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7

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

11 In the Matter of:

12 ANTHONY PHAN and NEIGHBORS
13 FOR ANTHONY PHAN 2016-CITY
COUNCIL,

14 Respondents.

FPPC Case No. 17/054

STIPULATION, DECISION AND ORDER

15 **INTRODUCTION**

16 Respondent Anthony Phan (“Phan”) is a current member of the Milpitas City Council. Phan was a
17 successful candidate for Milpitas City Council in the November 8, 2016 General Election and re-elected
18 in the November 3, 2020 General Election. Phan’s candidate-controlled committee in 2016 was Neighbors
19 for Anthony Phan 2016 – City Council (“Committee”). Johnathon Le (“Le”) was the named treasurer
20 through 2016. From the beginning of 2017, Phan was the treasurer until the date of termination on June
21 14, 2019.

22 The Political Reform Act (“Act”)¹ requires candidates, their controlled committees, and the
23 treasurers of those committees to file campaign statements at specific times, disclosing specific information
24 regarding contributions received and expenditures made by their committees. Further, to promote
25 transparency by ensuring that receipts and expenditures in election campaigns are fully and truthfully
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28 ¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014, and all statutory
references are to this code. The regulations of the Fair Political Practice Commission are contained in Sections 18110 through
18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

1 disclosed, the Act includes prohibitions on the use of cash over \$100. In this matter, Phan and the
2 Committee failed to: timely and properly disclose a loan made to the Committee; impermissibly received
3 cash contributions over \$100 and made cash expenditures over \$100; and failed to timely and properly
4 disclose occupation and employer information on campaign statements as required. In this way, the
5 Committee and Phan violated the Act.

6 A Tolling Agreement was entered into in this matter, effectively tolling the relevant statute of
7 limitations beginning August 25, 2021.

8 **SUMMARY OF THE LAW**

9 All legal references and discussions of law are intended to be citations to statutes and regulations
10 as they existed at the time of the violations.

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

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

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

20 **Loan Disclosure**

21 If a committee receives a loan of \$100 or more it must disclose the amount of the loan, the name,
22 street address, employer and occupation of the lender, as well as the original date of each loan, the due date
23 and interest rate of the loan, the payments made on the loan, and the outstanding balance at the end of each
24 statement period.⁷

26 ² Section 81001, subd. (h).

27 ³ Section 81003.

28 ⁴ Section 81002, subd. (a).

⁵ Sections 84200, *et seq.*

⁶ Section 81002, subd. (f).

⁷ Section 84211, subd. (g).

1 A committee's campaign statement must disclose the total amount of expenditures made during the
2 period to persons who received \$100 or more, including contributions/loans, along with the recipient's full
3 name, street address, the amount of each expenditure, a brief description of the consideration for which
4 each expenditure was made, and, in the case of an expenditure which is a contribution to a candidate,
5 elected officer, or committee, the date of the contribution, the cumulative amount of contributions made to
6 that recipient, the full name of the recipient, and the office and district/jurisdiction for which he or she
7 seeks nomination or election.⁸

8 **Disclosure of Contributor Information**

9 For each campaign statement that a committee is required to file, the committee must disclose
10 certain information about contributors who contribute a cumulative amount of \$100 or more.⁹ Under
11 Section 84211, subdivision (f), the committee must disclose the following about these contributors: (1) the
12 contributor's full name; (2) the contributor's street address; (3) the contributor's occupation; (4) the name
13 of the contributor's employer, or if he or she is self-employed, the name of the business; (5) the date and
14 amount received during the period covered by the campaign statement; and (6) the cumulative amount of
15 contributions.

16 **Prohibited Cash Transactions**

17 No contribution of \$100 or more shall be made or received in cash.¹⁰ No expenditure of \$100 or
18 more shall be made in cash.¹¹ All contributions of \$100 or more must be made in the form of a written
19 instrument containing the name of the contributor and the name of the payee, and drawn from the account
20 of the contributor.¹²

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⁸ Section 84211, subd. (k).

27 ⁹ Section 84211, subd. (f).

28 ¹⁰ Section 84300, subd. (a).

¹¹ Section 84300, subd. (b).

¹² Section 84300, subd. (c).

