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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of:

FPPC Case No. 18/1404

RE-ELECT MAGDALENA
CARRASCO FOR CITY COUNCIL D5
2018, MAGDALENA CARRASCO,
and HUASCAR CASTRO,

STIPULATION, DECISION AND ORDER

Respondents.

INTRODUCTION

Respondent, Magdalena Carrasco (“Carrasco”), was successful in her bid for San Jose City Council for District 5 in the June 5, 2018, primary election. Respondent, Re-Elect Magdalena Carrasco for City Council D5 2018 (the “Committee”) (ID# 1400557), was Carrasco’s controlled committee. Respondent, Huascar Castro (“Castro”), served as the Committee’s treasurer.

The Political Reform Act (the “Act”)¹ requires committees and treasurers to file 24-hour contribution reports to disclose late contributions received and to report complete contributor information. Carrasco, the Committee, and Castro violated the Act by failing to timely file a 24-hour contribution report and by failing to report complete contributor information.

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.

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 2017 and 2018. For this reason, all legal references and discussions of law pertain to the Act’s
4 provisions as they existed at that time.

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

6 When enacting the Act, the people of California found and declared that previous laws regulating
7 political practices suffered from inadequate enforcement by state and local authorities.² Thus, it was
8 decreed the Act “should be liberally construed to accomplish its purposes.³ A central purpose of the Act
9 is to promote transparency by ensuring that receipts and expenditures in election campaigns are fully
10 and truthfully disclosed so that voters are fully informed and improper practices are inhibited.⁴ Another
11 purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously
12 enforced.”⁵

13 **24-Hour Contribution Report**

14 A “late contribution” is a contribution that totals in the aggregate \$1,000 or more and is received
15 by a candidate or a controlled committee during the 90-day period preceding the date of the election, at
16 which the candidate is to be voted on.⁶ Each candidate or committee that receives a late contribution
17 shall report the late contribution within 24 hours of the time it is made.⁷

18 **Reporting Contributor Information**

19 If the cumulative amount of contributions received from a person is \$100 or more and a
20 contribution has been received from that person during the period covered by the campaign statement,
21 then the campaign statement shall contain all of the following: full name, street address, occupation,
22 name of employer, the date and amount received.⁸

23 “Street address” means the street name and building number, and the city, state, and zip code.⁹
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25 ² Section 81001, subdivision (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subdivision (a).

28 ⁵ Section 81002, subdivision (f).

⁶ Section 82036, subdivision (a).

⁷ Section 84203, subdivisions (a)-(b).

⁸ Section 84211, subdivision (f).

⁹ Regulation 18421.2.

1 **Joint and Several Liability of Committee and Treasurer**

2 It is the duty of a committee treasurer to ensure the committee complies with the Act.¹⁰ A
3 treasurer may be held jointly and severally liable, along with the committee and candidate, for violations
4 committed by the committee.¹¹

5 **Liability for Violations**

6 Any person who violates any provision of the Act, who purposely or negligently causes any
7 other person to violate any provision of the Act, or who aids and abets any other person in the violation
8 of any provision of the Act, is liable for administrative penalties up to \$5,000 per violation.¹²

9 **SUMMARY OF THE FACTS**

10 This case was opened in response to a sworn complaint alleging the Committee failed to timely
11 file a 24-hour contribution report and failed to report contributor information.

12 The Committee reported to qualify as a committee on December 8, 2017. According to the
13 Committee’s filed campaign statements, the Committee received approximately \$92,533 in contributions
14 and spent approximately \$98,683.56 on expenditures. To date, the Committee has not been terminated.

15 **Failure to Timely File 24-Hour Contribution Report**

16 The 90-day period preceding the June 5, 2018, primary election, began on March 7, 2018 and
17 ended on June 5, 2018. The Committee was required to file 24-hour contribution reports within 24 hours
18 of receiving a late contribution. The Committee’s campaign statements revealed one late contribution
19 that required a 24-hour contribution report.

20 On June 4, 2018, the Committee reported, on its post-election semi-annual campaign statement,
21 receiving two \$600 contributions from Patrick Mahoney. On July 31, 2018, 56 days late, the Committee
22 filed a 24-hour contribution report disclosing the late contribution. Also, the semi-annual campaign
23 statement and 24-hour contribution report disclosed one of the \$600 contributions were returned to the
24 contributor “in next period.” Carrasco’s jurisdiction had local contribution limits that required the return
25 of one of the \$600 contributions.

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27 _____
28 ¹⁰ Sections 81004, 84100, and Regulation 18427.

¹¹ Sections 83116. 5 and 91006.

¹² Sections 83116 and 83116. 5.

