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State of California

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Department of General Services

Governor Edmund G. Brown Jr.

February 21, 2017

Fair Political Practices Commission  
Executive Director  
428 J Street, Suite 620  
Sacramento, CA 95814



**Subject:** Rabbi Shifren, Nachum; Committee to Elect Rabbi Shifren  
OAH No. 2016061262  
Agency No. 14/1109

Enclosed are the following:

- The original Proposed Decision
- An agency order of adoption. If the Proposed Decision is adopted, please return a copy of the signed adoption order to the Office of Administrative Hearings.
- The original Decision
- Exhibits numbered: 1 – 54 and A  
Please make sure you have received all listed exhibits. If exhibits are missing, please contact OAH immediately.
- Email copy of the Proposed Decision to:
- The above referenced case was resolved prior to conclusion of the hearing. We are returning the enclosed original exhibits 1 – x to you.

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BEFORE THE  
FAIR POLITICAL PRACTICES COMMISSION  
STATE OF CALIFORNIA

In the Matter of:

RABBI NACHUM SHIFREN, and  
COMMITTEE TO ELECT RABBI  
SHIFREN,

Respondents.

FPPC Case No. 14/1109

OAH No. 2016061262

**PROPOSED DECISION**

This matter was heard before Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings, State of California, on January 17, 2017, in Sacramento, California.

Angela J. Brereton, Senior Commission Counsel, and Michael W. Hamilton, Commission Counsel, represented the complainant Enforcement Division of the Fair Political Practices Commission (FPPC).

Rabbi Nachum Shifren (Shifren) appeared on his own behalf and on behalf of the Committee to Elect Rabbi Shifren (Shifren Committee). Shifren and the Shifren Committee are referred to collectively as "respondents."

Documentary evidence including witness affidavits was received and oral argument heard on January 17, 2017. The parties did not offer oral testimony at the hearing. The record was held open until January 20, 2017, to allow complainant to submit a written brief regarding precedential decisions, which complainant timely submitted, and marked for identification as Exhibit 54. Respondents did not submit a brief regarding precedential decisions. The record was closed and the matter was submitted for decision on January 20, 2017.

## FACTUAL FINDINGS

### *The Parties and Jurisdiction*

1. The FPPC is the state agency charged with the duty to administer, implement, and enforce the provisions of the Political Reform Act (Act).<sup>1</sup>

2. Shifren was an unsuccessful candidate for the California State Senate, 26th District, in the November 2, 2010 general election. The Shifren Committee was Shifren's candidate controlled committee.<sup>2</sup>

3. The Republican Central Committee of Los Angeles County, also known as the Republican Party of Los Angeles County (RPLAC), is a political party committee.<sup>3</sup> RPLAC was fined by the FPPC pursuant to a default decision and order approved by the FPPC on October 16, 2014, for conduct related to this matter.<sup>4</sup> RPLAC is a participant in the conduct at issue, though it is not a party in this matter.

4. On August 12, 2015, the FPPC issued an Order Finding Probable Cause and to Prepare and Serve an Accusation in this matter. Complainant prepared and served an accusation pursuant to the terms of the order. Shifren filed a Notice of Defense on behalf of respondents. This hearing followed.

### *Summary of Allegations*

5. The complainant alleges that during 2010, respondents committed numerous violations of the Act. The allegations set forth in the Accusation are summarized as follows:

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<sup>1</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014. The regulations of the FPPC are contained in California Code of Regulations, title 2, sections 18110 through 18997.

<sup>2</sup> Government Code section 82016 defines a "controlled committee" as being controlled directly or indirectly by a candidate insofar as the candidate has a significant influence on the actions or decisions of the committee.

<sup>3</sup> Government Code section 85205 defines a "political party committee" as a political party's state or county central committee.

<sup>4</sup> RPLAC was found liable by default decision for two violations of Government Code section 84302 (failure to disclose intermediary and original contributor information to recipient of campaign contribution), and one violation of Government Code section 84211 (disclosure of false information in pre-election campaign statement). The FPPC fined RPLAC \$5,000 for each violation, for a total of \$15,000.

