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7

8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**
10

11 In the Matter of

FPPC Case No. 18/063

12
13 ORANGE COUNTY DIGNITY PAC,
SPONSORED BY ORANGE COUNTY
14 FEDERATION OF LABOR, AFL-CIO,
15

STIPULATION, DECISION AND ORDER

16 Respondent.

17 **INTRODUCTION**

18 Respondent Orange County Dignity PAC, sponsored by Orange County Federation of Labor
19 AFL-CIO (the Committee) is a state general purpose committee, and it originally qualified as a committee
20 in 2012. The Committee currently remains open and active.

21 This case arose from a Franchise Tax Board (“FTB”) audit of the Committee. The FTB audit
22 report covered the audit period of January 1, 2013 through December 31, 2014. During the audit period,
23 the Committee reported receiving contributions of approximately \$827,000 and making expenditures of
24 approximately \$829,620.

25 The Committee was active in advance of the June 3, 2014 Primary Election and the
26 November 4, 2014 General Election, supporting and opposing candidates for state and local offices.
27

1 Despite such activity, the Committee failed to timely report numerous late independent expenditures in
2 eighteen 24-hour independent expenditure reports, and one late contribution in a 24-hour contribution
3 report, in violation of the Political Reform Act (the “Act”)¹.

4 **SUMMARY OF THE LAW**

5 All legal references and discussions of the law refer to the Act’s provisions as they existed at the
6 time of the stated violations.

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

8 When enacting the Political Reform Act, the people of the state of California found and declared
9 that previous laws regulating political practices suffered from inadequate enforcement by state and local
10 authorities.² To that end, the Act must be liberally construed to achieve its purposes.³

11 There are many purposes of the Act. One purpose is to ensure that receipts and expenditures in
12 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
13 practices are inhibited.⁴ To achieve this purpose, the Act includes a comprehensive campaign reporting
14 system.⁵ Another purpose is to provide adequate enforcement mechanisms so that the Act will be
15 “vigorously enforced.”⁶

16 **Duty to File 24-Hour Independent Expenditure Reports**

17 When a committee makes a late independent expenditure, the committee must disclose the
18 expenditure in a 24-hour independent expenditure report filed in the places where it would be required
19 to file campaign statements as if it were formed or existing primarily to support or oppose the candidate
20 or measure for or against which it is making the late independent expenditure within 24 hours of making
21 the late independent expenditure.⁷ A “late independent expenditure” means any independent expenditure
22 which totals in the aggregate \$1,000 or more and is made for or against any specific candidate or measure

23 ¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references
24 are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of Title
2 of the California Code of Regulations, and all regulatory references are to this source.

25 ² § 81001, subd. (h).

26 ³ § 81003.

27 ⁴ § 81002, subd. (a).

28 ⁵ §§ 84200, *et seq.*

⁶ § 81002, subd. (f).

⁷ § 84204.

1 involved in an election within 90 days before the date of the election.⁸ The 90-day period for the
2 June 3, 2014 election was March 5 through June 2, 2014, and the 90-day period for the
3 November 4, 2014 election was August 6 through November 3, 2014.

4 **Online or Electronic Filing of Campaign Statements and Reports**

5 Certain committees are required to file online or electronically with the Secretary of State,
6 including general purpose committees that cumulatively receive contributions or make expenditures
7 totaling \$25,000 or more to support or oppose candidates for any elective state office or state measure.⁹
8 Commencing 90 days prior to an election—and ending on the date of the election—when such a
9 committee makes an independent expenditure of \$1,000 or more in connection with a candidate for
10 elective state office, that committee must file an online or electronic independent expenditure report with
11 the Secretary of State within 24 hours.¹⁰

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

13 Each candidate or committee that makes or receives a late contribution must file a report within
14 24 hours of making or receiving the contribution.¹¹ A “late contribution” includes a contribution
15 aggregating \$1,000 or more that is made to or received by a candidate or his or her controlled committee
16 during the 90-day period preceding an election.¹² The 90-day period for the June 3, 2014 election was
17 March 5 through June 2, 2014, and the 90-day period for the November 4, 2014 election was August 6
18 through November 3, 2014.

19 **Liability for Violations**

20 Any person who violates any provision of the Act, who purposely or negligently causes any other
21 person to violate any provision of the Act, or who aids and abets any other person in the violation of any
22 provision of the Act, is liable for administrative penalties up to \$5,000 per violation.¹³

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24
25 ⁸ § 82036.5.

⁹ § 84605, subd. (a)(2).

