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9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
10 STATE OF CALIFORNIA

11
12 In the Matter of:

13 KIMBERLY HO FOR CITY COUNCIL
2020 AND KIMBERLY HO

14
15 Respondents.
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FPPC Case No. 2021-01068

STIPULATION, DECISION, AND ORDER

17
18 **INTRODUCTION**

19 Respondent Kimberly Ho (“Ho”) was a successful candidate for Westminster City Council in the
20 November 3, 2020, General Election. Ho for City Council 2020 (“the Committee”) was the candidate-
21 controlled committee. Lysa Ray (“Ray”) served as the Committee’s treasurer. This case arose from a
22 complaint filed against Ho for violating campaign finance provisions regarding a recall effort in 2021.

23 The Political Reform Act¹ (“Act”) requires candidates, committees, and treasurers to accept
24 contributions within the prescribed contribution limits and to file campaign statements disclosing
25 contributions received and expenditures made for the associated reporting period. The Committee and
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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 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to this source.

Ho violated the Act by accepting contributions that exceeded campaign contribution limits and failing to disclose four non-monetary contributions on a single campaign statement.

SUMMARY OF THE LAW

The violations in this case occurred in 2021 and all legal references and discussions of law pertain to the Act's provisions as they existed at that time.

Need for Liberal Construction and Vigorous Enforcement of the Act

When enacting the Act, the people of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.² Thus, it was decreed that the Act "should be liberally construed to accomplish its purposes."³ One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited.⁴ The Act, therefore, establishes a campaign reporting system designed to accomplish this purpose of disclosure. Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced."⁵

Controlled Committee

A controlled committee means a committee that is controlled directly or indirectly by a candidate.⁶ A candidate controls a committee if he has a significant influence on the actions or decisions of the committee.⁷

Contribution Limits for Candidates of Statewide Offices

The Act imposes campaign contribution limits with respect to the making and receiving of certain contributions. These limits are adjusted periodically, and different limits apply depending upon who is contributing and who is receiving.⁸

In 2021, a person, other than a small contributor committee or political party committee, wishing

² Section 81001, subd. (h).

³ Section 81003.

⁴ Section 81002, subd. (a).

⁵ Section 81002, subd. (f).

⁶ Section 82016, subdivision (a)

⁷ *Id.*

⁸ See Section 85301, subd. (a), as well as Sections 83124, 85303, and 85305, which prohibit the making and acceptance of over-the-limit contributions

1 to contribute to a local candidate in the city of Westminster could not contribute more than \$4,900 per
2 election.⁹

3 **Contents of Campaign Statements**

4 Each campaign statement shall contain all of the following information: (1) the total amount of
5 contributions received during the period covered by the campaign statement; and (2) the total amount of
6 expenditures made during the period covered by the campaign statement.¹⁰

7 **Period Covered by Campaign Statement**

8 “Period covered” by a campaign statement means the period beginning the day after the closing
9 date of the most recent campaign statement which was required to be filed and ending with the closing
10 date of the statement in questions.¹¹ If a person has not previously filed a campaign statement, the period
11 covered begins on January 1.¹²

12 **Joint and Several Liability of Candidate and Committee**

13 It is the duty of the candidate to ensure that the committee complies with all of the requirements
14 of the Act concerning the receipt, expenditure, and reporting of funds.¹³ The candidate may be held
15 jointly and severally liable, along with the committee, for violations committed by the committee.¹⁴

16 **Liability for Violations**

17 Any person who violates any provision of the Act, who purposely or negligently causes any
18 other person to violate any provision of the Act, or who aids and abets any other person in the violation
19 of any provision of the Act, is liable for administrative penalties up to \$5,000 per violation.¹⁵

20 **SUMMARY OF THE FACTS**

21 *Background*

22 The Committee qualified on April 2, 2016, in conjunction with Ho’s successful campaign for
23 Westminster City Council in 2016 and was previously named Ho for City Council 2016. Ho previously
24 survived a recall attempt on April 7, 2020. In July 2021, a notice of intent for a recall was served on Ho

25 ⁹ Section 85301, subd. (a); Regulation 18545, subd. (a)(1).

26 ¹⁰ Section 84211

27 ¹¹ Section 82046, subdivision (b).

28 ¹² *Id.*

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

¹⁴ Sections 83116.5 and 91006.

¹⁵ Sections 83116 and 83116.5

1 and recall petitions circulated in the following months. The recall effort failed to qualify for the ballot
2 in the November 2021 General Election.