### Contributions Not Made in Legal Name of the Donor

Count 1: Respondents violated the requirement that contributions be made under the contributor's legal name in that they purposefully or negligently caused, or aided and abetted, Paul Anthony (Tony) Novelly to make a financial contribution to the Shifren Committee in the name of RPLAC.

Count 2: Respondents violated the requirement that contributions be made under the contributor's legal name in that they purposefully or negligently caused, or aided and abetted, Jared Novelly, Chandra Niemann and Thomas Niemann to make financial contributions to the Shifren Committee in the name of RPLAC.

### Prohibited Earmarked Contributions

Count 3: Respondents violated the prohibition against earmarking in that they purposefully or negligently caused, or aided and abetted, Tony Novelly to make a contribution to RPLAC on the condition or with the agreement that the contribution would be ultimately contributed to the Shifren Committee.

Count 4: Respondents violated the prohibition against earmarking in that they purposefully or negligently caused, or aided and abetted, Jared Novelly, Chandra Niemann, and Thomas Niemann to make a contribution to RPLAC on the condition or with the agreement that the contribution would be ultimately contributed to the Shifren Committee.

### Accepting an Over-the-Limit Contribution

Count 5: Respondents, on or about August 25, 2010, received a campaign contribution from Tony Novelly, in excess of the \$3,900 individual contribution limits.

### Disclosure of False Contributor Information

Count 6: Respondents, on or about October 4, 2010, filed a false pre-election campaign statement for the reporting period of July 1 through September 30, 2010, falsely reporting that a \$32,400 contribution was received from RPLAC – when in fact the contribution was made by the Novelly family, with RPLAC acting as an intermediary for the transaction.

## Failure to Maintain Campaign Records

Count 7: Respondents failed to maintain the detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that campaign statements were properly filed, and to comply with campaign reporting requirements during January 1 through December 31, 2010.

### *Complainant's Evidence*

6. During the spring of 2010, Paul Anthony Novelly (Tony Novelly)<sup>5</sup>, a resident of Florida, traveled to Los Angeles where a friend introduced him to Shifren. Tony Novelly spoke with Shifren's about his campaign, during which he asked Shifren how much money he would need to win his campaign for the California State Senate. Shifren said he would need approximately \$50,000. Tony Novelly responded to Shifren to the effect that he would help Shifren get that money. Tony Novelly did not have any other contact with Shifren, and did not have any contact with anyone from the Shifren Committee. On May 4, 2010, Tony Novelly and his wife each contributed \$3,900 toward Shifren's June 8, 2010 primary election campaign for the California State Senate, 26th District, in which Shifren was the only Republican on the ballot.

7. To make good on his word that he would help raise \$50,000, Tony Novelly asked his son, Jared Novelly, a resident of Missouri, to arrange for other members of the Novelly family to contribute to Shifren's campaign for the general election on November 2, 2010. Jared Novelly did some research regarding Shifren, and concluded that Shifren had not been using his campaign money wisely. Jared Novelly also learned that Shifren had lost in a previous campaign, and had little chance of winning the 2010 general election. Jared Novelly shared his findings and conclusions with his family. Tony Novelly nonetheless wanted to make good on his promise that he would help raise \$50,000 to contribute to Shifren's campaign. As a result of Jared Novelly's findings, the only family members willing to contribute to Shifren's campaign were Tony Novelly, Jared Novelly, Chandra Niemann (daughter of Tony Novelly), and Thomas Niemann (Chandra Niemann's husband).

8. Jared Novelly did not want the family to contribute directly to Shifren's campaign because he had concluded Shifren was possibly untrustworthy with campaign money. He instead wanted to give money to a party organization which would in turn spend the money on voter registration drives, issue advertisements, and other activities not coordinated with the candidate. Jared Novelly spoke with representatives of both the California Republican Party and RPLAC about making contributions. He decided his family's contributions would best be made to RPLAC, so they could spend the money in Shifren's district. Jared Novelly specifically wanted RPLAC to control the Novelly family

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<sup>5</sup> First and last names are used to distinguish between members of the Novelly and Niemann families.

contributions. He understood that RPLAC might give some or all of the money to Shifren. Jared Novelly does not recall specifically telling RPLAC what to do with the money.