¹⁰ §§ 85204 and 85500, subd. (a).

¹¹ § 84203.

¹² § 82036.

¹³ §§ 83116 and 83116. 5.

SUMMARY OF THE FACTS

24-Hour Independent Expenditure Reports

Campaign records show that the Committee made independent expenditures supporting Sharon Quirk-Silva, a candidate for Assembly District 65, totaling approximately \$475,450. Some of these independent expenditures totaled in the aggregate \$1,000 or more and were made within 90 days of the election, so qualified as late independent expenditures. But the Committee did not report all of the late independent expenditures in timely filed 24-hour independent expenditure reports. The FTB Audit Report determined, and the Enforcement Division staff confirmed, that the Committee failed to timely report late independent expenditures totaling over \$360,000. The Committee disclosed nearly all of these late independent expenditures in the Committee’s timely filed campaign statements (Form 460s), but some were disclosed in preelection campaign statements before the election, and some were disclosed in campaign statements after the election. The following tables summarize the late independent expenditures which were late-reported:

Disclosed in Campaign Statements (Form 460) – Before the Election						
Late-Reported Late Independent Expenditures			Disclosure in 24-Hour Independent Expenditure Report		Disclosure in Preelection Campaign Statements	
Dates Made	Total Amount	Election Date	Due Date	Dates Filed	Due Date	Date Filed
9/26/2014 – 9/29/2014	\$28,898.78	11/4/2014	9/30/2014	12/15/2016, 1/5/2017 ¹⁴	10/6/2014	10/6/2014
9/30/2014	\$5,260.00	11/4/2014	10/1/2014	12/15/2016, 1/5/2017	10/6/2014	10/23/2014
10/1/2014 – 10/5/2014	\$1,312.26	11/4/2014	10/6/2014	1/5/2017	10/23/2014	10/23/2014
10/6/2014, 10/8/2014	\$365.75	11/4/2014	10/9/2014	1/5/2017	10/23/2014	10/23/2014
10/9/2014	\$23,813.68	11/4/2014	10/10/2014	12/15/2016	10/23/2014	10/23/2014
10/10/2014, 10/15/2014	\$7,500.00	11/4/2014	10/16/2014	12/15/2016	10/23/2014	10/23/2014
TOTAL	\$67,150.47					

¹⁴ Some of the \$28,898.78 in independent expenditures were not disclosed in the 24-hour independent expenditure reports filed by the Committee.

Disclosed in Campaign Statements (Form 460) – After the Election

Late-Reported Late Independent Expenditures			Disclosure in 24-Hour Independent Expenditure Report		Disclosure in Campaign Statement	
Dates Made	Total Amount	Election Date	Due Date	Dates Filed	Due Date	Date Filed
5/19/2014 – 5/27/2014	\$1,309.70	6/3/2014	5/28/2014	12/15/2016	7/31/2014	10/6/2014 ¹⁵
10/17/2014	\$1,313.12	11/4/2014	10/18/2014	12/15/2016, 1/5/2017	2/2/2015	2/2/2015
10/20/2014, 10/22/2014	\$4,750.27	11/4/2014	10/23/2014	12/15/2016, 1/5/2017 ¹⁶	2/2/2015	2/2/2015
10/23/2014	\$109,540.41	11/4/2014	10/24/2014	12/15/2014	2/2/2015	2/2/2015
10/24/2014	\$3,760.41	11/4/2014	10/25/2014	Not Filed	2/2/2015	2/2/2015
10/25/2014, 10/27/2014	\$1,925.92	11/4/2014	10/28/2014	12/15/2016, 1/5/2017	2/2/2015	2/2/2015
10/28/2014	\$56,258.05	11/4/2014	10/29/2014	12/15/2016, 1/5/2017	2/2/2015	2/2/2015
10/29/2014	\$32,911.16	11/4/2014	10/30/2014	12/15/2016, 1/5/2017	2/2/2015	2/2/2015
10/30/2014	\$1,299.84	11/4/2014	10/31/2014	1/5/2017 ¹⁷	2/2/2015	2/2/2015
11/1/2014	\$2,684.45	11/4/2014	11/2/2014	1/5/2017 ¹⁸	2/2/2015	2/2/2015
11/2/2014 – 11/3/2014	\$8,485.23	11/4/2014	11/4/2014	12/15/2016, 1/5/2017 ¹⁹	2/2/2015	2/2/2015
11/4/2014	\$68,942.69	11/4/2014	11/5/2014	12/15/2016 ²⁰	2/2/2015	2/2/2015
TOTAL	\$293,181.25					

¹⁵ The Committee incorrectly reported the date these late independent expenditures were made as September 29, 2014. The Committee disclosed these late independent expenditures during the preelection reporting period ending September 30, 2014, which was timely filed on October 6, 2014. But these late independent expenditures should have been disclosed in the Committee's semi-annual campaign statement for the reporting period ending June 30, 2014, which was due on July 31, 2014. So these late independent expenditures were disclosed well after the June 3, 2014 primary election.

