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

10
11 In the Matter of:

FPPC Case Nos. 15/247 and 16/19915

12 STIPULATION, DECISION AND ORDER

13 RESIDENTS FOR REFORM,
14 NEIGHBORHOOD PRESERVATION
COALITION, DAVID ELLIS, SCOTT
15 PEOTTER FOR CITY COUNCIL 2014,
SCOTT PEOTTER, DUFFIELD FOR
16 CITY COUNCIL 2014, DUFFY
DUFFIELD, MULDOON FOR NB CITY
17 COUNCIL 2014, KEVIN MULDOON,
DIANE DIXON FOR CITY COUNCIL
2014, DIANE DIXON and LYSA RAY,

18 Respondents.
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20 **INTRODUCTION**

21 Scott Peotter (“Peotter”), Marshall “Duffy” Duffield (“Duffield”), Kevin Muldoon (“Muldoon”),
22 and Diane Dixon (“Dixon”) ran for the Newport Beach City Council in the November 4, 2014 General
23 Election. Their respective controlled committees were Scott Peotter for City Council 2014 (the “Peotter
24 Committee”), Duffield for City Council 2014 (the “Duffield Committee”), Muldoon for NB City Council
25 2014 (the “Muldoon Committee”), and Diane Dixon for City Council 2014 (the “Dixon Committee”).
26 The four candidates branded themselves as a slate named “Team Newport.” All four candidates were
27 successful in the election. Duffield, Muldoon, and Dixon still sit on the City Council.

28 Residents for Reform (“RFR”) was a local general purpose committee formed in 2012 that

1 became primarily formed when it provided substantial support to Team Newport in 2014. Neighborhood
2 Preservation Coalition (“NPC”) registered as a slate mailer organization in 2014 and produced
3 advertisements primarily featuring Team Newport. However, as addressed in more detail below, NPC
4 was actually a primarily formed recipient committee.

5 David Ellis (“Ellis”) was a paid political consultant for all four Team Newport candidates,
6 operating through his company called Delta Partners LLC. Ellis also ran for the Orange County
7 Municipal Water District in the November 4, 2014 General Election, but was unsuccessful. As addressed
8 in more detail below, Ellis controlled, and was the principal officer of, both RFR and NPC.

9 Lysa Ray (“Ray”) served as treasurer for RFR, NPC, the Duffield Committee, and the Dixon
10 Committee.

11 Due to Ellis’ roles with RFR and NPC, and position as campaign consultant for the Team
12 Newport candidates, RFR and NPC made, and the candidates received as contributions, coordinated
13 expenditures that were not properly reported by Respondents on campaign statements, in violation of
14 the Political Reform Act (the “Act”).¹ Further, NPC failed to register as a recipient committee and file
15 the appropriate campaign statements, in violation of the Act, and both RFR and NPC failed to identify
16 themselves as controlled by Ellis and primarily formed. RFR and NPC both also failed to timely file
17 certain 24-hour contribution reports. Lastly, Ellis, a candidate himself, controlled multiple committees,
18 thereby violating the Act’s one bank account rule.

19 SUMMARY OF THE LAW

20 The Act and its regulations are amended from time to time. The violations in this case occurred in
21 2014 and 2015. For this reason, all legal references and discussions of law pertain to the Act’s provisions
22 as they existed at that time.

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27 ¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the
28 Government Code, unless otherwise indicated. 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 Title 2,
Division 6 of the California Code of Regulations, unless otherwise indicated.

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

2 When enacting the Act, the people of California found and declared that previous laws regulating
3 political practices suffered from inadequate enforcement by state and local authorities.² For this reason,
4 the Act is to be construed liberally to accomplish its purposes.³

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

10 Recipient Committee

11 In 2014, any person who received contributions totaling \$1,000 or more qualified as a recipient
12 committee.⁷ A contribution includes any payment, except to the extent full adequate consideration is
13 received, unless it is clear from surrounding circumstances that it is not made for a political purpose.⁸
14 Contributions include any transfer of anything of value received by a committee.⁹ A “contribution”
15 includes any goods or services received by a candidate or committee at no charge or at a discount from
16 fair market value.¹⁰ This type of contribution is commonly referred to as a “nonmonetary” or “in kind”
17 contribution.

18 Controlled Committee

19 A recipient committee controlled directly or indirectly by a candidate is a “controlled
20 committee.” A candidate controls a committee if he has significant influence on the actions or decisions
21 of the committee.¹¹ A controlled committee must identify the controlling candidate on its statement of
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23 ² Section 81001, subd. (h).

24 ³ Section 81003.

25 ⁴ Section 81002, subd. (a).

26 ⁵ Sections 84200, *et seq.*

27 ⁶ Section 81002, subd. (f).

28 ⁷ Section 82013, subd. (a).

⁸ Section 82015, subd. (a).

⁹ Section 82015, subd. (d).

¹⁰ Regulation 18215, subd. (b)(3)

¹¹ Section 82016.