1 **Failure to Report Contributor Information**

2 For the reporting period of January 1, 2017 to December 31, 2017, the Committee reported
3 receiving \$42,354 in contributions. The Committee failed to report complete contributor information for
4 approximately 40 contributions received for a total of \$12,200. This amounts to approximately 29% of
5 the total contributions received for this reporting period ($\$12,200 / 42,354 = 0.288$).

6 For the reporting period of January 1, 2018 to April 21, 2018, the Committee reported receiving
7 \$19,328 in contributions. The Committee failed to report complete contributor information for
8 approximately four contributions received for a total of \$1,050. This amounts to approximately 5% of
9 the total contributions received for this reporting period ($\$1,050 / 19,328 = 0.054$).

10 For the reporting period of April 22, 2018 to May 19, 2018, the Committee reported receiving
11 \$7,531 in contributions. The Committee reported required contributor information for 100% of the
12 contributions received during this reporting period.

13 For the reporting period of May 20, 2018 to June 3, 2018, the Committee reported receiving
14 \$6,800 in contributions. The Committee failed to report complete contributor information for
15 approximately four contributions received for a total of \$2,300. This amounts to approximately 34% of
16 the total contributions received for this reporting period ($\$2,300 / 6,800 = 0.338$).

17 For the reporting period of June 4, 2018 to June 30, 2018, the Committee reported receiving
18 \$16,520 in contributions. The Committee failed to report complete contributor information for
19 approximately 28 contributions received for a total of \$8,550. This amounts to approximately 52% of
20 the total contributions received for this reporting period ($\$8,550 / 16,520 = 0.517$).

21 For the reporting period of July 1, 2018 to December 31, 2018, the Committee reported it had not
22 received any contributions for this reporting period.

23 In summary, throughout 2017 and 2018, the Committee reported receiving a total of \$92,533 in
24 contributions. The Committee failed to report complete contributor information for approximately 76
25 contributions received for a total of \$24,100. This amounts to approximately 26% of the total
26 contributions received by the Committee ($\$24,100 / 92,533 = 0.260$). On November 8, 2018, the
27 Committee amended each of its campaign statements to include complete contributor information. Aside
28

1 from two contributions totaling \$1,100, the Committee was able to report all other contributor
2 information as required.

3 VIOLATIONS

4 **Count 1: Failure to Timely File 24-Hour Contribution Report**

5 Prior to the June 5, 2018, primary election, Carrasco, the Committee, and Castro failed to timely
6 file a 24-hour contribution report totaling \$1,200, in violation of Government Code Section 84203.

7 **Count 2: Failure to Report Contributor Information**

8 Throughout 2017 and 2018, Carrasco, the Committee, and Castro failed to report complete
9 contributor information on campaign statements, in violation of Government Code Section 84211,
10 subdivisions (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 here is \$10,000.¹³

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. Further, 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.¹⁴

21 The public harm inherent in campaign reporting violations is that the public is deprived of
22 important, time-sensitive information regarding campaign activity. Generally, these types of violations
23 are considered more serious when the public is deprived of information that was required to be disclosed
24 prior to an election because this has the potential to affect how votes are cast. Another factor that
25 influences the seriousness of the violation is whether the public harm was mitigated because some of the
26 reportable activity was disclosed, prior to the election.

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28 ¹³ Section 83116, subdivision (c).

¹⁴ Regulation 18361. 5, subdivision (d).

1 Here, the public harm stemming from Carrasco, the Committee, and Castro's violations was not
2 mitigated because the late contribution and contributor information was not reported on any campaign
3 statements filed prior to the June 5, 2018, primary election.

4 In this case, there was no evidence to support an intent to conceal, deceive or mislead the public
5 as to the Committee's receipts and contributors. However, the failure to report contributor information
6 violation appears to be negligent as Carrasco is sophisticated with the Act and had previously
7 campaigned, on at least two other occasions for elected positions. Further, at least one campaign
8 statement in 2018 was filed by the Committee with complete contributor information included.
9 Carrasco, the Committee, and Castro voluntarily filed amendments to their campaign statements to
10 include the missing contributor information.

11 Carrasco has prior enforcement history. In FPPC Case No. 17/1432, a warning letter was issued
12 for Carrasco's failure to timely file a qualifying statement of organization and her failure to pay annual
13 fees with the Secretary of State. In FPPC Case No. 14/451, a warning letter was issued for Carrasco's
14 failure to timely file a semi-annual campaign statement. In FPPC Case No. 15/1271, Carrasco entered
15 into a streamline stipulation for failing to timely file two semi-annual campaign statements.