¹⁶ Some of the \$4,750.27 in independent expenditures were not disclosed in the 24-hour independent expenditure reports filed by the Committee.

¹⁷ Some of the \$1,299.84 in independent expenditures were not disclosed in the 24-hour independent expenditure reports filed by the Committee.

¹⁸ Some of the \$2,684.45 in independent expenditures were not disclosed in the 24-hour independent expenditure reports filed by the Committee.

¹⁹ Some of the \$8,485.23 in independent expenditures were not disclosed in the 24-hour independent expenditure reports filed by the Committee.

²⁰ Some of the \$68,942.69 in independent expenditures were not disclosed in the 24-hour independent expenditure reports filed by the Committee.

1 **24-Hour Contribution Report**

2 Within 90 days before the election, on October 27, 2014, the Committee made a \$7,500
3 contribution to Bao Nguyen for Garden Grove Mayor 2014. The Committee disclosed the contribution
4 in the Committee's timely filed semi-annual campaign statement for the period ending
5 December 31, 2014. But campaign and SOS records show that the Committee failed to timely file a 24-
6 hour contribution report for this late contribution. So this late contribution was not disclosed in any
7 manner by the Committee before the November 4, 2014 General Election. In some mitigation, this late
8 contribution was disclosed by the recipient the day before the November 4, 2014 election on a 24-hour
9 contribution report filed on November 3, 2014.

10 In connection with this settlement, the parties entered into a tolling agreement with respect to the
11 Act's five-year statute of limitations for administrative prosecution.

12 **VIOLATIONS**

13 Count 1: Failure to Timely Report Late Independent Expenditures

14 The Committee failed to timely report approximately \$67,150 in independent expenditures in six
15 24-hour independent expenditure reports due between September 30, 2014 and October 16, 2014, in
16 violation of Government Code Section 84204.

17 Count 2: Failure to Timely Report Late Independent Expenditures

18 The Committee failed to timely report approximately \$293,181 in late independent expenditures
19 in twelve 24-hour independent expenditure reports due between May 28, 2014 and November 5, 2014,
20 in violation of Government Code Section 84204.

21 Count 3: Failure to Timely Report a Late Contribution Report

22 The Committee failed to timely report making a \$7,500 late contribution in a 24-hour contribution
23 report due October 28, 2014, in violation of Government Code Section 84203.

24 **PROPOSED PENALTY**

25 This matter consists of three counts of violating the Act, which carries a maximum administrative
26 penalty of \$5,000 per count, totaling \$15,000.²¹

27 ²¹ § 83116, subd. (c).

1 In determining the appropriate penalty for a particular violation of the Act, the Commission
2 considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis
3 on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and
4 circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d):
5 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3)
6 whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated
7 good faith in consulting with Commission staff; 5) whether there was a pattern of violations and whether
8 the violator has a prior record of violations of the Act or similar laws; and 6) whether, upon learning of
9 the violation, the violator voluntarily provided amendments to provide full disclosure.²²

10 Applying the factors to this case, the violations at issue here involved large amounts of financial
11 activity. But, the action of the Committee appears to be negligent, and the Enforcement Division's
12 investigation did not reveal evidence of intent to deceive the voting public. Upon learning of the
13 violations during the FTB audit, the Committee filed the missing 24-hour independent expenditure
14 reports disclosing the activity.

15 And the Committee has prior enforcement history for similar conduct. On May 25, 2017, the
16 Commission approved a penalty of \$827 against the Committee for failing to timely report late
17 independent expenditures (2 counts) and late contributions (1 count) for campaign activity in 2012 (FPPC
18 Case No. 16/083).

19 The Commission also considers penalties in prior cases involving similar violations. Recent cases
20 with similar violations include:

21 Counts 1 and 2: Failure to Timely Report Late Independent Expenditures

22 *In the Matter of Friends of Livermore, Leland Younker, and David Jonas*; FPPC No. 16/19930.
23 Respondents, a city general purpose committee, its principal officer and its treasurer, failed to timely file
24 42 different 24-hour independent expenditure reports for late independent expenditures totaling
25 approximately \$152,517, in violation of Government Code Section 84204 (1 count). All but one of the
26 24-hour independent expenditure reports were filed on November 7, 2016, the day before the election,

27 ²² Reg. 18361.5, subd. (d).