1 organization and include the last name of the candidate in the committee’s name.¹² If the committee is
2 controlled by a candidate for the purposes of his or her own election, the committee’s name must also
3 include the office sought and year of the election.¹³

4 Primarily Formed Committee

5 The Act defines “primarily formed committee” to include a committee which is formed or exists
6 primarily to support or oppose a group of candidates.¹⁴ A committee is primarily formed if its “primary
7 purpose and activities” are to support or oppose a group of candidates.¹⁵ Further, a committee is
8 primarily formed if it makes more than 70 percent of its total contributions and expenditures on all
9 candidates and measures on a specific single candidate or measure, or group of candidates or measures in
10 the same election, during either the immediately preceding 24 months or the current two-year period
11 beginning January 1 of an odd-numbered year.¹⁶

12 A committee that has reason to know it is close to becoming primarily formed shall determine
13 whether it is primarily formed quarterly at the end of March, June, September, and December.¹⁷ An
14 existing general purpose committee need only change its filing status to primarily formed if it makes at
15 least \$10,000 of contributions and/or expenditures if supporting or opposing local candidates or
16 measures.¹⁸

17 A primarily formed committee must state the full name and office sought by any candidate(s) it
18 supports or opposes as its primary activity in its statement of organization.¹⁹ Whenever there is a change
19 in any of the information contained in a statement of organization, including the committee name, an
20 amendment shall be filed within ten days to reflect the change.²⁰ The committee must file the original of
21 the amendment with the Secretary of State and a copy with the local filing officer.²¹

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23 ¹² Section 84102, subd. (e), and Regulation 18402, subd. (c)(1)

24 ¹³ Regulation 18402, subd. (c)(2).

25 ¹⁴ Section 82047.5.

26 ¹⁵ Regulation 18247.5, subd. (d)(2).

27 ¹⁶ Regulation 18247.5, subd. (d)(3).

28 ¹⁷ Regulation 18247.5, subd. (e)(1).

¹⁸ Regulation 18247.5, subd. (g)(2).

¹⁹ Section 84102, subd. (d).

²⁰ Section 84103, subd. (a).

²¹ Sections 84103, subd. (a); and 84215.

1 Slate Mailer Organization

2 A “slate mailer” is a mass mailing that supports or opposes four or more candidates or ballot
3 measures.²² A “slate mailer organization” is any person who is involved in the production of one or more
4 slate mailers and receives \$500 or more in a calendar year for the production of one or more slate
5 mailers.²³ A candidate, or a committee controlled by a candidate, cannot qualify as a slate mailer
6 organization.²⁴

7 Disclosure of Contributions and Expenditures

8 A committee must disclose on campaign statements the total amount of all contributions received
9 and expenditures made. For contributions and expenditures of \$100 or more, the statements must provide
10 certain identifying information about the source of a contribution and the recipient of an expenditure.²⁵

11 Coordinated Expenditures

12 An “independent expenditure” means an expenditure made in connection with a communication
13 that expressly advocates the election or defeat of a candidate.²⁶ An expenditure is not independent, and is
14 a contribution from the person making the expenditure to the candidate for whose benefit the expenditure
15 is made, if the expenditure is made under any arrangement, coordination, or direction between the
16 candidate, or the candidate’s agent, and the person making the expenditure.²⁷ Similarly, payments made
17 at the behest of a candidate are considered a contribution to the candidate’s committee unless full and
18 adequate consideration is received from the candidate’s committee for making the payment.²⁸

19 A payment is made at the behest of a candidate if it is made at the direction of, in cooperation,
20 consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior
21 consent of the candidate or his agent.²⁹ In instances where the person making the expenditure retains the
22 services of a person who provides the candidate with professional services related to the campaign
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24 ²² Section 82048.3.

25 ²³ Section 82048.4, subd. (a).

26 ²⁴ Section 82048.4, subd. (b).

27 ²⁵ Section 84211, subds. (a), (b), (c), (f), (i), and (k).

28 ²⁶ Section 82031.

²⁷ Section 85500, subd. (b)(3).

²⁸ Section 82015.

²⁹ Regulation 18225.7.

1 strategy for that same election, the law presumes the expenditure is made at the behest of a candidate and
2 is a contribution to the candidate.³⁰ This presumption may be rebutted by a showing that there was no
3 coordination between the candidate or the candidate’s agent, and the person making the expenditure.

4 24-Hour Contribution Reports

5 A committee that makes or receives a late contribution must file a 24-hour contribution report
6 within 24 hours of the contribution.³¹ For nonmonetary contributions, the late contribution report is due
7 within 48 hours of the contribution.³² A “late contribution” is a contribution that totals in the aggregate
8 \$1,000 or more made to, or received by, a controlled committee within 90 days before an election.³³ For
9 the 2014 General Election, the late contribution period began August 6, 2014.

10 One Bank Account Rule

11 Upon filing a statement of intention to be a candidate, a candidate must open one bank account
12 and all campaign contributions and expenditures must go through that account.³⁴ Consequently, a
13 candidate may only have one controlled committee with one bank account per election unless the second
14 committee is a ballot measure committee or officeholder committee.³⁵

15 Principal Officer Definition

16 A principal officer is the individual primarily responsible for approving the political activities of a
17 committee, including authorizing the content of communications, authorizing expenditures, and
18 determining campaign strategy.³⁶ A committee’s statement of organization must identify the committee’s
19 principal officer(s).³⁷ A committee may have more than one principal officer.³⁸

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³⁰ Regulations 18225.7, subd. (c)(3)(A) and 18550.1, subd. (b)(3). The Commission amended Regulation 18225.7
and repealed Regulation 18550.1 in November of 2015. The amendments consolidated the two regulation sections but made
no substantive changes as it relates to the common consultant presumption.

