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8
9 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

10 **STATE OF CALIFORNIA**

11 In the Matter of:

FPPC Case No. 19/673

12 KEITH CARSON, KEITH CARSON
13 FOR ALAMEDA COUNTY
14 SUPERVISOR-2016, and MIGUEL
15 DWIN,

STIPULATION, DECISION AND ORDER

16 Respondents.

17 **INTRODUCTION**

18 Respondent, Keith Carson (“Carson”), was a successful incumbent candidate for Alameda
19 County Supervisor, District 5, in the June 7, 2016 Primary Election. Respondent, Keith Carson for
20 Alameda County Supervisor-2016 (ID# 890744) (the “Committee”), is Carson’s controlled committee.
21 Respondent, Miguel Dwin (“Dwin”), serves as the Committee’s treasurer.

22 The Committee was the subject of a Franchise Tax Board (“FTB”) audit. The FTB audit report
23 covered the audit period of July 1, 2012 through June 30, 2016. During the audit period, the Committee
24 reported \$80,302 in contributions and \$84,352 in expenditures.

25 The FTB audit revealed the Committee, Carson, and Dwin violated the Political Reform Act (the
26 “Act”).¹ The Act requires committees, candidates, and treasurers to timely file certain campaign

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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

1 statements and reports. The Committee, Carson, and Dwin violated the Act by failing to timely file pre-
2 election campaign statements and 24-hour contribution reports.

3 **SUMMARY OF THE LAW**

4 The Act and its regulations are amended from time to time. The violations in this case occurred
5 in 2016. For this reason, all legal references and discussions of law pertain to the Act’s provisions as
6 they existed at that time.

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

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

11 A central purpose of the Act is to promote transparency by ensuring that receipts and
12 expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed
13 and improper practices are inhibited.⁴ Another purpose of the Act is to provide adequate enforcement
14 mechanisms so that the Act will be “vigorously enforced.”⁵

15 **Pre-Election Campaign Statements**

16 All candidates appearing on the ballot to be voted on at the next election, and their controlled
17 committees, shall file the applicable pre-election campaign statements.⁶ The first pre-election campaign
18 statement, for the period ending 45 days before the election, shall be filed no later than 40 days before
19 the election.⁷ The second pre-election campaign statement, for the period ending 17 days before the
20 election, shall be filed no later than 12 days before the election.⁸

21 **24-Hour Contribution Reports**

22 A “late contribution” is a contribution that totals in the aggregate \$1,000 or more and is made to
23 or received by a candidate or controlled committee during the 90-day period preceding the date of the
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25 this source.

26 ² Section 81001, subdivision (h).

27 ³ Section 81003.

28 ⁴ Section 81002, subdivision (a).

⁵ Section 81002, subdivision (f).

⁶ Section 84200.5, subdivision (a).

⁷ Section 84200.8, subdivision (a).

⁸ Section 84200.8, subdivision (b).

1 election, or on the date of the election, at which the candidate is to be voted on.⁹ Each candidate or
2 committee that makes or receives a late contribution shall report the late contribution within 24 hours of
3 the time it is made or received.¹⁰

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

5 It is the duty of the candidate and treasurer of a controlled committee to ensure that the
6 committee complies with all the requirements of the Act concerning the receipt, expenditure, and
7 reporting of funds.¹¹ A treasurer may be held jointly and severally liable, along with the candidate, for
8 violations committed by the committee.¹²

9 **Liability for Violations**

10 Any person who violates any provision of the Act is liable for administrative penalties up to
11 \$5,000 per violation.¹³

12 **SUMMARY OF THE FACTS**

13 The FTB audit revealed the Committee, Carson, and Dwin failed to timely file pre-election
14 campaign statements and 24-hour contribution reports prior to the June 7, 2016 Primary Election.

15 **Failure to Timely File Pre-Election Campaign Statements**

16 Since Carson appeared on the June 7, 2016 Primary Election ballot, the Committee was required
17 to file both pre-election campaign statements. Instead, on July 26, 2016, the Committee filed a semi-
18 annual campaign statement for the reporting period of January 1, 2016 to June 30, 2016. The following
19 chart summarizes the campaign activity for each reporting period between January 1, 2016 to June 30,
20 2016.

21 STATEMENT	REPORTING PERIOD	DUE DATE	DATE FILED	ACTIVITY
22 First Pre-Election	01/01/2016 - 04/23/2016	04/28/2016	07/26/2016 (89 days late)	CTB: \$705 EXP: \$8,235
23 Second Pre-Election	04/24/2016 - 05/21/2016	05/26/2016	07/26/2016 (61 days late)	CTB: \$4,295 EXP: \$5,160
24 Semi-Annual	05/22/2016 – 06/30/2016	08/01/2016	07/26/2016	CTB: \$450 EXP: \$2,690

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27 ⁹ Section 82036, subdivision (a).

