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

11 In the Matter of:

12 HARMESH KUMAR, COMMITTEE TO
ELECT DR. KUMAR FOR ASSEMBLY
13 (DISTRICT 14) 2016, ALEX CARDOSO,
AND COMMITTEE TO ELECT DR.
14 KUMAR 4 BOS CCC DISTRICT 4,

15 Respondents.

FPPC Case Nos. 2018-00590 and 2018-00777

16 STIPULATION, DECISION AND ORDER

17 **INTRODUCTION**

18 Respondent Harmesh Kumar (“Kumar”) was an unsuccessful candidate for office in 2016 and 2018.
19 For the June 7, 2016 Primary Election, Kumar was a candidate for Assembly District 14. His controlled
20 committee was Committee to Elect Dr. Kumar for Assembly (District 14) 2016 (“2016 Committee”). Alex
21 Cardoso (“Cardoso”) served as the treasurer. FPPC Case 2018-00777 arose pursuant to an audit conducted
22 by the Franchise Tax Board (“FTB”). The FTB audit report covered the audit period of January 1, 2015
23 through June 30, 2016. During the audit period, the 2016 Committee reported \$18,716 in contributions and
24 an equal amount in expenditures. The FTB’s audit found, and the Enforcement Division of the Fair Political
25 Practices Commission confirmed, that the Committee, Kumar, and Cardoso violated the Political Reform
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1 Act¹ (“Act”) by failing to timely file a pre-election campaign statement, by failing to utilize a single
2 designated campaign bank account, and by improperly accepting cash contributions of \$100 or more.

3 For the June 5, 2018 Primary Election, Kumar was a candidate for Contra Costa County Board of
4 Supervisors District 4. His controlled committee was Committee to Elect Dr. Kumar 4 BOS CCC District
5 4 (“2018 Committee”). Kumar served as the treasurer for this committee. FPPC Case 2018-00590 arose
6 pursuant to a referral from the filing officer as part of a pre-election compliance effort. The 2018
7 Committee reported \$42,878 in contributions and \$48,170 in expenditures in 2018. The 2018 Committee
8 and Kumar violated the Act by failing to timely file a pre-election campaign statement.

9 SUMMARY OF THE LAW

10 All statutory references and discussions of law pertain to the Act’s provisions as they existed at the
11 time of the violations.

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

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

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

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25 ¹ The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections
26 81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission
27 are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references
28 are to this source.

² Section 81001, subdivision (h).

³ Section 81003.

⁴ Section 81002, subdivision (a).

⁵ Sections 84200, *et seq.*

⁶ Section 81002, subdivision (f).

1 Pre-election Campaign Statements

2 A recipient committee to support a candidate must file two pre-election campaign statements as
3 required by the Act.⁷ A committee must file a first pre-election campaign statement no later than 40 days
4 before the election for the reporting period ending 45 days before the election. A committee must file a
5 second pre-election statement no later than 12 days before the election for the reporting period ending 17
6 days before the election. Whenever the deadline falls on a Saturday, Sunday, or official state holiday, the
7 filing deadline for a statement shall be extended to the next regular business day.⁸

8 In particular, in connection with the election held June 7, 2016, a controlled committee was required
9 to file for the reporting period of January 1, 2016 through April 23, 2016 by the deadline of April 28, 2016.
10 A second pre-election campaign statement was required for the reporting period of April 24, 2016 through
11 May 21, 2016 by the deadline of May 26, 2016. In connection with the election held June 5, 2018, a
12 controlled committee was required to file for the reporting period of January 1, 2018 through April 21,
13 2018 by the deadline of April 26, 2018. A second pre-election campaign statement was required for the
14 reporting period of April 22, 2018 through May 19, 2018 by the deadline of May 24, 2018.

15 One Designated Campaign Bank Account

16 A candidate-controlled committee must deposit all contributions and make all expenditures from
17 the committee's designated bank account.⁹ Any loans to the candidate or committee must be deposited in
18 the campaign bank account before being utilized.¹⁰ Any personal funds a candidate intends to spend on
19 campaign-related expenses must first be deposited in the campaign bank account before the expenditure is
20 made.¹¹ All expenditures must be made from the account.¹²

21 Prohibition on Cash

22 No contribution of one hundred dollars (\$100) or more shall be made or received in cash.¹³ All
23 contributions of \$100 or more must be made in the form of a written instrument containing the name of the
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26 ⁷ Section 84200.5, subdivision (a).