24 ³¹ Section 84203.

25 ³² Section 84203.3, subd. (b).

26 ³³ Section 82036, subd. (a).

27 ³⁴ Section 85201.

28 ³⁵ Nelson Advice Letter, No. A-14-010.

³⁶ Section 82047.6, subd. (a).

³⁷ Section 84102, subd. (c).

³⁸ Section 82047.6, and Regulation 18402.1.

1 Liability

2 Any person who violates any provision of the Act, who purposely or negligently causes any other
3 person to violate any provision of the Act, or who aids and abets any other person in the violation of the
4 Act is liable under the Act if the person has filing or reporting obligations under the Act, or is paid to
5 provide services regulated by the Act.³⁹ If two or more persons are responsible for a violation of the Act
6 they are jointly and severally liable.⁴⁰

7 Principal officers are jointly and severally liable, along with the committee, for violations by the
8 committee related to the content of communications by the committee and expenditures by the
9 committee, amongst other violations.⁴¹ Each committee must have a treasurer.⁴² The treasurer is jointly
10 and severally liable, along with the committee and controlling candidate, for campaign reporting
11 violations.⁴³

12 **SUMMARY OF THE FACTS**

13 Residents for Reform

14 RFR reported receiving contributions totaling \$95,980 and making expenditures totaling
15 \$94,381.34 in 2014. At the end of September 2014, when the committee was required to review its status,
16 RFR became a primarily formed committee in support of Team Newport, as its payments related to the
17 candidates, at that time, reached the 70 percent threshold required for primarily formed committees.

18 Until July 2014, RFR identified Erica Froelich, Ellis' assistant, as its principal officer. However,
19 it was Ellis who was the true principal officer, given his involvement with RFR. Further, as a candidate,
20 Ellis controlled RFR. In particular, Ellis worked with vendors on the contents of communications,
21 authorized payment for those communications, and fundraised on behalf of RFR. Following the election,
22 RFR paid Ellis \$5,000 through Delta Partners for campaign consulting services.

23 Despite the fact that RFR was primarily formed to support Team Newport and controlled by Ellis,
24 the committee failed to amend its statement of organization to reflect this, or change its name to include
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26 ³⁹ Section 83116.5.

⁴⁰ Section 91006.

⁴¹ Sections 82047.6, 83116.5, and 91006; and Regulation 18402.1.

⁴² Section 84101.

⁴³ Section 83116.5, and Regulation 18316.6.

1 Ellis' name, as required under the Act.

2 Since Ellis controlled RFR and also served as a retained consultant for the Team Newport
3 committees, all expenditures made by RFR in support of the candidates were presumed coordinated
4 expenditures, and therefore nonmonetary contributions. Many of the pertinent expenditures were reported
5 as independent expenditures, giving rise to certain reporting violations. A table detailing the expenditures
6 follows:

7	8	9	10	11	12	13
Row	Date	Amount	Beneficiary of Expenditure	Reported as	Payment Description	
1	09/04/2014	\$ 327.50	Dixon	Nonmonetary	Print ad	
2	09/04/2014	\$ 218.75	Dixon	Nonmonetary	Print ad	
3	09/04/2014	\$ 327.50	Muldoon	Nonmonetary	Print ad	
4	09/04/2014	\$ 218.75	Muldoon	Nonmonetary	Print ad	
5	09/04/2014	\$ 327.50	Peotter	Nonmonetary	Print ad	
6	09/04/2014	\$ 327.50	Duffield	Nonmonetary	Print ad	
7	09/04/2014	\$ 218.75	Duffield	Nonmonetary	Print ad	
8	09/04/2014	\$ 218.75	Peotter	Nonmonetary	Print ad	
9	09/05/2014	\$ 146.75	Peotter	Nonmonetary	Design charges	
10	09/05/2014	\$ 146.75	Dixon	Nonmonetary	Design charges	
11	09/05/2014	\$ 146.75	Duffield	Nonmonetary	Design charges	
12	09/05/2014	\$ 146.75	Muldoon	Nonmonetary	Design charges	
13	09/19/2014	\$ 10,000.00	Duffield (Ad against opponent)	Independent Expenditure	Television ad	
14	09/23/2014	\$ 2,500.00	Duffield (Ad against opponent)	Independent Expenditure	Television ad	
15	10/08/2014	\$ 10,000.00	Duffield (Ad against opponent)	Independent Expenditure	Television ad	
16	10/11/2014	\$ 100.00	Dixon	Independent Expenditure	Television ad	
17	10/11/2014	\$ 100.00	Duffield	Independent Expenditure	Television ad	

