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9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

10 In the Matter of:

11 BRIAN PAYTON FOR EUREKA CITY
12 SCHOOL BOARD 2018 and BRIAN
13 PAYTON

14 Respondents.

FPPC Case No. 2018-00916

STIPULATION, DECISION AND ORDER

15
16 **INTRODUCTION**

17 Brian Payton for Eureka City School Board 2018 (“Committee”) was the candidate-controlled
18 committee for Brian Payton (“Payton”), an unsuccessful candidate for Eureka City School Board during
19 the November 6, 2018 General Election. Payton served as the treasurer for the Committee. The Committee
20 and Payton violated the Political Reform Act (the “Act”)¹ by failing to use a designated campaign bank
21 account.

22 **SUMMARY OF THE LAW**

23 The Act and its regulations are amended from time to time. The violations in this case occurred in
24 2018. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they
25 existed at that time—unless otherwise noted.

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28 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 **Joint and Several Liability**

2 Every committee must have a treasurer.¹² It is the duty of the treasurer and the candidate to ensure
3 that the committee complies with all the requirements of the Act.¹³ The treasurer and the candidate may be
4 held jointly and severally liable, along with the committee, for violations committed by the committee.¹⁴

5 **SUMMARY OF THE FACTS**

6 This matter was opened as part of the Enforcement Division’s pre-election efforts during the
7 November 6, 2018 General Election. Humboldt County Elections referred the matter to the Enforcement
8 Division because the Committee and Payton failed to timely file a pre-election campaign statement.

9 On July 27, 2018, Payton filed the Committee’s initial statement of organization, indicating that
10 the Committee had not yet qualified, however, subsequent campaign statements indicate that the
11 Committee qualified on or around July 3, 2018. The Committee and Payton failed to timely file a first pre-
12 election campaign statement for the reporting period ending September 22, 2018 by the deadline of
13 September 27, 2018. This statement was filed eight days late on October 5, 2018, after the Enforcement
14 Division contacted the candidate. This statement only covered the reporting period of July 1, 2018 through
15 September 22, 2018; however, since the Committee had not previously filed any campaign statements, the
16 Committee and Payton were required to file for the reporting period starting January 1, 2018. As a result,
17 the Committee’s activity from prior to July 1, 2018, totaling approximately \$1,300, was not disclosed until
18 amendments were filed in 2020.

19 The Committee and Payton timely filed the second pre-election campaign statement for the
20 reporting period ending October 20, 2018 but failed to file any post-election campaign statements until
21 contacted again by the Enforcement Division. The Committee and Payton filed the outstanding statements
22 and filed a statement of organization to terminate the Committee with local county election officials on
23 January 22, 2020.

24 The campaign statements demonstrate, and Payton admitted, that the Committee and Payton did
25 not utilize the designated campaign bank account for depositing the contributions of the candidate. Instead,
26 the candidate made expenditures on behalf of the Committee utilizing his own accounts. The Committee
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28 ¹² Section 84100.

¹³ Sections 81004, 84100, 84104, and 84213, and Regulation 18427.

¹⁴ Sections 83116.5 and 91006.

1 and Payton reported several non-monetary contributions from Payton. A notation on the campaign
2 statement indicates that the campaign bank account was not opened until August 14, 2018. Payton made
3 at least \$2,228 in expenditures for the Committee using his own funds prior to opening the campaign bank
4 account. After the account was opened, Payton continued to use his own funds instead of using the
5 campaign bank account, for a total of approximately \$530. In total, this activity was approximately 63%
6 of the committee activity. In 2018, the Committee reported raising and spending approximately \$4,338.

7 VIOLATIONS

8 Count 1: Failure to Use One Designated Campaign Bank Account

9 The Committee and Payton failed to deposit all contributions, including personal funds of the
10 candidate, into the designated campaign bank account and failed to make all expenditures from the
11 designated campaign bank account from approximately May 25, 2018 through September 27, 2019, in
12 violation of Section 85201.

13 PROPOSED PENALTY

14 This matter consists of one count. Therefore, the maximum penalty that may be imposed is
15 \$5,000.¹⁵

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

22 Due to the size of the committee and the inexperience of the candidate, the potential violations in
23 this matter are considered as generally aggravating while the most serious violation, the failure to
24 exclusively utilize a designated campaign bank account, is presented as the one charged violation. Failing
25 to utilize a designated campaign bank account impedes the ability of the Enforcement Division to
26 substantiate the campaign activity that a candidate reports. The violations appear to be negligent, as
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28 ¹⁵ See Section 83116, subd. (c).

¹⁶ Regulation 18361.5, subd. (d).

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

8 5. Respondents agree to the issuance of the decision and order set forth below. Also,
9 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
10 \$2,000. One or more payments totaling said amount—to be paid to the General Fund of the State of
11 California—is/are submitted with this stipulation as full payment of the administrative penalty described
12 above, and same shall be held by the State of California until the Commission issues its decision and order
13 regarding this matter.

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

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

Galena West, Chief of Enforcement
Fair Political Practices Commission

Dated: _____

Brian Payton, Candidate and Treasurer
Individually and on behalf of Brian Payton for Eureka
City School Board 2018

