit conducted by the Political Reform Audit Program of the Franchise Tax Board ("FTB"), for the period from July 1, 2010, through June 30, 2014.

The Political Reform Act[1] requires candidates and their controlled committees to timely file 24-Hour Reports to disclose late contributions received and made of $1,000 or more and requires timely disclosure of loans. Based on the FTB audit and confirmed through investigation, Kramer and the

[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 are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source.

Committee failed to timely file nine 24-Hour Reports and improperly disclosed a loan, in violation of the Act.

SUMMARY OF THE LAW

The Act and its regulations are amended from time to time. The violations in this case occurred in 2013 and 2014. Kramer and the Committee entered into a tolling agreement in this matter, effectively tolling the statute of limitations in the named counts. As such, all legal references and discussions of law pertain to the Act's provisions as they existed at that time.

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

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

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

Mandatory Filing of 24-Hour Reports

At the core of the Act's campaign reporting system is the requirement that committees must file campaign statements and reports for certain reporting periods and by certain deadlines.[7]

For example, certain contributions must be reported within 24 hours. In this regard, the Act defines a "late contribution" to include any contribution that totals $1,000 or more, which is made to or received by a candidate or a controlled committee within 90 days before the election.[8] Each candidate or

---

[2] Section 81001, subdivision (h).

[3] Section 81003.

[4] Section 81002, subdivision (a).

[5] Sections 84200, et seq.

[6] Section 81002, subdivision (f).

[7] Sections 84200, et seq.

[8] Section 82036.

committee that makes or receives a "late contribution" must report the contribution by filing a Form 497 within 24 hours.[9]

Loan Disclosure

A committee's campaign statement must disclose the name, street address, occupation, employer name, date, amount of contribution, and cumulative amount of contributions for each person who contributes $100 or more, including loans, during the period covered by the campaign statement. [10] If a committee receives a loan of $100 or more it must disclose the amount of the loan, the name, street address, employer and occupation of the lender, as well as the original date of each loan, the due date and interest rate of the loan, the payments made on the loan, and the outstanding balance at the end of each statement period.[11]

A committee's campaign statement must disclose the total amount of expenditures made during the period to persons who received $100 or more, including contributions/loans, along with the recipient's full name, his or her street address, the amount of each expenditure, a brief description of the consideration for which each expenditure was made, and, in the case of an expenditure which is a contribution to a candidate, elected officer, or committee, the date of the contribution, the cumulative amount of contributions made to that recipient, the full name of the recipient, and the office and district/jurisdiction for which he or she seeks nomination or election.[12]

Joint and Several Liability of Candidate, Treasurer and Committee

It is the duty of a committee treasurer to ensure that the committee complies with the Act.[13] A candidate, committee and treasurer may be held jointly and severally liable for violations of the Act.[14]

SUMMARY OF THE FACTS

Gus Kramer has been the Contra Costa County Assessor since 1994 and was re-elected in the June 3, 2014 Primary Election. Kramer ran unopposed in this election. The Committee was Kramer's

---

[9] Section 84203.

[10] Section 84211, subdivision (f).

[11] Section 84211, subdivision (g).

[12] Section 84211, subdivision (k).

[13] Sections 81004, 84100, 84104, and 84213; Regulation 18427.

[14] Sections 83116.5 and 91006.

candidate controlled committee. At all relevant times, Kramer was the treasurer of the Committee.

This case arose from an audit conducted by the Political Reform Audit Program of the Franchise Tax Board ("FTB"), for the period from July 1, 2010, through June 30, 2014. During the audit period, the Committee reported receiving $183,550 in contributions and making $70,625 in expenditures.

This case involves the failure to file nine 24-Hour Reports and the improper disclosure of a loan.

VIOLATIONS

Count 1

Failure to Timely File 24-Hour Reports

In connection with the June 3, 2014 Primary Election, candidates and committees were required to file 24-Hour Reports for the period March 5, 2014, through June 2, 2014. The Committee and Kramer received 17 contributions of $1,000 or more during this period, but failed to timely file nine 24-Hour Reports disclosing these contributions. These late contributions were reported on one 24-Hour Report filed on June 6, 2016, after FTB identified the violations. However, these contributions were disclosed prior to the election on the Committee's pre-election campaign statements. The following chart includes the late contributions received during this period:

24-Hour Report	Date Received	Contributor	Amount	Date Filed 24-Hour Report
1	3/12/14	Alexander Properties Company	$1,600	6/6/16
	3/12/14	Black Diamond Electric, Inc.	$1,675	6/6/16
	3/12/14	Sunset Development Company	$1,600	6/6/16
	3/12/14	Zander Investment Company	$1,600	6/6/16
2	3/13/14	Alves Ranch, LLC	$1,675	6/6/16
	3/13/14	Banister Electric, Inc.	$1,675	6/6/16
3	3/14/14	UA Local 342 PAC Fund	$1,675	6/6/16
4	3/17/14	DeNova Homes, Inc.	$1,000	6/6/16
5	3/18/14	Bisio and Dunivan	$1,000	6/6/16
	3/18/14	Sid Corrie, Jr.	$1,675	6/6/16
6	3/26/14	Albert D. Seeno III	$1,675	6/6/16

7	3/27/14	Golden Gate Petroleum	$1,000	6/6/16
	3/27/14	Untd. Prof. Fire Fighters of CCC I.A.F.F. Local 1230 Cand. PAC	$1,675	6/6/16
	3/27/14	Mike Zeelen	$1,000	6/6/16
8	3/31/14	Phillips 66 Company	$1,500	6/6/16
9	4/11/14	Thomas Seeno (1999 Living Trust)	$1,675	6/6/16
	4/11/14	Norine Seeno (1999 Living Trust)	$1,675	6/6/16
		Total:	**$25,375**	

By failing to timely file nine 24-Hour Reports disclosing 17 late contributions received, the Committee and Kramer violated Section 84203.