9. A series of emails were sent regarding potential contributions by the Novelly family to Shifren's general election campaign. On June 25, 2010, Jared Novelly sent an email to Shifren stating:

As mentioned to you by my father, we are looking to help finance your campaign. With the large percentage of campaign contributions that you have already received from my parents [two \$3,900 contributions for Shifren's primary campaign], I feel it may be best to have the rest of the contributions come from sources other than Missouri and Florida residents with the last name of Novelly. Are there any political action committees that you have had discussions with who may be interested in contributing if they received other monies? Not sure of campaign finance laws in CA, but if we could find these other groups, it would look better for both your campaign and our private sensibilities.

10. Later the same morning on June 25, 2010, Shifren sent an email to Chris Garcia (Garcia), who was working on Shifren's campaign, stating in part:

This is a wonderful situation. If we can get organized some sort of PAC [political action committee], then I'm quite sure Jared and family will feel great about helping me win my race. I defer to you in this matter and will await word from you before any response is given.

11. Garcia then forwarded Shifren's June 25, 2010 email to John Thomas (Thomas), a political consultant in Los Angeles, asking for his thoughts. Thomas later met with Shifren and Garcia. Shifren told Thomas that there was a benefactor willing to fund his campaign with contributions up to seven figures. Thomas told Shifren that it would be illegal for the benefactor to make a contribution over the legal limit. Shifren responded "there's gotta be ways around that." Thomas told Shifren contributions could possibly be made to fund an independent expenditure (IE) committee, in excess of the amount legally contributed directly to Shifren's campaign.

12. On June 28, 2010, Shifren sent an email to Jared Novelly stating in part:

I had a very productive meeting yesterday with Chris Garcia (former president of the Pepperdine Republican Club, Malibu Campus) and John Thomas of Thomas Partners Strategies in Glendale . . . . The issue discussed was precisely your question of a PAC for my campaign, which would totally facilitate all

campaign contributions from anyone, anywhere, for any amount. This is the solution. I hope you will communicate this good news to your father, that John is ready to immediately set up and work with such an account. Let me know what you think. Once a PAC or independent expenditure (IE) committee is established, we will be on the road to an election victory. Tony [Novelly], as you are aware, has pledged a large donation to my campaign. This can now be done with utmost efficiency and ease through the PAC or IE.

13. On July 14, 2010, Jane Barnett (Barnett), the chair of RPLAC, sent an email to Garcia asking him to call her after hours on her cell phone. Later the same day, Garcia sent an email to Jared Novelly stating in part:

Thank you again for speaking with me earlier. It's been an honor to work with Rabbi Shifren thus far in his campaign for CA State Senate . . . .

You and your family's generous commitment to helping his campaign efforts is graciously appreciated. The Republican Party of Los Angeles County is committed to lending a hand with Rabbi Shifren's campaign. Accordingly, Rabbi and I have agreed that the remainder of your commitment would be best served by being directed to the Party. Jane Barnett, copied here, has indicated that the check may be sent to the following address: [Republican Party of Los Angeles County, Att: Jane Barnett].

14. The next morning on July 15, 2010, Jared Novelly sent an email to Garcia asking a few questions:

What is the maximum an individual can contribute to the Party? Just wondering if I have to give several checks or only one. I assume it is no problem for my mother and father to contribute to the party as well as having already contributed to the campaign.

Please let me know and I will get the check or checks out as soon as I hear.

15. The same day on July 15, 2010, Garcia replied with a copy to Barnett and Shifren, stating:

I've checked with Jane Barnett and I have also read through the policies of the California Fair Political Practices Commission.

There is no limit to the funds that an individual may donate to a political party. The maximum contribution that can be made to a candidate directly by an individual is \$3,900 per election cycle, but no limit exists for contributions to a state or county party.