18	10/11/2014	\$ 100.00	Duffield (Ad against opponent)	Independent Expenditure	Television ad	
19	10/11/2014	\$ 100.00	Muldoon	Independent Expenditure	Television ad	
20	10/11/2014	\$ 100.00	Peotter	Independent Expenditure	Television ad	
21	10/16/2014	\$ 1,009.89	Duffield	Independent Expenditure	Campaign paraphernalia/misc.	
22	10/16/2014	\$ 1,009.89	Dixon	Independent Expenditure	Campaign paraphernalia/misc.	
23	10/16/2014	\$ 1,009.89	Muldoon	Independent Expenditure	Campaign paraphernalia/misc.	
24	10/16/2014	\$ 1,009.89	Peotter	Independent Expenditure	Campaign paraphernalia/misc.	
25	10/27/2014	\$ 150.00	Peotter	Nonmonetary	Information technology costs	
26	10/27/2014	\$ 150.00	Muldoon	Nonmonetary	Information technology costs	
27	10/27/2014	\$ 150.00	Duffield	Nonmonetary	Information technology costs	
28	10/27/2014	\$ 150.00	Dixon	Nonmonetary	Information technology costs	
29		\$ 5,000.00	Delta Partners	Campaign Consultant Services	Campaign consultants	
Total:		\$ 35,411.56				

RFR also failed to timely file 24-hour contribution reports for the contributions identified in rows 1 through 24 of the table immediately above. Although not reported on timely-filed 24-hour reports, the subject activity was otherwise reported on campaign statements filed prior to the election.

Neighborhood Preservation Coalition

NPC filed a slate mailer organization statement of organization (Form 400) on September 16, 2014, and filed certain campaign statements and reports required of slate mailer organizations. In 2014, NPC reported receiving payments of \$97,100 and making payments totaling \$96,182.46. A substantial

1 portion of the payments received by NPC came from persons other than the candidates featured on NPC
2 materials. NPC produced various mailers and door hangers primarily featuring the Team Newport
3 candidates, with a few also highlighting Ellis' candidacy and one other candidate for the Orange County
4 Water District. NPC identified Ellis as the individual who authorized the contents of mailers on its Form
5 400.

6 Similar to RFR, NPC was actually a recipient committee controlled by Ellis, and not a slate
7 mailer organization. Since Ellis controlled NPC, and a candidate-controlled committee cannot qualify as
8 a slate mailer organization, NPC, by definition, could not be a slate mailer organization. Also, NPC did
9 not qualify as a slate mailer organization because it received \$1,000 or more in contributions (payments
10 from those other than Team Newport). As a result, NPC should have filed as a recipient committee and
11 not a slate mailer organization. Further, Ellis met the definition of principal officer for NPC given his
12 role with the committee.

13 At the end of September 2014, when the committee was required to review its status, NPC
14 became a primarily formed committee in support of Team Newport, as its expenditures and contributions
15 on all candidates and ballot measures at the time reached the 70 percent threshold required for primarily
16 formed committees.

17 Despite the fact that NPC was primarily formed to support Team Newport and controlled by Ellis,
18 the committee failed to amend its statement of organization to reflect this, or change its name to include
19 Ellis' name, office sought, and year of the election, as required under the Act.

20 Due to Ellis' respective roles with NPC and the Team Newport committees, all payments made
21 by NPC in support of the candidates were presumed coordinated expenditures, and therefore
22 nonmonetary contributions. Since the payments were improperly categorized, NPC and the Team
23 Newport committees committed certain reporting violations, as described below.

24 The following table summarizes all payments received by NPC in 2014, including the source of
25 the payment and to which candidate it was attributed:

Row	Date	Received From	Amount	Position	Candidate
1	07/18/2014	Delta Partners, LLC	\$100	Support	[none listed]

2	09/16/2014	Duffield For City Council 2014	\$5,000	Support	Duffy Duffield	
3	09/17/2014	Diane Dixon For City Council 2014	\$5,000	Support	Diane Dixon	
4		Muldoon For NB City Council 2014	\$5,000	Support	Kevin Muldoon	
4	09/22/2014	Scott Peotter For City Council 2014	\$5,000	Support	Scott Peotter	
5	10/11/2014	Thomas Larkin Jr.	\$1,000	Support	David Ellis	
8			\$1,000	Support	Leslie Daigle	
9			\$10,000	Oppose	Rush Hill	
10			\$2,000	Support	Scott Peotter	
11			\$2,000	Support	Kevin Muldoon	
12			\$2,000	Support	Diane Dixon	
13			\$2,000	Support	Duffy Duffield	
14		John Saunders	\$500	Support	David Ellis	
15			\$500	Support	Leslie Daigle	
16			\$5,000	Oppose	Rush Hill	
17			\$1,000	Support	Scott Peotter	
18			\$1,000	Support	Kevin Muldoon	
19			\$1,000	Support	Diane Dixon	
20			\$1,000	Support	Duffy Duffield	
21	6	10/13/2014	Duffield For City Council 2014	\$20,000	Support	Duffy Duffield
22	7	10/18/2014	David Ellis For Water Board 2014	\$1000	Support	David Ellis
23	8	10/28/2014	Fritz Duda	\$250	Support	David Ellis
24				\$250	Support	Leslie Daigle
25				\$3,500	Oppose	Rush Hill
26				\$250	Support	Scott Peotter