1 **Joint and Several Liability of Committee, Candidate, and Treasurer**

2 It is the duty of a committee treasurer and the candidate to ensure that the committee complies with
3 the Act’s campaign reporting system.¹³ A treasurer and candidate may be held jointly and severally liable
4 with the committee for violations committed by the committee.¹⁴

5 **SUMMARY OF THE FACTS**

6 Phan is a current member of the Milpitas City Council. Phan was a successful candidate for Milpitas
7 City Council in the November 8, 2016 General Election and re-elected in the November 3, 2020 General
8 Election. In 2016, Phan received 20.83% of the votes and in 2020, received 19.69% of the votes. Le was
9 the named treasurer of the Committee through 2016. From the beginning of 2017, Phan was the treasurer
10 of the Committee until the date of termination on June 14, 2019.

11 In the November 2016 election, Phan was one of the youngest candidates for Milpitas City Council,
12 at 22 years old. At the time, his named treasurer, Le, was a minor, as he was 14 years old. According to
13 Phan, Le was his cousin who was good with numbers. Le is not named as a respondent in this matter, as
14 he was underage at the time of the violations, and the Enforcement Division has been unable to locate him.

15 In connection with the November 2016 election, the Committee received approximately \$31,712
16 and spent approximately \$35,097 in expenditures. The Committee has filed a termination statement as of
17 June 14, 2019.

18 Loan Disclosure

19 The Committee reported a loan from Phan in the amount of \$43,000, disclosing it was received on
20 August 24, 2016. But according to Committee bank records, no \$43,000 deposit was made. Instead, \$5,000
21 in cash was deposited on September 27, 2016. According to Phan, he intended to make a \$43,000 loan to
22 the Committee. Phan asserts he had saved money from special events in his life and gave \$43,000 in cash
23 to Le in a Nike shoebox to deposit into the Committee bank account. However, according to Phan, Le was
24 advised by Le’s mother not to deposit such a large amount of cash into the Committee bank account, so Le
25 only deposited \$5,000. Phan asserts Le failed to inform him that he did not deposit all of the money until
26 after the election, in January 2017. At that time, Phan states he was unsure how to correct the reporting
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28 ¹³ Sections 81004, 84100, 84104, and Regulation 18427.

¹⁴ Sections 83116.5 and 91006.

1 issue, so he filed an amendment reporting that \$20,000 of the loan had been forgiven. According to Phan,
2 at the time, he was unsure how much had actually been deposited and did not follow up by checking the
3 Committee bank records. The Enforcement Division’s investigation was unable to confirm or deny Phan’s
4 account of these events, but the bank statements confirm that \$5,000 in cash was deposited.

5 After this case was opened, on August 2, 2017, Phan amended the campaign statements to disclose
6 the original amount of the loan as \$5,000, removed the \$20,000 loan forgiveness, and added an additional
7 loan from himself to the Committee in the amount of \$2,500. The Committee bank records show that Phan
8 had made a \$2,500 loan to the Committee, in the form of a personal check.

9 The Committee and Phan were required to file a 24-Hour Contribution Report for the \$5,000 loan
10 made on September 27, 2016.¹⁵ This 24-Hour Contribution Report was due on September 28, 2016 but
11 was never filed. This violation is not being separately charged in the interest of settlement.

12 Impermissible Cash Transactions

13 The Committee and Phan deposited \$5,000 in cash into the Committee bank account on September
14 27, 2016, which was ultimately disclosed as a loan from Phan.

15 Additionally, the Committee and Phan withdrew a total of \$4,500 in cash. More specifically, on
16 February 27, 2017, \$200 was withdrawn in cash from the Committee bank account and on August 2, 2017,
17 \$4,300 was withdrawn in cash from the Committee bank account. According to Phan, these cash
18 withdrawals were for repayment of the \$5,000 loan he made to the Committee.

19 Campaign Reporting – Occupation and Employer Information

20 On the pre-election campaign statement for the reporting period of September 25, 2016, through
21 October 22, 2016, the Committee and Phan failed to report the occupation and employer information of 25
22 contributors, indicating that an amendment would follow. On February 14, 2017, the Committee and Phan
23 filed an amendment, reporting the occupation and employer information for these contributors. Of these,
24 12 were disclosed as either unemployed or retired. However, this information was not accurate. Phan
25 asserts a friend and colleague hosted a fundraiser for his candidacy on October 19, 2016. These 12
26 individuals made contributions as a result of the fundraiser. Phan asked the colleague for their occupation
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28 ¹⁵ The Committee and Phan were also required to file a 24-Hour Contribution Report for a \$3,000 contribution made
by Phan to the Committee on August 12, 2016, but this violation is outside the statute of limitations.