⁸ Regulation 18116, subdivision (a).

⁹ Section 85201, subdivision (e).

¹⁰ Section 85201, subdivision (c).

¹¹ Section 85201, subdivision (d), and Regulation 18524, subdivision (a).

¹² Section 85201, subdivision (e).

¹³ Section 84300, subdivision (a).

1 contributor and the name of the payee, and drawn from the account of the contributor.¹⁴ No expenditure of
2 one hundred dollars (\$100) or more shall be made in cash.¹⁵

3 Candidate and Treasurer Liability

4 Under the Act, it is a duty of the candidate and the treasurer of a controlled committee to ensure
5 that the committee complies with all the requirements of the Act concerning the receipt, expenditure, and
6 reporting of funds.¹⁶ The candidate and treasurer may be held jointly and severally liable, along with the
7 committee, for violations committed by the committee.¹⁷

8 **SUMMARY OF THE FACTS**

9 2016 Committee

10 The 2016 Committee timely filed the first pre-election campaign statement but filed the second pre-
11 election campaign statement late. For the reporting period of April 24, 2016 through May 21, 2016, a
12 campaign statement was due on May 26, 2016. According to the Secretary of State, the 2016 Committee
13 filed the statement prior to the election but 5 days late on May 31, 2016. The activity reported was \$16,829
14 in contributions and \$9,262 in expenditures. The 2016 Committee timely filed a semiannual campaign
15 statement and terminated as a committee.

16 The candidate, Kumar, made several expenditures on behalf of the campaign utilizing his own
17 personal funds. In total, the candidate spent \$5,382 in personal funds on expenditures without first
18 depositing those funds into the campaign bank account. In addition, the 2016 Committee reported
19 approximately \$3,300 in contributions from 17 contributors. These 17 contributors gave \$100 or more.
20 However, these 17 contributions were not deposited into the campaign bank account. According to the
21 treasurer, these contributions were accepted in the form of cash. The cash was then delivered to the
22 candidate, Kumar, as a reimbursement for personal funds he had expended on behalf of the committee. In
23 total, the audit found and the Enforcement Division confirmed, that the 2016 Committee had \$8,682 in
24 funds outside of the campaign bank account. This figure represents approximately 46% of the total activity.

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¹⁴ Section 84300, subd. (c).

¹⁵ Section 84300, subd. (b).

28 ¹⁶ Sections 81004, 84100, 84104, and 84213; Regulation 18427.

¹⁷ Sections 83116.5 and 91006.

1 The 2016 Committee reported a \$1,700 payment made out to the payee, Cardoso. However,
2 Cardoso cashed the check and gave the cash to the true payee, Stephanie Simms, for consulting services.
3 Cardoso provided an invoice documenting this transaction and explained that it was meant to expediate
4 the payment for the convenience of Simms. This cash expenditure represents approximately 9% of all
5 expenditures made by the 2016 Committee.

6 2018 Committee

7 The filing officer, Contra Costa County, referred the 2018 Committee to the Enforcement Division
8 as part of a pre-election compliance program. The 2018 Committee failed to timely file the first pre-election
9 campaign statement timely. The 2018 Committee responded to the Enforcement Division's request and
10 filed a pre-election campaign statement for the reporting period of January 1, 2018 through April 21, 2018
11 on May 7, 2018. The statement was due on April 26, 2018 and was filed 11 days late. The 2018 Committee
12 reported a \$35,000 loan from the candidate and reported expenditures totaling \$6,704. The 2018
13 Committee has subsequently timely filed all required campaign statements.

14 **VIOLATIONS**

15 *As to the 2016 Committee, Kumar, and Cardoso only,*

16 Count 1: Failure to Timely File a Pre-election Campaign Statement

17 The Committee, Kumar, and Cardoso failed to timely file a pre-election statement for the reporting
18 period of April 24, 2016 through May 21, 2016, due on May 26, 2016, in violation of Government Code
19 section 84200.5 and 84200.8.