¹⁰ Section 84203, subdivision (a)-(b).

¹¹ Sections 81004, 84100, 84213, and Regulation 18427.

¹² Sections 83116. 5 and 91006.

¹³ Sections 83116 and 83116. 5.

1 Thus, the Committee failed to report any of its campaign activity prior to the June 7, 2016
2 Primary Election, was 89 days late to report its campaign activity during the first pre-election reporting
3 period, and was 61 days late to report its campaign activity during the second pre-election reporting
4 period.

5 **Failure to Timely File 24-Hour Contribution Reports**

6 The 90-day period preceding the June 7, 2016 Primary Election began on March 9, 2016. The
7 Committee's semi-annual campaign statement for the reporting period of January 1, 2016 to June 30,
8 2016, reported late contributions received that required 24-hour contribution reports as follows:

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CONTRIBUTOR	DUE DATE	DATE FILED	AMOUNT
Davillier Sloan Inc.	04/01/2016	Not Filed	\$1,000
Drive Committee	05/17/2016	Not Filed	\$1,000
IBEW Local 595	05/19/2016	Not Filed	\$1,000
Healthplus Shared Services	05/19/2016	Not Filed	\$1,250
		TOTAL:	\$4,250

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14 Additionally, the Committee made a late contribution totaling \$4,200 on April 10, 2016 to
15 Sandre Swanson For Senate. The Committee was required to file a 24-hour contribution report for this
16 late contribution made by the April 11, 2016 due date. According to the County of Alameda, the
17 Committee failed to file this report. However, the recipient here reported the late contribution on a
18 timely filed 24-hour contribution report and second pre-election campaign statement.

19 Thus, the Committee failed to report its late contributions received or made on any statement or
20 report filed prior to the June 7, 2016 Primary Election, for four late contributions received totaling
21 \$4,250, and for one late contribution made totaling \$4,200.

22 **VIOLATIONS**

23 **Count 1: Failure to Timely File Pre-Election Campaign Statements**

24 The Committee, Carson, and Dwin failed to timely file two pre-election campaign statements for
25 the reporting periods ending April 23, 2016 and May 21, 2016, by the April 28, 2016 and May 26, 2016
26 due dates, respectively, in violation of Government Code Sections 84200.5 and 84200.8.

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

2 The Committee, Carson, and Dwin failed to timely file 24-hour contribution reports for four late
3 contributions received on March 31, 2016, May 16, 2016, and May 18, 2016 totaling \$4,250, by the
4 April 1, 2016, May 17, 2016, and May 19, 2016 due dates, respectively, and for one late contribution
5 made on April 10, 2016 totaling \$4,200, by the April 11, 2016 due date, in violation of Government
6 Code Section 84203.

7 **PROPOSED PENALTY**

8 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per
9 count. Thus, the maximum penalty that may be imposed here is \$10,000.¹⁴

10 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
11 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
12 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division
13 considers the facts and circumstances of the violation in the context of the following factors set forth in
14 Regulation 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused
15 by the specific violation; (2) The level of experience of the violator with the requirements of the
16 Political Reform Act; (3) Penalties previously imposed by the Commission in comparable cases; (4) The
17 presence or absence of any intention to conceal, deceive or mislead; (5) Whether the violation was
18 deliberate, negligent or inadvertent; (6) Whether the violator demonstrated good faith by consulting the
19 Commission staff or any other governmental agency in a manner not constituting complete defense
20 under Government Code Section 83114(b); (7) Whether the violation was isolated or part of a pattern
21 and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
22 (8) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide
23 full disclosure.¹⁵

24 The public harm inherent in campaign reporting violations is that the public is deprived of
25 important, time-sensitive information regarding campaign activity. Here, the Committee, Carson, and
26 Dwin’s failure to timely file pre-election campaign statements and 24-hour contribution reports prior to
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28 ¹⁴ Section 83116, subdivision (c).

¹⁵ Regulation 18361. 5, subdivision (e).

1 the June 7, 2016 Primary Election is aggravated because failing to file these statements and reports
2 resulted in the public having no knowledge of the Committee's campaign activity prior to the election.

3 In this case, there was no evidence to support an intent to conceal, deceive or mislead the public
4 as to the Committee's receipts and expenditures. The violations here appear to be negligent as the
5 Committee has been open and active since 1989, Carson has been in office since 1993, and Dwin has
6 served as the Committee's treasurer since December 26, 2014. Thus, Carson and Dwin knew or should
7 have known of the Committee's filing obligations. The Committee, Carson, and Dwin do not have prior
8 enforcement history.