3 *Acceptance of over-the limit contributions*

4 Contribution limits per AB 571 went into effect on January 1, 2021. The City of Westminster
5 adopted the default state/local contribution limits of \$4,900 per year. On September 19, 2021, Ho held
6 an event in opposition to the recall effort against her at the Diamond Seafood Restaurant. Flyers were
7 circulated stating “Support Councilwoman Ho - Say No On Her Recall” and asked for contributions to
8 be payable to the Committee. On September 19, 2021, the Committee and Ho received a non-monetary
9 contribution in the amount of \$7,500 from Ho’s spouse Daniel Seid (“Seid”) for “the Diamond Seafood
10 Fundraiser”. On November 7th, the Committee and Ho received a second non-monetary contribution in
11 the amount of \$6,300 from Seid for entertainment for the fundraiser. In total, the Committee and Ho
12 received \$13,800 from Seid.

13 In 2021, local candidates in the city of Westminster were only permitted to accept a maximum of
14 \$4,900 from a single source for each election. As a result, the most the Committee and Ho could have
15 accepted from Seid was \$4,900. The amount received was \$8,900 over the limit.

16 *Failure to Accurately Disclose Campaign Activity*

17 A semi-annual campaign statement for candidates not appearing on the ballot in 2021 was
18 required to have a reporting period of July 1, 2021 to December 31, 2021, due on January 31, 2022. On
19 January 31, 2022, the Committee, Ho, and Ray timely filed the semi-annual campaign statement for the
20 correct reporting period. For this reporting period, the Committee reported receiving, \$20,314 in
21 contributions and making \$1,027.09 in expenditures.

22 During the investigation, Ho stated that the Committee received \$16,200 in non-monetary
23 contributions that failed to be reported on the filed semi-annual campaign statement for the reporting
24 period ending on December 31, 2021. Two of these contributions were from Seid, a single source that
25 exceeded contribution limits in the aggregate. Ray stated she was unaware of these contributions until
26 the investigation and Ho confirmed the activity was not reported to Ray.¹⁶ Below is a summary of the
27 unreported activity:

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¹⁶ Based upon this evidence, Ray is not charged as a Respondent in this settlement agreement.

Statement	Date Received	Contributor	Contribution Amount
7/1/21 to 12/31/21	9/19/21	Daniel Seid	\$7,500
7/1/21 to 12/31/21	11/7/21	Daniel Seid	\$6,300
7/1/21 to 12/31/21	11/7/21	Phuong Pham	\$2,200
7/1/21 to 12/31/21	12/5/2021	Phuong Pham	\$200
		Total	\$16,200

VIOLATIONS

The Committee and Ho

Count 1: Acceptance of Over-the-limit Contributions

The Committee and Ho accepted non-monetary contributions from a single person that exceeded the contribution limit of \$4,900, in violation of Government Code section 85301 and Regulation 18545.

Count 2: Failure to Accurately Disclose Campaign Activity

The Committee and Ho failed to accurately disclose four non-monetary contributions on the semi-annual campaign statement for the reporting period of July 1, 2021 through December 31, 2021, due by January 31, 2022, in violation of Government Code section 84211.

PROPOSED PENALTY

This matter consists of two proposed counts. The maximum penalty that may be imposed is \$5,000 per count. Thus, the maximum penalty that may be imposed for the violations charged is \$10,000.¹⁷

This matter does not qualify for the Streamline Program.¹⁸ While the late reporting of campaign contributions can be violations included in the Streamline Program, accepting over-the-limit contributions that exceed contribution limits by more than \$1,000 makes the violation ineligible for the

¹⁷ Section 83116, subd. (c).

¹⁸ Regulations 18360.1, subd. (a) and 18360.2, subd. (a).

1 Streamline Program; therefore, the violation for late reporting of campaign statements is also excluded
2 from the Streamline Program.

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

17 Accepting a campaign contribution in excess of the limits is a serious violation of the Act
18 because it allows for circumvention of the limits on campaign contributions proscribed by California's
19 voters and provides an unfair advantage to one candidate over another in an election. Additionally, the
20 violations committed here resulted in the Committee and Ho failing to disclose approximately 46% of
21 the total contributions received for the associated reporting period. Withholding this amount of
22 campaign activity increases the seriousness of the reporting violation as voters were unaware of a high
23 percentage of the Committee's campaign activity.

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

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¹⁹ Regulation 18361.5, subd. (e).