16. On July 26, 2010, Barnett sent an email to Garcia in response to an email from him asking for her thoughts regarding contribution limits to political candidates. Barnett's email to Garcia stated:

Yes, a person can give the party unlimited but the party can only give state legislative candidates \$32,400 directly. But we can do lots of get out the vote with other money.

17. On August 3, 2010, Jared Novelty sent an email to Shifren and Garcia notifying them that the contribution checks had been sent, stating:

Checks are out. Should have received some of them today and the rest are being sent today.

I had called Jane [Barnett] Monday and let her know they would be on their way.

18. RPLAC received the following checks from members of the Novelty family, totaling \$39,000:

Payor	Amount	Date on Check	Payee
Tony Novelty	\$27,300	7/31/10	RPLAC
Jared Novelty	\$3,900	8/2/10	RPLAC
Chandra Niemann	\$3,900	7/28/10	RPLAC
Thomas Niemann	\$3,900	8/3/10	RPLAC

19. Leonard Lanzi (Lanzi) was the treasurer of the RPLAC executive board from 2010, through 2012. As the treasurer, Lanzi's responsibilities included requesting checks from RPLAC's accounting firm (HK & G) to make contributions to candidates, and signing contribution checks. On August 10, 2010, Lanzi prepared hand-written instructions to HK & G directing them to prepare a check in the amount of \$32,400 payable to the Shifren Committee. On the same date, the balance in RPLAC's checking account was \$8,929.

20. On August 16, 2010, Lanzi signed a check payable to the Shifren Committee in the amount of \$32,400. On the same date, RPLAC deposited into its checking account the four checks from the Novelty family members totaling \$39,000. On October 5, 2010, RPLAC filed a pre-election campaign statement for the period of July 1 through September



30, 2010, reporting that RPLAC was the contributor of the \$32,400 sent to the Shifren Committee.

21. On August 25, 2010 the \$32,400 check from RPLAC was deposited in the Shifren Committee account. On October 4, 2010, the Shifren Committee filed a mandatory pre-election campaign statement regarding monetary contributions received during the period of July 1, 2010 through September 30, 2010, in which it reported the \$32,400 as a contribution by RPLAC.

22. Chandra Niemann signed an affidavit on November 28, 2016, stating that she never had any contact with anyone from Shifren's campaign or RPLAC. She wrote a check payable to RPLAC in the amount \$3,900 because that was the amount that Jared Novelty asked her to give, and because she wanted to be supportive of her father. Thomas Niemann signed an affidavit on November 28, 2016, stating he made a contribution because he wanted to be supportive of his wife and father-in-law. He made the contribution in the amount of \$3,900 because that was the amount he was asked to give. He is not familiar with the contribution limits in California for candidates or political parties.

23. On April 5 and 17, 2012, a special investigator for the FPPC interviewed Barnett. She had by that time resigned her position as chair of the RPLAC executive board because she had cancer. Ms. Barnett passed away as a result of her illness on August 8, 2013. Barnett told the special investigator during the April 17, 2012 interview that the executive board had decided to contribute \$32,400 to the Shifren Committee to use for voter registration drives. In addition, Barnett stated that RPLAC's contribution to the Shifren Committee was taken out of RPLAC's general pool of funds, and that the Novelty family contributions had not been earmarked.

24. The RPLAC executive board had seven members, including the chair Barnett, and treasurer Lanzi. Board meetings were held on a monthly basis, in addition to weekly informal telephone meetings. The RPLAC bylaws required executive board approval for any expenditure or contribution exceeding \$500, unless the item was already included in the annual budget. None of the board members recalled any discussions regarding RPLAC's receipt of contributions from the Novelty family, the decision to contribute \$32,400 to the Shifren Committee, or the possibility of funding voter registration drives in Shifren's district. At least three of the board members said they would have opposed the contribution if it had been discussed or had they been aware of it.

25. Lanzi conducted a thorough search of the minutes of the RPLAC meetings and notes, and did not find any remarks reflecting the decision to make a \$32,400 contribution to the Shifren Committee. He does not have any specific recollection, but based on customary business practices he believes that Barnett, asked him to obtain the \$32,400 contribution check from HK & G and/or sign the check.