1 and employer information, but the colleague failed to provide this information. As a result, Phan stated he
2 guessed and made up this information.

3 **VIOLATIONS**

4 Count 1: Failure to Properly Report a Loan

5 A committee is required to disclose specific information when a loan of \$100 or more is received
6 or repaid by the Committee. According to campaign statements, the Committee and Phan disclosed
7 receiving a loan in the amount of \$43,000 on September 24, 2016. However, only \$5,000 in cash was
8 deposited on September 27, 2016. The Committee and Phan then improperly reported in an amended
9 campaign statement that \$20,000 of the \$43,000 loan had been forgiven. Later, on amendments filed on
10 August 2, 2017, the Committee and Phan disclosed the original amount of the loan was \$5,000 and removed
11 the \$20,000 loan forgiveness. By misreporting receiving a \$43,000 loan and forgiving \$20,000 of the loan,
12 the Committee and Phan violated Section 84211, subdivisions (f), (g) and (k).

13 Count 2: Impermissible Receipt and Expenditures of Cash

14 In 2016, the Committee and Phan impermissibly accepted a loan of \$5,000 in cash and
15 impermissibly made cash expenditures in the amount of \$4,500, in violation of Section 84300, subdivisions
16 (a), (b) and (c).

17 Count 3: Failure to Properly Disclose Required Contributor Information on Campaign Statements

18 On the pre-election campaign statement for the reporting period of September 25, 2016, through
19 October 22, 2016, the Committee and Phan failed to timely disclose 25 contributors' occupations and
20 employers. On February 14, 2017, the Committee and Phan misreported 12 of these contributors'
21 occupations and employers by making up the information in an amendment. In this way, the Committee
22 and Phan violated Section 84211, subdivisions (f)(3) and (f)(4).

23 **PROPOSED PENALTY**

24 This matter consists of three counts. The maximum penalty that may be imposed is \$5,000 per
25 count.¹⁶ Thus, the maximum penalty that may be imposed here is \$15,000.

26 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
27 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
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¹⁶ See Section 83116, subd. (c).

1 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers
2 the facts and circumstances of the violation in the context of the following factors set forth in Regulation
3 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused by the specific
4 violation; (2) The level of experience of the violator with the requirements of the Political Reform Act;
5 (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence or absence of
6 any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate, negligent or
7 inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission staff or any
8 other governmental agency in a manner not constituting complete defense under Government Code Section
9 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the violator has a prior
10 record of violations of the Political Reform Act or similar laws; and (8) Whether the violator, upon learning
11 of a reporting violation, voluntarily filed amendments to provide full disclosure.¹⁷

12 This case does not qualify for the Streamline Program. More specifically, a case will be excluded
13 from the Streamline Program if the extent and gravity of public harm is more than minimal, which is the
14 case in this matter. The violations in this matter resulted in the public not timely and accurately receiving
15 the required information regarding the Committee's and Phan's contributions. The circumstances in this
16 case show an intent to violate the Act regarding disclosure of contributors' occupation and employer
17 information, in particular, Phan admitted making up the employer and occupation information for 12
18 contributors. Further, the Committee and Phan inflated the appearance of support by reporting a \$43,000
19 loan, and the campaign statement was not amended until after the election, reporting the loan was actually
20 \$5,000. The use of cash interfered with the Enforcement Division's ability to verify the source of the loan
21 to the Committee, and the story provided regarding the initial loan amount lacked credibility, even though
22 the Enforcement Division could not confirm or deny Phan's account of the circumstances. As a result, this
23 case has been excluded from the Streamline Program after consideration of the totality of the circumstances
24 in this case.

25 An important purpose of the Act is to ensure receipts and expenditures in election campaigns are
26 fully and truthfully disclosed in order that the voters may be fully informed and improper practices
27 inhibited. In this matter, the Committee and Phan committed multiple violations of the Act which resulted
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¹⁷ Regulation 18361.5, subd. (e).

1 in limited or incorrect disclosure. Additionally, some of the information provided could not be accurately
2 verified during the Enforcement Division’s investigation, and the use of cash made it difficult to source
3 where the money came from. No evidence was obtained that the Committee or Phan consulted with
4 Commission staff or any other governmental agency for assistance in this matter.