Count 1:

- *In the Matter of Gray for Assembly 2016; FPPC Case No. 16/455.* Respondents were a candidate, candidate-controlled committee, and treasurer. Gray was a current member of the State Assembly seeking re-election. The Committee, Gray, and White accepted campaign contributions that exceeded contribution limits when they received a contribution in the amount of \$5,000 from a single source and later received a second contribution in the amount of \$8,200 from the same source. Therefore, in the aggregate, the Committee received \$13,200 in contributions and was only permitted to accept a maximum of \$4,100 from a person per election (\$9,100 over the limit). Respondents in Gray failed to reimburse the excess contribution amount to the contributing party until this stipulation was consummated. On August 17, 2017, the Commission imposed a penalty of \$3,000 for one count.

As to Count 1, Respondents are deserving of a penalty slightly higher than that imposed in the *Gray* matter, given the excess contributions were not disclosed on a campaign statement, and the amount received in excess in this case was lower than in *Gray*. In mitigation and in the interest of settlement, reimbursement of the excess contributions was not required because the recall did not qualify for the ballot, the excess contributions were from Ho's spouse, and any reimbursement of the excess contributions would benefit Ho as her spouse was the contributor. Thus, a penalty in the mid-range is appropriate.

Count 2:

- *In the Matter of Nick for Lake Forest City Council 2016; Adam Nick, individually; Bryan Burch; and Adam Nick, as a major donor committee; FPPC Case No. 2016-20096.* Adam Nick ("Nick") was an unsuccessful candidate for Lake Forest City Council in the November 8, 2016, General Election. The Committee, Nick, and Burch, among other violations, failed to timely report \$7,838 in non-monetary contributions made on a pre-election campaign statement and \$1,112 in nonmonetary contributions received and \$1,112 in non-monetary contributions made on a semi-annual campaign statement in addition to other activity. On April 20, 2022, the Commission imposed a penalty of \$1,000 for one count of failing to timely report activity on a campaign statement.

As to Count 2, Respondents are deserving of a higher penalty than *Nick* given that Ho was a successful candidate in office at the time of the violations, and two of the contributions were the over-the-limit non-monetary contributions from Ho's spouse. Also, Ho failed to disclose a higher amount of campaign activity for a single reporting period than *Nick*. *Nick's* committee failed to report a total of \$7,838 in nonmonetary contributions made on the preelection campaign statement for the reporting period of September 25, 2016 to October 22, 2016 while Ho failed to report \$16,200 in nonmonetary contributions made on the campaign statement for the reporting period of July 1, 2021 to December 31, 2021.

All of the violations charged against the Committee and Ho are aggravated considering both Ho's experience and familiarity with the Act.

In mitigation, of all counts, Ho cooperated with the investigation and does not have a prior history of violating the Act. In addition, Ho was not listed on the ballot or involved in an active election during the period of the violations, and Ho is not currently in office.

Based on the factors outlined above, the Enforcement Division is seeking a total penalty of \$5,500 as follows:

Count #	Violation	Penalty Amount
1	Acceptance of Over-the-Limit Contributions	\$3,500
2	Failure to Accurately Disclose Campaign Activity	\$2,000
	Total:	\$5,500

CONCLUSION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondents, Kimberly Ho for City Council 2020 and Kimberly Ho hereby agree as follows:

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

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

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

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

11 5. The Respondents agree to the issuance of the decision and order set forth below. Also,
12 the Respondents agree to the Commission imposing against it an administrative penalty in the amount of
13 \$5,500. One or more cashier's checks or money orders totaling said amount—to be paid to the General
14 Fund of the State of California—is/are submitted with this stipulation as full payment of the
15 administrative penalty described above, and same shall be held by the State of California until the
16 Commission issues its decision and order regarding the matter.

17 6. If the Commission declines to approve this stipulation—then this stipulation shall
18 become null and void, and within fifteen business days after the Commission meeting at which the
19 stipulation is rejected, all payments tendered by the Respondents in connection with this stipulation shall
20 be reimbursed to the Respondents. If this stipulation is not approved by the Commission, and if a full
21 evidentiary hearing before the Commission becomes necessary, neither any member of the Commission,
22 nor the Executive Director, shall be disqualified because of prior consideration of 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 hard copy of a signature page transmitted via
3 fax or as a PDF email attachment is as effective and binding as the original.
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5 Dated: _____

6 Angela J. Brereton, Assistant Chief of Enforcement
7 Fair Political Practices Commission
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10 Dated: _____

11 Kimberly Ho, individually and on behalf of Kimberly
12 Ho for City Council 2020
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The foregoing stipulation of the parties “In the Matter of Kimberly Ho and Kimberly Ho for City Council 2020, FPPC Case No. 2021-01068, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated:

Adam E. Silver Chair

Fair Political Practices Commission