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			\$250	Support	Kevin Muldoon
			\$250	Support	Diane Dixon
			\$250	Support	Duffy Duffield
		Donald Howard	\$250	Support	David Ellis
			\$250	Support	Leslie Daigle
			\$3,500	Oppose	Rush Hill
			\$250	Support	Scott Peotter
			\$250	Support	Kevin Muldoon
			\$250	Support	Diane Dixon
			\$250	Support	Duffy Duffield
		Robert Winkel	\$250	Support	David Ellis
			\$250	Support	Leslie Daigle
			\$3,500	Oppose	Rush Hill
			\$250	Support	Scott Peotter
			\$250	Support	Kevin Muldoon
			\$250	Support	Diane Dixon
			\$250	Support	Duffy Duffield
9	10/29/2014	Leslie Daigle for OCWD Director 2014	\$1,000	Support	Leslie Daigle
10	12/18/2014	Michael Coppola	\$125	Support	David Ellis
			\$125	Support	Leslie Daigle
			\$1,750	Oppose	Rush Hill
			\$125	Support	Scott Peotter
			\$125	Support	Kevin Muldoon
			\$125	Support	Diane Dixon
			\$125	Support	Duffy Duffield
		James Duda	\$125	Support	David Ellis

			\$1,750	Support	Leslie Daigle
			\$125	Oppose	Rush Hill
			\$125	Support	Scott Peotter
			\$125	Support	Kevin Muldoon
			\$125	Support	Diane Dixon
			\$125	Support	Duffy Duffield
11	12/22/2014	Leigh Ann Scott	\$125	Support	David Ellis
			\$125	Support	Leslie Daigle
			\$1,750	Oppose	Rush Hill
			\$125	Support	Scott Peotter
			\$125	Support	Kevin Muldoon
			\$125	Support	Diane Dixon
			\$125	Support	Duffy Duffield
12	12/23/2014	Lendy Duda Vail	\$125	Support	David Ellis
			\$125	Support	Leslie Daigle
			\$1,750	Oppose	Rush Hill
			\$125	Support	Scott Peotter
			\$125	Support	Kevin Muldoon
			\$125	Support	Diane Dixon
			\$125	Support	Duffy Duffield

The following table summarizes payments made by NPC for communications supporting the Team Newport candidates:

Row	Invoice Date	Quantity	Description	Amount
1	09/22/2014	10,000	Newport Doorhanger	\$ 3,417.83
2	09/22/2014	(Design)	Newport Meet and Greet Flyer	\$ 205.00
3	09/23/2014	10,000	GOP Newport Doorhanger	\$ 4,182.86
4	09/23/2014	10,000	Preservation Team Newport Doorhanger	\$ 4,182.86

5	09/25/2014	7,200	Team Newport City Hall Mailer	\$ 7,043.54
6	10/04/2014	7,200	Rush Hill Asleep Preservation Coalition Mailer	\$ 7,854.34
7	10/12/2014	9,700	Rush Hill FPPC Mailer	\$ 10,779.00
8	10/16/2014	13,100	NPC Rush Hill S**T Mailer	\$ 14,479.13
9	10/19/2014	8,500	NPC GOP News Mailer	\$ 10,196.00
10	10/22/2014	20,000	NPC Doorhanger	\$ 6,091.20
11	10/27/2014	13,000	NPC Rush Hill Asleep (Modified) Mailer	\$ 13,001.00
12	10/27/2014	13,000	NPC Rush Hill FPPC (Modified) #6090	\$ 13,001.00
Total:				\$ 94,433.76

NPC also failed to timely file 24-hour contribution reports for the contributions identified in rows 3 through 12 of the table immediately above. Although not reported on timely-filed 24-hour reports, the activity identified in rows 3 through 8 was otherwise reported on campaign statements filed prior to the election.

VIOLATIONS

Violations committed by RFR, Ellis as the principal officer and paid consultant who caused the violations, and Ray as the treasurer:

Count 1: Failure to Properly Report Nonmonetary Contributions on Preelection Campaign Statements

RFR, Ellis, and Ray failed to properly report two nonmonetary contributions totaling \$12,500 on RFR's preelection campaign statement for the reporting period ending September 30, 2014; and ten nonmonetary contributions totaling \$14,539.56 on RFR's preelection campaign statement for the reporting period ending October 18, 2014, in violation of Section 84211, subdivision (k).

Count 2: Failure to Timely File 24-Hour Contribution Reports

RFR, Ellis, and Ray failed to timely file four 24-hour contribution reports for late contributions totaling \$29,811.56 that were made between September 4, 2014 and October 16, 2014, in violation of Section 84203.

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1 Count 3: Failure to Properly Name the Committee and Identify the Committee as Controlled and
2 Primarily Formed

3 RFR, Ellis, and Ray failed to identify Ellis as RFR’s controlling candidate and disclose that RFR
4 was primarily formed on RFR’s statement of organization, and failed to include the last name of Ellis, as
5 controlling candidate, in RFR’s name, in violation of Section 84103 and Regulation 18402.