5 The Committee and Phan have no prior Enforcement history and were inexperienced with the Act
6 at the time of these violations. Further, the Committee and Phan have cooperated with the investigation
7 and agreed to a settlement prior to the issuance of a Probable Cause Report. In connection with settlement,
8 and in aggravation to all counts, the Committee and Phan also violated the Act by failing to maintain
9 complete campaign records, failing to use the campaign bank account for a returned civic donation, and
10 failing to timely file a 24-Hour Contribution Report.

11 The Commission also considers penalties in prior cases with comparable violations.

12 Regarding Count 1, a comparable case involving loan disclosure is as follows:

13 *In the Matter of Gus Kramer, 17/142:* Gus Kramer was a successful candidate for re-election for
14 Contra Costa County Assessor in the June 3, 2014 Primary Election. Committee to Elect Gus Kramer was
15 his candidate-controlled committee. The Committee and Kramer failed to properly disclose a loan on a
16 semiannual campaign statement for the reporting period of July 1, 2013 through December 31, 2013, in
17 violation of Government Code Section 84211, subdivisions (f), (g), and (k) (1 count). The loan amount
18 was originally disclosed as \$90,000 from Kramer himself. However, the \$90,000 was never deposited into
19 the campaign bank account. Kramer stated he had made the money available to his committee if needed
20 but did not need the money. He was able to show proof that he had the funds available at that time and
21 amended his campaign statement to remove the loan. In May 2019, the Commission approved a penalty of
22 \$3,000 for the loan disclosure violation.

23 In the Kramer case, the loan amount was \$90,000. Proof that the funds were available in a personal
24 bank account at the time of the disclosure was considered mitigation. In this matter, the Committee and
25 Phan improperly reported a loan of \$5,000 as \$43,000. While the amount was lower than in the Kramer
26 case, cash was used here, which limited the Enforcement Division’s ability to source the loan. Further, the
27 story surrounding the loan lacked credibility, even though the Enforcement Division could not confirm or
28 deny Phan’s account through the investigation. Additionally, the Committee and Phan failed to timely

1 disclose the proper loan amount in campaign statements and reports, failing to provide timely and accurate
2 disclosure to the public prior to the election. As a result, a higher penalty for Count 1 of \$5,000 for the
3 improper disclosure of a loan is recommended.

4 Regarding Count 2, comparable cases involving impermissible acceptance and making
5 expenditures of cash over \$100 is as follows:

6 *In the Matter of Committee to Elect Jim Smith, Superior Court Judge, Seat #3 2014, James S. Smith,*
7 *and Michael Arzaga, FPPC Case No. 2017-00076.* Jim Smith was an unsuccessful candidate for Superior
8 Court Judge, Imperial County, in the 2014 Statewide Primary Election. The Committee to Elect Jim Smith,
9 Superior Court Judge, Seat #3 2014 was Smith’s candidate-controlled committee. This committee
10 improperly accepted a total of \$13,230 in cash from contributors who gave \$100 or more. The total number
11 of improper contributions was 8, with one source being unverified but reported as a loan from the candidate.
12 In addition, the committee deposited cash totaling \$790 but failed to keep record of receipts or a contributor
13 list. In May 2020, the Commission imposed a penalty of \$2,500 for one count of accepting cash over \$100.

14 In the Smith case, the committee improperly accepted a total of \$13,230 in cash from contributors.
15 In mitigation, all but one source was able to be verified. In this matter, Phan asserts he provided \$43,000
16 in cash to his 14-year-old treasurer in a Nike shoe box to deposit, and the treasurer only deposited \$5,000.
17 The assertion regarding the \$43,000 could not be verified through the investigation, but the bank statements
18 confirm that a deposit of \$5,000 in cash was made. Further, the amount of the loan at issue was inaccurately
19 reported both originally and in an amendment.

20 *In the Matter of Friends of Lilia Leon for City Council 2013 and Lilia Leon; FPPC No. 16/116.*
21 Lilia Leon was a successful candidate for Commerce City Council in the March 5, 2013 election. Friends
22 of Lilia Leon for City Council 2013 was Leon’s controlled committee. In September 2019, the Commission
23 approved a stipulated decision for multiple counts, including 1 count of making 21 cash expenditures
24 totaling \$7,230 over a 2-year period for a penalty of \$2,000 for this violation.