16 The Commission considers penalties in prior cases with the same or similar violations and
17 comparable facts.

18 **Count 1: Failure to Timely File 24-Hour Contribution Report**

19 *In the Matter of Hector Chacon and Re-Elect Chacon for School Board 2013*; FPPC Case No.
20 17/227. Respondents, a successful candidate for the Board of Directors for Montebello Unified School
21 District and his controlled committee, failed to file two 24-hour contribution reports totaling \$2,718. The
22 24-hour contribution reports were for two non-monetary contributions received. The non-monetary
23 contributions were mailers in support of Chacon and other candidates. Both mailers were done in
24 coordination with and at the behest of Chacon. The size of the committee in 2013 was approximately
25 \$64,805 received in contributions and \$65,406 made in expenditures. On February 21, 2019, the
26 Commission approved a penalty of \$2,500 for this count.

27 A lesser penalty than that approved in the *Chacon* case is recommended. Similar to *Chacon*, the
28 Committee, Carrasco, and Castro failed to timely file one 24-hour contribution report for a late

1 contribution received. Although, the late contribution received by the Committee, Carrasco, and Castro
2 totaled only \$1,200, less than half the amount at issue in *Chacon*. Also, similar to *Chacon*, Carrasco was
3 successful in her bid for San Jose City Council and was sophisticated with the Act. In mitigation, unlike
4 *Chacon*, half of the late contribution received was refunded to the contributor following the election. In
5 aggravation, the late contribution received by the Committee, Carrasco, and Castro exceeded the local
6 contribution limit by \$600, which was why half of the late contribution was refunded to the contributor.
7 Therefore, a penalty of \$1,500 is recommended.

8 **Count 2: Failure to Report Contributor Information**

9 *In the Matter of Tom Wheeler for Supervisor District 5-2018, Tom Wheeler, and Nancy D.*
10 *Beavers*; FPPC Case No. 18/381. Respondents, an incumbent candidate for Madera County supervisor,
11 his controlled committee, and its treasurer, failed to report employer and occupation information for 24
12 contributors totaling \$10,927. In the first half of 2018, the Committee reported receiving a total of
13 \$42,811 in contributions and spending a total of \$75,405 on expenditures for the Primary Election. The
14 contributions with missing contributor information amounted to approximately 25% of the total
15 contributions received in the first half of 2018. On September 20, 2018, the Commission approved a
16 penalty of \$1,500 for this count.

17 A similar penalty than that approved in the *Wheeler* case is recommended. Similar to *Wheeler*,
18 Carrasco is sophisticated with the Act as she has prior campaign experience. Also, similar to *Wheeler*,
19 the contributions with missing contributor information amounted to approximately 26% of the total
20 contributions received by the Committee. Therefore, a penalty of \$1,500 is recommended.

21 Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty
22 in the amount of \$3,000 is justified, as reflected in the chart below:

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Count	Violation	Penalty
1	Failure to Timely File 24-Hour Contribution Report	\$1,500
2	Failure to Report Contributor Information	\$1,500
	TOTAL:	\$3,000

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1 **CONCLUSION**

2 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
3 Respondents, Re-Elect Magdalena Carrasco for City Council D5 2018, Magdalena Carrasco and
4 Huascar Castro, hereby agree as follows:

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

7 2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at
8 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
11 determine the 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
14 18361.9. This includes, but is not limited to the right to appear personally at any administrative
15 hearing held in this matter, to be represented by an attorney at Respondents’ own expense, to
16 confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to
17 testify at the hearing, to have an impartial administrative law judge preside over the hearing as a
18 hearing officer, and to have the matter judicially reviewed.

19 5. Respondents agree to the issuance of the decision and orders set forth below. Also,
20 Respondents agree to the Commission imposing against them an administrative penalty in the
21 amount of \$3,000. One or more cashier’s checks or money orders totaling said amount – to be
22 paid to the General Fund of the State of California – is/are submitted with this stipulation as full
23 payment of the administrative penalty described above, and same shall be held by the State of
24 California until the 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
27 stipulation is rejected, all payments tendered by Respondents in connection with this stipulation
28 shall be reimbursed to Respondents. If this stipulation is not approved by the Commission, and if

1 a full evidentiary hearing before the Commission becomes necessary, neither any member of the
2 Commission, nor the Executive Director, shall be disqualified because of prior consideration of
3 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
6 transmitted via fax or as a PDF email attachment, is as effective and binding as the original.

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

11 Dated: _____
12 Magdalena Carrasco, individually and on behalf of
13 Re-Elect Magdalena Carrasco for City Council D5 2018,
14 Respondents

15 Dated: _____
16 Huascar Castro, Respondent

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19 The foregoing stipulation of the parties "In the Matter of Re-Elect Magdalena Carrasco for City
20 Council D5 2018, Magdalena Carrasco and Huascar Castro," FPPC Case No. 18/1404, is hereby
21 accepted as the final decision and order of the Fair Political Practices Commission, effective upon
22 execution by the Chair.

23
24 IT IS SO ORDERED.

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26 Dated: _____
27 Richard C. Miadich, Chair
28 Fair Political Practices Commission