6 **Violations committed by NPC, Ellis as the principal officer, and Ray as the treasurer:**

7 Count 4: Failure to Timely File 24-Hour Contribution Reports

8 NPC, Ellis, and Ray failed to timely file four 24-hour contribution reports for late contributions
9 totaling \$34,042.60 that were made between September 23, 2014 and October 12, 2014, in violation of
10 Section 84203.

11 Count 5: Failure to Timely File 24-Hour Contribution Reports

12 NPC, Ellis, and Ray failed to timely file four 24-hour contribution reports for late contributions
13 totaling \$56,768.33 that were made between October 16, 2014 and October 27, 2014, in violation of
14 Section 84203.

15 Count 6: Failure to Properly Name the Committee and Identify the Committee as Controlled and
16 Primarily Formed

17 NPC, Ellis, and Ray failed to identify Ellis as NPC’s controlling candidate and disclose that NPC
18 was primarily formed on NPC’s statement of organization, and failed to include the last name of Ellis, as
19 controlling candidate, along with the office he sought and year of the election, in NPC’s name, in
20 violation of Section 84103 and Regulation 18402.

21 **Violations committed by Team Newport candidates and their respective controlled**
22 **committees and treasurers, and Ellis as the paid consultant who caused the violations:**

23 Count 7: Failure to Timely Report Nonmonetary Contributions on Campaign Statements

24 The Peotter Committee, Peotter, and Ellis failed to timely report \$24,868.33 in nonmonetary
25 contributions on the Peotter Committee’s preelection campaign statements for the reporting periods
26 ending September 30, 2014 and October 18, 2014, and semiannual campaign statement for the reporting
27 period ending December 31, 2014, in violation of Section 84211, subdivisions (a), (c), and (f).

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1 Count 8: Failure to Timely Report Nonmonetary Contributions on Campaign Statements

2 The Duffield Committee, Duffield, Ellis, and Ray failed to timely report \$47,468.33 in
3 nonmonetary contributions on the Duffield Committee's preelection campaign statements for the
4 reporting periods ending September 30, 2014 and October 18, 2014, and semiannual campaign statement
5 for the reporting period ending December 31, 2014, in violation of Section 84211, subdivisions (a), (c),
6 and (f).

7 Count 9: Failure to Timely Report Nonmonetary Contributions on Campaign Statements

8 The Muldoon Committee, Muldoon, and Ellis failed to timely report \$24,868.33 in nonmonetary
9 contributions on the Muldoon Committee's preelection campaign statements for the reporting periods
10 ending September 30, 2014 and October 18, 2014, and semiannual campaign statement for the reporting
11 period ending December 31, 2014, in violation of Section 84211, subdivisions (a), (c), and (f).

12 Count 10: Failure to Timely Report Nonmonetary Contributions on Campaign Statements

13 The Dixon Committee, Dixon, Ellis, and Ray failed to timely report \$24,868.33 in nonmonetary
14 contributions on the Dixon Committee's preelection campaign statements for the reporting periods
15 ending September 30, 2014 and October 18, 2014, and semiannual campaign statement for the reporting
16 period ending December 31, 2014, in violation of Section 84211, subdivisions (a), (c), and (f).

17 **Violations committed by Ellis, individually:**

18 Count 11: Campaign Bank Accounts

19 Ellis received contributions and made expenditures from multiple campaign bank accounts of
20 controlled committees, in violation of Section 85201.

21 **PROPOSED PENALTY**

22 This matter consists of eleven counts. The maximum penalty that may be imposed is \$5,000 per
23 count. Thus, the maximum penalty that may be imposed is \$55,000.⁴⁴

24 In determining the appropriate penalty for a particular violation of the Act, the Commission
25 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
26 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of

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⁴⁴ Section 83116, subd. (c).

1 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
2 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
3 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
4 record of violations.⁴⁵

5 In this case, Respondents contend that they did not intend to conceal, deceive, or mislead the
6 public, or evade their reporting requirements. Further, the Enforcement Division found no evidence that
7 Respondents otherwise failed to report contributions, outside of those described herein. Much of the
8 subject activity of RFR and NPC, although mischaracterized, was otherwise reported on other statements
9 and reports, thereby providing the public with some disclosure. The candidates contend that, although
10 they knew that Ellis was involved with multiple committees, they did not understand that such
11 overlapping roles would result in violations by the candidate-controlled committees. Further, RFR, NPC,
12 Ellis, and the candidates do not have a prior history of violations.

13 The Commission also considers penalties in prior cases involving similar violations. Recent
14 similar cases involving a committee's failure to properly report nonmonetary contributions on campaign
15 statements include the following:

16 • *In the Matter of Paul Fickas, Rita Copeland, and Californians for Better Jobs and Education*
17 *Committee*; FPPC No. 18/1253. Respondents, a general purpose committee and its principal officer,
18 improperly reported nonmonetary contributions totaling \$2,718 as independent expenditures on a
19 preelection campaign statement, in violation of Section 84211. The subject contributions were
20 coordinated with the recipient. In December 2018, the Commission approved a fine of \$2,000 on one
21 count.