25 In the Leon case, an impermissible cash expenditure violation was charged for making 21 cash
26 expenditures totaling \$7,230. These cash expenditures could not be verified and occurred over a 2-year
27 period. In this matter, Phan asserts the Committee paid him back \$4,500 in cash for the \$5,000 loan Phan
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1 made to the Committee. The assertion that this was a loan repayment could not be verified through the
2 investigation, but the bank statements confirm that \$4,500 in cash was withdrawn.

3 In mitigation for both the receipt of cash and cash expenditures, the amount of the receipt of cash
4 and the cash expenditures is lower than the comparable cases, and the Leon case included 21 cash
5 expenditures over a 2-year period. Phan contends he mistakenly believed that since he made the loan in
6 cash, the Committee could repay the loan in cash as well. Considering the aggravating and mitigating
7 information, a higher penalty for Count 2 of \$5,000 is recommended.

8 Regarding Count 3, a comparable case involving disclosure of required contributor information is
9 as follows:

10 *In the Matter of Re-Elect Liz Kniss for City Council 2016 and Liz Kniss*; FPPC No. 17/114. Liz
11 Kniss was a successful candidate for Palo Alto City Council in the November 8, 2016 General Election.
12 Re-Elect Liz Kniss for City Council 2016 was Kniss' controlled-committee. In addition to other violations,
13 the Committee and Kniss failed to timely disclose all required occupations and/or employers of
14 contributors, which failed to provide approximately 20% of required contributor information. In February
15 2021, the Commission approved a stipulated decision for one count of failing to timely disclose all required
16 contributor information in the amount of \$2,000. In aggravation, Kniss was an experienced public official,
17 as she had been a public official for approximately 30 years. In mitigation, Kniss contended that her
18 treasurer was ill during this period (who later passed away), which led to the errors made by Kniss and the
19 Committee.

20 Regarding the disclosure of occupation and employer information, Kniss had more experience with
21 the reporting requirements of the Act, as opposed to Phan who was a young candidate with little experience
22 with the Act. In this matter, the Committee and Phan failed to disclose required occupation and employer
23 information for 25 contributions received, which constituted approximately 50% of the contributions
24 received during the reporting period. Although the campaign statement identified that an amendment would
25 follow, the amendment was filed after the relevant election, and Phan admitted that he made up the
26 contributor information for 12 of the contributors in the amended campaign statement.

27 As a result, a higher penalty for Count 3 of \$5,000 for the failure to properly report contributor
28 information is recommended.

1 Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty
2 in the amount of \$15,000 is justified, as reflected in the chart below:

3 Count	Violation	Penalty
4 1	Loan Disclosure	\$5,000
5 2	Impermissible Cash Receipt and Expenditures	\$5,000
6 3	Disclosure of Required Contributor Information	\$5,000
7	Total:	\$15,000

8 **CONCLUSION**

9 Complainant, the Enforcement Division of the Fair Political Practices Commission, Phan and the
10 Committee agree as follows:

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

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

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

18 4. Respondents have had the opportunity to consult with an attorney. Respondents understand,
19 and hereby knowingly and voluntarily waive, any and all procedural rights set forth in Sections 83115.5,
20 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not limited to, the right to
21 appear personally at any administrative hearing held in this matter, to be represented by an attorney at
22 Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to
23 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over the
24 hearing as a hearing officer, and to have the matter judicially reviewed.

25 5. Respondents agree to the issuance of the decision and order set forth below. Also,
26 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
27 \$15,000. One or more payments totaling said amount—to be paid to the General Fund of the State of
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1 California—is/are submitted with this stipulation as full payment of the administrative penalty described
2 above, and same shall be held by the State of California until the Commission issues its decision and order
3 regarding this matter.

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

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

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14 Dated: _____

Angela J. Brereton, Chief of Enforcement
Fair Political Practices Commission

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18 Dated: _____

Anthony Phan, individually and on behalf of Neighbors
for Anthony Phan 2016 – City Council

1 **DECISION AND ORDER**

2 The foregoing stipulation of the parties “In the Matter of Neighbors for Anthony Phan 2016-City
3 Council and Anthony Phan,” FPPC Case No. 17/054 is hereby accepted as the final decision and order of
4 the Fair Political Practices Commission, effective upon execution below by the Chair.

5
6 IT IS SO ORDERED.

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8 Dated: _____

9 _____
Richard C. Miadich, Chair
Fair Political Practices Commission