Count 2

Loan Disclosure

A committee is required to disclose specific information when a loan of $100 or more is received or repaid to the committee. According to the Committee semi-annual campaign statement for the period July 1, 2013, through December 31, 2013, filed January 14, 2014, the Committee disclosed a beginning cash balance of $3,603, receiving $5,350 in contributions and a loan from Kramer to his committee in the amount of $90,000. According to the Committee semi-annual campaign statement for the period May 30, 2014, through June 30, 2014, filed on July 18, 2014, the Committee disclosed the $90,000 loan to Kramer was paid. However, $90,000 was never deposited into the Committee bank account.

On May 25, 2016, after the FTB audit, Kramer and the Committee amended the semi-annual campaign statement covering the period May 30, 2014, through June 30, 2014, removing the loan from Kramer of $90,000. Kramer provided documentation to show he had $90,000 in a personal account that he says he was going to make available to his Committee.

By reporting receiving and repayment of a loan that was not deposited into the Committee bank account, the Committee and Kramer violated Section 84211, subdivisions (f), (g) and (k).

PROPOSED PENALTY

This matter consists of two counts. The maximum penalty that may be imposed is $5,000 per count. Thus, the maximum penalty that may be imposed is $10,000.[15]

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior record of violations.[16] Additionally, the Commission considers penalties in prior cases with comparable violations.

The Commission has found disclosure to be essential, especially before an election. The public harm inherent in campaign reporting violations is that the public is deprived of important, time-sensitive information regarding political contributions. In this case, the large amount of the loan disclosed during a significant time when candidates decide to run in the election created the appearance that Kramer had a significant advantage over another candidate.

Regarding Count 1, the Commission recently considered a settlement involving similar violations in November 2018. *In the Matter of Alejo for Assembly 2014 and Alejo, FPPC No. 16/188,* the Commission approved a $3,000 penalty for Count 2 including failing to timely file 3 24-Hour Reports totaling $36,000, of which $35,000 was not disclosed until after the relevant election. For Count 3 in Alejo, the Commission approved a $2,000 penalty which included 8 untimely filed 24-Hour Reports totaling $18,400. Of this amount, $15,420 was disclosed prior to the election.

In the current case, there were nine 24-Hour Reports that should have been filed within 24 hours of receipt, disclosing 17 contributions. In total, the Committee and Kramer failed to disclose $25,375 in

---

[15] Section 83116, subdivision (c).

[16] Regulation 18361.5, subdivision (d).

late contributions received. In aggravation, Kramer has been the County Assessor since 1994 and was a public official prior. In mitigation, the Committee and Kramer disclosed these contributions on pre-election campaign statements prior to the election and ran unopposed. Thus, all of these contributions were made public to the voters before the election.

Under these circumstances—instead of charging one count for each report, a single count with a penalty in the amount of $2,500 is recommended for Count 1.

Regarding Count 2, the Commission approved a case involving a similar violation in November 2016. *In the Matter of Steven Detrick and Detrick for Council 2012, FPPC No. 16/709.* In this matter, Detrick was a successful candidate for the Elk Grove City Council in 2008 and ran again in 2016. Detrick and the Committee failed to timely report the receipt of a loan. Regarding the loan, Detrick failed to timely disclose the original dates of 3 loans to the Committee on semi-annual campaign statements. In 2015, the Committee did not include the original date of a $71,500 outstanding loan from Detrick and a $7,500 loan from the treasurer to the Committee. Additionally, in 2016, the Committee failed to report an additional loan of $80,000 from Detrick to the Committee. In aggravation, it was noted that Detrick had a history of violating the Act including personal use. The Commission approved a penalty in the amount of $1,500.

In this case, the Committee and Kramer reported the loan and then reported it was repaid on the following campaign statement, all prior to an uncontested election, creating the appearance that his Committee had more money than it did to any potential opposition. Additionally, Kramer has been an elected official for over 20 years and is familiar with campaign reporting. In mitigation, Kramer stated he made a line of credit available to his Committee and did provide documentation of his personal savings account which showed he did have over $90,000 in his personal savings account. Further in mitigation, Kramer fully cooperated with the FTB and this investigation and took immediate steps to correct the way the loan was reported once the FTB notified him of the error, although well after the election.

Under these circumstances, a penalty in the amount of $3,000 is recommended for Count 2.

Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of $5,500 is justified, as reflected in the chart below:

Count	Violation	Penalty
1	Failure to Timely File 24-Hour Reports	$2,500
2	Loan Disclosure	$3,000
		Total: $5,500

CONCLUSION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondents Committee to Elect Gus Kramer and Gus Kramer hereby agree as follows:

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

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

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

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

5. Respondents agree to the issuance of the decision and order set forth below. Also, Respondents agree to the Commission imposing against them an administrative penalty in the amount of $5,500. One or more payments totaling this amount—to be paid to the General Fund of the State of California—is/are submitted with this stipulation as full payment of the administrative penalty described above, and they will be held by the State of California until the Commission issues its decision and order regarding this matter.

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

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

Dated: ____________________

____
Galena West, Chief of Enforcement
Fair Political Practices Commission

Dated: ____________________

____
Gus S. Kramer, individually, and on behalf of
Committee to Elect Gus Kramer, Respondents

The foregoing stipulation of the parties "In the Matter of Committee to Elect Gus Kramer and Gus Kramer," FPPC Case No. 17/142, 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: ____________________

____
Alice T. Germond, Chair
Fair Political Practices Commission