22 As to Count 1, Respondents are deserving of a penalty higher than that approved in the
23 comparable case given the higher amount of financial activity that was not properly reported across
24 multiple campaign statements.

25 Recent similar cases involving a committee's failure to timely file 24-hour contribution reports
26 include the following:

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⁴⁵ Regulation 18361.5, subd. (d).

1 • *In the Matter of Los Angeles League of Conservation Voters*; FPPC No. 16/19925. Respondent, a
2 general purpose committee, failed to timely file 24-hour contribution reports for 17 late contributions
3 made amounting to a total of \$65,478, in violation of Section 84203. In December 2018, the Commission
4 approved a fine of \$2,500 on each of two counts.

5 As to Counts 2 and 4, Respondents are deserving of a penalty similar to the per count fine
6 approved in the comparable case. In both cases, although the 24-hour reports were not filed prior to the
7 election, the subject financial activity was otherwise reported on campaign statements filed prior to the
8 election. Further, the amount of subject financial activity per count is similar.

9 As to Count 5, Respondents are deserving of a penalty higher than the comparable case for two
10 reasons. First, the amount of financial activity at issue is higher. Second, although the subject late
11 contributions were otherwise reported on a timely-filed campaign statement, that statement was not due
12 until after the election, which means the public had no disclosure of this activity prior to the election.

13 Recent similar cases involving a failure to properly name the subject committee include the
14 following:

15 • *In the Matter of Antonio “Tony” Mendoza, Yes We Can, and John Valencia*; FPPC No. 16/19816.
16 Respondents, a candidate and a general purpose committee and its treasurer, failed to identify the
17 candidate as the controlling candidate on the committee’s statement of organization and failed to add the
18 candidate’s name as the controlling candidate to the committee name, in violation of Section 84102,
19 subdivisions (e) and (g), and Regulation 18402, subdivision (c). In November 2016, the Commission
20 approved a fine of \$2,500 on one count.

21 As to Count 3, a penalty similar to the one ratified in the *Mendoza* case is appropriate here.
22 Although RFR both failed to identify the committee as controlled and failed to identify the committee as
23 primarily formed, in *Mendoza*, the candidate’s control of the committee allowed him to influence
24 transactions that helped his own political aspirations, whereas, here, Ellis’ involvement with RFR did not
25 benefit his own campaign, only those of the Team Newport candidates.

26 As to Count 6, a penalty higher than that approved in *Mendoza* is warranted, since NPC not only
27 failed to identify the committee as controlled, but also failed to identify the committee as primarily
28 formed. As to NPC, Ellis’s involvement did benefit his own campaign.

1 Recent similar cases involving a failure to timely report receipt of nonmonetary contributions on
2 campaign statements include the following:

3 • *In the Matter of Family Farmers Working for a Better California with Major Support By Western*
4 *Growers Association and Ward Kennedy*; FPPC No. 16/0068. Respondents, a state general purpose
5 committee and its treasurer, failed to timely report receipt of a total of \$99,992 in nonmonetary
6 contributions on two different campaign statements, in violation of Section 84211, subdivisions (a), (c),
7 and (f). In October 2017, the Commission approved a fine of \$2,500 on each of two counts.

8 As to Counts 7 through 10, a penalty lower than that approved in the comparable case is justified
9 since, on a per count basis, the amount of subject financial activity here was lower.

10 Recent similar cases involving a failure to comply with the one bank account rule include the
11 following:

12 • *In the Matter of Art Chacon, Art Chacon for Water Board 2014, and Californians for Clean*
13 *Water*; FPPC No. 14/1236. Respondents, a candidate and general purpose committee, maintained
14 different campaign bank accounts for two committees controlled by the candidate, in violation of Section
15 85201. In October 2017, the Commission approved a fine of \$5,000 on one count.

16 As to Count 11, Ellis is deserving of a penalty lower than that approved in the *Chacon* case. The
17 facts of the *Chacon* case are more egregious. In *Chacon*, the respective committees both operated and
18 made expenditures in support of Chacon's candidacy. Here, with the exception of minimal activity by
19 NPC, the subject committees did not spend money supporting Ellis' candidacy. Generally, the conduct
20 here did not rise to the level of public harm present in the *Chacon* case.

21 In aggravation of Counts 1 through 3 against RFR, Ellis, and Ray, RFR committed additional
22 campaign reporting violations in 2016. In particular, RFR failed to timely report \$43,878.99 in
23 independent expenditures and \$1,442 in accrued expenses on its semiannual campaign statement
24 covering the reporting period of January 1, 2016 to June 30, 2016, as filed with Orange County. In
25 mitigation of these violations, however, the payments associated with the missing independent
26 expenditures were otherwise timely reported on the campaign statement. Further, the subject financial
27 activity was properly reported on the same statement as timely filed with the City of San Clemente. In the
28 interest of settlement, these additional violations are not charged herein.

In aggravation of Counts 4 through 6, NPC committed additional violations of the Act. NPC failed to timely file additional 24-hour contribution reports (Form 497) for \$45,000 in late contributions received by NPC; however, NPC timely filed slate mailer payment reports (Form 498) within 24 hours that reported the same information. NPC further failed to timely file a statement of organization as a recipient committee, in violation of Section 84101. Finally, seven mass mailers paid for by NPC failed to state that they were "Paid for by" the committee, in violation of Regulation 18435(c). However, in the interest of settlement, these violations are not charged herein.