1 and the reports ranged from three to 46 days late. In January 2019, the Commission imposed a penalty of
2 \$3,000 for this violation.

3 In this case, the Committee failed to timely file 18 different 24-hour independent expenditure
4 reports for late independent expenditures totaling over \$360,000. Nearly 81% of those late independent
5 expenditures were not disclosed in any manner before the election. About 19% of the late independent
6 expenditures were disclosed in the Committee's applicable preelection campaign statements.

7 Here, the amount of activity in Count 1 (\$67,150) was lower than the late-reported amount in the
8 comparable case – less than half – and the activity was disclosed in some manner before the election. A
9 penalty of \$2,500 is recommended for Count 1.

10 Also in this case, the activity in Count 2 (\$293,181) was higher than the late-reported amount in
11 the comparable case. This activity was not disclosed in any manner before the election, but it was
12 disclosed voluntarily in the Committee's campaign statements. A penalty of \$3,500 is recommended for
13 Count 2.

14 Count 3: Failure to Timely Report a Late Contribution Report

15 *In the Matter of Stanislaus County Democratic Central Committee – State and Rita Copeland;*
16 FPPC No. 17/617. Respondents, a general purpose committee and its treasurer, failed to timely report
17 late contributions totaling \$50,000 in a 24-hour contribution report, in violation of Government Code
18 Section 84203 (1 count). The 24-hour contribution report was filed late, but several weeks before the
19 election. In August 2018, the Commission imposed a penalty of \$1,500 for this violation.

20 In this case, the Committee failed to timely report making a \$7,500 late contribution in a 24-hour
21 contribution report. The Committee disclosed this contribution in the applicable semi-annual campaign
22 statement, but that was not due until nearly three months after the election. So the Committee did not
23 disclose the contribution before the election. In mitigation, the amount of this late contribution was a very
24 small percentage of the total amount of contributions received/expenditures made by the Committee
25 during the audit period – less than 1%. Additionally, this late contribution was disclosed by the recipient
26 before the November 4, 2014 election, and the amount of the late contribution in this case is lower than
27 in the comparable case. A penalty of \$1,000 for Count 3 is recommended.

1 For the foregoing reasons, a total administrative penalty in the amount of \$7,000 is recommended:
2 \$2,500 for Count 1, \$3,500 for Count 2, and \$1,000 for Count 3.

3 **CONCLUSION**

4 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
5 Respondent, Orange County Dignity PAC, sponsored by Orange County Federation of Labor AFL-CIO,
6 hereby agree as follows:

7 1. Respondent 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
13 the liability of Respondent pursuant to Section 83116.

14 4. Respondent has consulted with its attorneys, Kaufman Legal Group, and understands, and
15 hereby knowingly and voluntarily waives, any and all procedural rights set forth in Sections 83115.5,
16 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not limited to the right to
17 appear personally at any administrative hearing held in this matter, to be represented by an attorney at
18 Respondent’s own expense, to confront and cross-examine all witnesses testifying at the hearing, to
19 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
20 the hearing as a hearing officer, and to have the matter judicially reviewed.

21 5. Respondent agrees to the issuance of the decision and order set forth below. Also,
22 Respondent agrees to the Commission imposing against it an administrative penalty in the amount of
23 \$7,000. One or more payments totaling this amount, to be paid to the General Fund of the State of
24 California, is/are submitted with this Stipulation as full payment of the administrative penalty described
25 above, and they will be held by the State of California until the Commission issues its decision and order
26 regarding this matter.

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

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

11 Dated: _____
12 Galena West, Chief, on behalf of the Enforcement Division
13 Fair Political Practices Commission

14 Dated: _____
15 _____ on behalf of
16 Orange County Dignity PAC, sponsored by Orange County
17 Federation of Labor AFL-CIO, Respondent

18 The foregoing Stipulation of the parties "In the Matter of Orange County Dignity PAC, sponsored
19 by Orange County Federation of Labor AFL-CIO," FPPC Case No. 18/063 is hereby accepted as the final
20 decision and order of the Fair Political Practices Commission, effective upon execution below by the
21 Chair.

22 IT IS SO ORDERED.

23 Dated: _____
24 Richard C. Miadich, Chair
25 Fair Political Practices Commission