20 Count 2: Failure to Utilize One Designated Bank Account

21 The Committee, Kumar, and Cardoso failed to utilize a single, designated campaign bank account
22 for the deposit of all contributions and payment of all expenditures, in violation of Government Code
23 section 85201.

24 Count 3: Prohibited Use of Cash

25 The Committee, Kumar, and Cardoso accepted cash contributions from contributors who gave \$100
26 or more and made a payment of more than \$100, in violation of Government Code section 84300.

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1 *As to the 2018 Committee and Kumar only,*

2 Count 4: Failure to Timely File a Pre-election Campaign Statement

3 The Committee and Kumar failed to timely file a pre-election statement for the period ending April
4 21, 2018 and due on April 26, 2018 in violation of Government Code section 84200.5 and 84200.8.

5 **PROPOSED PENALTY**

6 This matter consists of four counts. The maximum penalty that may be imposed is \$5,000 per
7 count.¹⁸ Thus, the maximum penalty that may be imposed here is \$20,000.

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

14 Applying the factors to this case, the respondents do not have prior record of violations. Kumar has
15 shown a pattern of violations as over two campaigns he has committed several of the same violations. For
16 example, Kumar failed to timely file a pre-election campaign statement, he failed to timely file 24-hour
17 contribution reports and utilized his own personal funds for both of his controlled committees. These
18 additional violations are not being sought as separate charges in this stipulated agreement but are
19 considered aggravating. The evidence supports a finding that the violations were negligent, as opposed to
20 deliberate or intentional, as the campaign statements appeared to fully report the activity. However, the
21 failure to use a single, designated campaign bank account and the use of cash are serious where they impede
22 the ability of the FTB and of the Enforcement Division to substantiate the reporting. In mitigation, the
23 Committee, Kumar, and Cardoso fully cooperated with the FTB's audit process and the Enforcement
24 Division's investigation.

25 The Commission also considers penalties in prior cases with the same or similar violations and
26 comparable facts.

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¹⁸ Section 83116, subdivision (c).

¹⁹ Regulation 18361.5, subdivision (d).

1 A comparable case regarding Count 1 and 4 is *In the Matter of Lenet Pacheco, L. Pacheco for*
2 *VCWD B-Member 2013, L. Pacheco 4 Valley County Water District 2018, and Ricardo Pacheco*, FPPC
3 Case No. 18/1045. (The Commission approved a stipulated decision on May 21, 2020.) Among other
4 violations the 2018 committee failed to timely file two pre-election statements. Both statements were filed
5 between 18 and 11 days late. The total reported activity was approximately \$30,000 in contributions at
6 \$20,391 in expenditures. The Commission imposed a penalty for one combined count of \$2,500.

7 With respect to Count 1, the 2016 Committee failed to timely file one pre-election statement and
8 filed all subsequent statements timely, unlike the comparable case where two pre-elections were filed late
9 and the respondents were charged with several failures to file campaign statements timely. The only
10 activity reported on this statement was a \$16,829 in contributions and \$9,262 in expenditures. As in the
11 comparable case, the statement was filed prior to the election. In aggravation, the 2016 Committee failed
12 to timely file four 24-hour contribution reports to disclose contributions from the treasurer, the candidate,
13 and loans from the candidate's business. Therefore, a similar penalty of \$2,500 is warranted for Count 1.

14 With respect to Count 4, the 2018 Committee failed to timely file one pre-election statement and
15 has filed all subsequent statements timely, unlike the comparable case where two pre-elections were filed
16 late, and the respondents were charged with several failures to file campaign statements timely. The only
17 activity reported on this statement was a \$35,000 loan from the candidate and approximately \$6,704 in
18 expenditures. As in the comparable case, the statement was filed prior to the election. In aggravation, the
19 2018 Committee failed to timely file three 24-hour contribution reports and had approximately 3% of the
20 total expenditures be made outside the designated campaign bank account. Therefore, a similar penalty of
21 \$2,500 is warranted for Count 4.