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

11 **Count 1: Failure to Timely File Pre-Election Campaign Statements**

12 *In the Matter of Karina Onofre for CA State Assembly 74th District 2016 and Karina Onofre;*
13 FPPC Case No. 16/649. Respondents, a candidate for California State Assembly and her controlled
14 committee, failed to timely file two pre-election campaign statements prior to the November 8, 2016
15 General Election. Both pre-election campaign statements were filed nearly two years after the pertinent
16 election. These pre-election campaign statements reported \$4,246 in contributions and \$8,633 in
17 expenditures. In aggravation, Onofre and her committee late-filed the post-election semi-annual
18 campaign statement. On October 15, 2020, the Commission approved a penalty of \$2,500.

19 A lesser penalty than that approved in *Onofre* is recommended. Here, the Committee, Carson,
20 and Dwin raised and spent slightly more than that at issue in *Onofre*. However, the Committee here was
21 only 61-89 days late in reporting its campaign activity during the pre-election reporting periods unlike
22 *Onofre* who filed the outstanding campaign statements over two years late. Further, the Committee
23 timely filed the post-election semi-annual campaign statement, unlike *Onofre* who late-filed this
24 statement. Therefore, a penalty of \$2,000 is recommended.

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

26 *In the Matter of David Ernst and David Ernst for Assembly 2018;* FPPC Case No. 20/391.
27 Respondents, a first-time candidate for California State Assembly and his controlled committee, failed
28 to timely file 24-hour contribution reports for three late contributions received totaling \$7,600. In

1 aggravation, these late contributions were not reported on any statement or report filed by the committee
2 prior to the pertinent election. On November 19, 2020, the Commission approved a penalty of \$1,500.

3 A higher penalty than that approved in *Ernst* is recommended. Here, the Committee, Carson, and
4 Dwin failed to timely file 24-hour contribution reports for four late contributions received totaling
5 \$4,250 and for one late contribution made totaling \$4,200, totaling an amount higher than that at issue in
6 *Ernst*. Similar to *Ernst*, these late contributions were not reported on any statement or report filed by the
7 Committee prior to the election. In mitigation, the recipient of the late contribution made by the
8 Committee reported the late contribution on a timely filed 24-hour contribution report and second pre-
9 election campaign statement. However, Carson has prior campaign experience and so knew or should
10 have known of his campaign filing obligations. Therefore, a penalty of \$2,000 is recommended.

11 Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty
12 in the amount of \$4,000 is justified, as reflected in the chart below:

Count	Violation	Penalty
1	Failure to Timely File Pre-Election Statements	\$2,000
2	Failure to Timely File 24-Hour Contribution Reports	\$2,000
	TOTAL:	\$4,000

17 CONCLUSION

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
19 Respondents, Keith Carson, Keith Carson for Alameda County Supervisor-2016, and Miguel Dwin,
20 hereby agree as follows:

- 21 1. Respondents violated the Act as described in the foregoing pages, which are a true and accurate
22 summary of the facts in this matter.
- 23 2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at
24 its next regularly scheduled meeting – or as soon thereafter as the matter may be heard.
- 25 3. This stipulation resolves all factual and legal issues raised in this matter – for the purpose
26 of reaching a final disposition without the necessity of holding an administrative hearing to
27 determine the liability of Respondents pursuant to Section 83116.

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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
3 18361.9. This includes, but is not limited to the right to appear personally at any administrative
4 hearing held in this matter, to be represented by an attorney at Respondents' own expense, to
5 confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to
6 testify at the hearing, to have an impartial administrative law judge preside over the hearing as a
7 hearing officer, and to have the matter judicially reviewed.

8 5. Respondents agree to the issuance of the decision and orders set forth below. Also,
9 Respondents agree to the Commission imposing against them an administrative penalty in the
10 amount of \$4,000. One or more cashier's checks or money orders totaling said amount – to be
11 paid to the General Fund of the State of California – is/are submitted with this stipulation as full
12 payment of the administrative penalty described above, and same shall be held by the State of
13 California until the Commission issues its decision and order regarding this matter.

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

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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
3 transmitted via fax or as a PDF email attachment, is as effective and binding as the original.
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6 Dated: _____
7 Angela J. Brereton, Chief of Enforcement
8 Fair Political Practices Commission
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10 Dated: _____
11 Keith Carson, individually and on behalf of
12 Keith Carson for Alameda County Supervisor-2016,
13 Respondents

14 Dated: _____
15 Miguel Dwin, individually and on behalf of
16 Keith Carson for Alameda County Supervisor-2016,
17 Respondents
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20 The foregoing stipulation of the parties "In the Matter of Keith Carson, Keith Carson for
21 Alameda County Supervisor-2016, and Miguel Dwin," FPPC Case No. 19/673, is hereby accepted as the
22 final decision and order of the Fair Political Practices Commission, effective upon execution by the
23 Chair.

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25 IT IS SO ORDERED.
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27 Dated: _____
28 Richard C. Miadich, Chair
Fair Political Practices Commission