Based on the foregoing, the following penalties are recommended:

Count	Violation	Proposed Penalty
1	Failure to Properly Report Nonmonetary Contributions on Preelection Campaign Statements	\$2,500
2	Failure to Timely File 24-Hour Contribution Reports	\$2,500
3	Failure to Properly Name the Committee and Identify the Committee as Controlled and Primarily Formed	\$2,500
TOTAL (RFR, Ellis, and Ray):		\$7,500
4	Failure to Timely File 24-Hour Contribution Reports	\$2,500
5	Failure to Timely File 24-Hour Contribution Reports	\$3,000
6	Failure to Properly Name the Committee and Identify the Committee as Controlled and Primarily Formed	\$3,000
TOTAL (NPC, Ellis, and Ray):		\$8,500
7	Failure to Timely Report Nonmonetary Contributions on Campaign Statements	\$2,000
8	Failure to Timely Report Nonmonetary Contributions on Campaign Statements	\$2,000
9	Failure to Timely Report Nonmonetary Contributions on Campaign Statements	\$2,000
10	Failure to Timely Report Nonmonetary Contributions on Campaign Statements	\$2,000
TOTAL (Team Newport Candidates):		\$8,000
11	Violation of One Bank Account Rule	\$3,000
TOTAL (Ellis, individually):		\$3,000

1 **CONCLUSION**

2 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
3 Respondents, Residents for Reform, Neighborhood Preservation Coalition, David Ellis, Scott Peotter for
4 City Council 2014, Scott Peotter, Duffield for City Council 2014, Duffy Duffield, Muldoon for NB City
5 Council 2014, Kevin Muldoon, Diane Dixon for City Council 2014, Diane Dixon, and Lysa Ray, hereby
6 agree as follows:

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

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

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

14 4. Respondents Residents for Reform, Neighborhood Preservation Coalition, David Ellis,
15 Scott Peotter for City Council 2014, Scott Peotter, Duffield for City Council 2014, Duffy Duffield,
16 Muldoon for NB City Council 2014, Kevin Muldoon, Diane Dixon for City Council 2014, and Diane
17 Dixon, having consulted with their attorneys, Steve Baric, Baric & Associates (on behalf of Residents for
18 Reform, Neighborhood Preservation Coalition, David Ellis, Scott Peotter for City Council 2014, Scott
19 Peotter, Duffield for City Council 2014, Duffy Duffield, Muldoon for NB City Council 2014, and Kevin
20 Muldoon), and Ashlee Titus, Bell, McAndrews & Hiltachk, LLP (on behalf of Diane Dixon for City
21 Council 2014 and Diane Dixon); and Respondent Lysa Ray understand, and hereby knowingly and
22 voluntarily waive, all procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations
23 18361.1 through 18361.9. This includes, but is not limited to, the right to appear personally at any
24 administrative hearing held in this matter, to be represented by an attorney at Respondents’ own expense,
25 to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at
26 the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer,
27 and to have the matter judicially reviewed.

28 5. Respondents agree to the issuance of the decision and order set forth below. Also,

1 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
2 \$27,000. One or more payments totaling this amount, to be paid to the General Fund of the State of
3 California, is/are submitted with this stipulation as full payment of the administrative penalty described
4 above, and they will be held by the State of California until the Commission issues its decision and order
5 regarding this matter.

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

12 7. The parties to this agreement may execute their respective signature pages separately. A
13 copy of any party’s executed signature page including a hardcopy of a signature page transmitted via fax
14 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

20 Dated: _____
21 David Ellis, individually and on behalf of
22 Residents for Reform and Neighborhood Preservation
23 Coalition

24 Dated: _____
25 Lysa Ray, individually and on behalf of
26 Residents for Reform, Neighborhood Preservation
27 Coalition, Duffield for City Council 2014, and Diane
28 Dixon for City Council 2014

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Dated: _____
Scott Peotter, individually and on behalf of
Scott Peotter for City Council 2014

Dated: _____
Duffy Duffield, individually and on behalf of
Duffield for City Council 2014

Dated: _____
Kevin Muldoon, individually and on behalf of
Muldoon for NB City Council 2014

Dated: _____
Diane Dixon, individually and on behalf of
Diane Dixon for City Council 2014

1 The foregoing stipulation of the parties “In the Matter of Residents for Reform, Neighborhood
2 Preservation Coalition, David Ellis, Scott Peotter for City Council 2014, Scott Peotter, Duffield for City
3 Council 2014, Duffy Duffield, Muldoon for NB City Council 2014, Kevin Muldoon, Diane Dixon for
4 City Council 2014, Diane Dixon, and Lysa Ray,” FPPC Case Nos. 15/247 and 16/19915 is hereby
5 accepted as the final decision and order of the Fair Political Practices Commission, effective upon
6 execution below by the Chair.

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8 IT IS SO ORDERED.

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10 Dated: _____

Richard C. Miadich, Chair
Fair Political Practices Commission