22 A comparable case regarding Count 2 is *In the Matter of Melendez for California State Senate 2018*
23 *and Rudy Melendez*, FPPC Case No. 2018-00863. (The Commission approved a stipulated decision on
24 April 16, 2020.) The respondents failed to open a designated campaign bank account and the candidate
25 utilized his personal accounts to make the committee's only expenditures, totaling \$5,808 in 2018. The
26 Commission imposed a penalty of \$2,500.

27 Here, the amount of activity that occurred outside of the campaign bank account was slightly larger,
28 totaling \$8,682. However, the Committee did have a designated bank account and about 46% of the activity

1 was outside of the account. Some of the activity was in late 2015, prior to the opening of the account.
2 However, the candidate continued to utilize his personal funds to make payments and accepted cash
3 contributions as reimbursement, without depositing funds into the account first and without keeping
4 documentation. Therefore, a penalty of \$3,000 is recommended.

5 A comparable case regarding Count 3 is *In the Matter of Committee to Elect Jim Smith, Superior*
6 *Court Judge, Seat #3 2014, James S. Smith, and Michael Arzaga*, FPPC Case No. 2017-00076. (The
7 Commission approved a stipulated decision on May 21, 2020.) The committee improperly accepted a total
8 of \$13,230 in cash from contributors who gave \$100 or more. The total number of improper contributions
9 was 8, with one source being unverified but reported as a loan from the candidate. In addition, the
10 committee deposited cash totaling \$790 but failed to keep record of receipts or a contributor list. The
11 Commission imposed a penalty of \$2,500.

12 Here, the amount of cash was less, totaling \$3,300 in contributions and a \$1,700 expenditure that
13 was paid to a payee in cash. The total individual contributions accepted was 17. On campaign statements,
14 the source of the funds was reported properly but documentation was not maintained regarding the final
15 disposition of funds. As the amount was smaller, a lesser penalty is appropriate. A penalty of \$2,000 is
16 recommended.

17 After considering the factors listed in Regulation 18361.5 and penalties in prior similar cases, a
18 total penalty of \$10,000 is recommended as follows:

Count	Respondents	Violation	Penalty
1	2016 Committee, Kumar, and Cardoso	Pre-election Statements	\$2,500
2	2016 Committee, Kumar, and Cardoso	Designated Bank Account	\$3,000
3	2016 Committee, Kumar, and Cardoso	Prohibited Cash	\$2,000
4	2018 Committee and Kumar	Pre-election Statements	\$2,500

25 CONCLUSION

26 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
27 Respondents Harmesh Kumar, Committee to Elect Dr. Kumar for Assembly (District 14) 2016, Alex
28 Cardoso, and Committee to Elect Dr. Kumar 4 BOS CCC District 4, hereby agree as follows:

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

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

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

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

15 5. Respondents agree to the issuance of the decision and order set forth below. Also,
16 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
17 \$10,000. One or more payments totaling said amount—to be paid to the General Fund of the State of
18 California—is/are submitted with this stipulation as full payment of the administrative penalty described
19 above, and same shall be held by the State of California until the Commission issues its decision and order
20 regarding this matter.

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

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

Galena West, Chief of Enforcement
Fair Political Practices Commission

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10 Dated: _____

Harmesh Kumar, individually and on behalf of
Committee to Elect Dr. Kumar for Assembly (District 14)
2016, and Committee to Elect Dr. Kumar 4 BOS CCC
District 4

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15 Dated: _____

Alex Cardoso, individually and on behalf of
Committee to Elect Dr. Kumar for Assembly (District 14)
2016

1 The foregoing stipulation of the parties “In the Matter of Harmesh Kumar, Committee to Elect Dr.
2 Kumar for Assembly (District 14) 2016, Alex Cardoso, and Committee to Elect Dr. Kumar 4 BOS CCC
3 District 4,” FPPC Case Nos. 2018-00590 and 2018-00777 is hereby accepted as the final decision and order
4 of the Fair Political Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

Richard C. Miadich, Chair
Fair Political Practices Commission