26. Barnett's statement that the RPLAC executive board decided to contribute to the Shifren Committee is inconsistent with the statements of other board members. Also, her

statement that the RPLAC contribution to the Shifren Committee came from the RPLAC general pool of funds is inconsistent with the fact that RPLAC sent its contribution to the Shifren Committee on the same day that RPLAC deposited four checks received from the Novelty and Niemann families. For these reasons, her statements given to the FPPC special investigator are not persuasive.

27. On April 4 and 17, 2012, a special investigator for the FPPC interviewed Shifren, who told the investigator he remembered RPLAC's \$32,400 contribution to his committee. Shifren also told the investigator he did not recall having any communication with RPLAC regarding the contribution, other than being informed by RPLAC that they would be sending his committee the contribution. Shifren's campaign communicated on numerous occasions with RPLAC, as evidenced by the numerous emails between Garcia and RPLAC chair, Barnett. Shifren also told the investigator that he had never met or spoken with any member of the Novelty family. This assertion is contradicted by the evidence. First, there are numerous email communications between Shifren and Jared Novelty. These emails were precipitated by a personal meeting between Shifren and Tony Novelty in the spring of 2010. For these reasons, Shifren's April 2012 statements to the investigator have no credibility.

28. On January 12, 2016, Shifren was again interviewed by an FPPC investigator. Shifren stated he spoke by telephone with Leonard Lanzi at RPLAC about money the Novelty family would contribute. Shifren stated in this interview that he spoke with Jared Novelty, and told the Novelty family should send their checks to RPLAC. Lanzi told Shifren that RPLAC would keep \$5,000 of the money sent by the Novelty family and send the remaining portion to the Shifren Committee. Shifren's assumption was that the money should be reported as coming from RPLAC. Shifren stated he knows mistakes were made, and is ascribed the events to "negligence."

29. In April 2012, the FPPC delivered a subpoena to both Shifren and the Shifren Committee treasurer, Robert Arkow (Arkow), requesting production of all campaign finance records from the Shifren Committee. The subpoena requested records including copies of contribution checks, canceled checks, bank statements, invoices and receipts for all committee expenditures, check registers and other records required by law to be maintained. The Shifren Committee was active from February 4, 2009 to July 6, 2011. Shifren did not produce any committee records in response to the subpoena. The Shifren Committee, through Arkow, produced only a small portion of the subpoenaed records.

30. The records produced by Arkow did not include the Shifren Committee's check register, checkbook, bank statements, or any canceled checks. The Shifren Committee produced two invoices related to expenditures totaling \$1,703, deposit slips for contributions totaling approximately \$38,000, and 21 contributor cards. The Shifren Committee's amended pre-election campaign statement for the period of July 1 through September 30, 2010, disclosed a greater number of transactions than indicated by the documents produced pursuant to the subpoena. Specifically, the amended pre-election campaign statement showed expenditures of more than \$39,000 for the calendar year, substantially more than the

\$1,703 indicated on the two invoices produced pursuant to the subpoena. The amended pre-election campaign statement also showed that the Shifren Committee received more than \$54,000 in contributions during the calendar year, substantially more than the \$38,000 indicated on the deposit slips produced pursuant to the subpoena. Also, the pre-election campaign statement disclosed 31 contributors, whereas the records produced pursuant to subpoena included only 21 contributor cards.

### *Respondent's Arguments*

31. Shifren did not present any evidence. He did, however submit a short written argument, summarized as follows: (1) Shifren received contributions from RPLAC in legal amounts; (2) RPLAC led Shifren to believe that RPLAC's activities were legal and in compliance with FPPC requirements; (3) Barnett and RPLAC are the guilty parties; (4) RPLAC received contributions directly from the Novelty family, and therefore RPLAC, not Shifren, had the duty to report the contributions to the FPPC; (5) RPLAC had full control over how to use the funds contributed by the Novelty family, therefore the contributions were not earmarked; (6) both Shifren and the Novelty family sought to comply with the law regarding political contributions, and (7) the FPPC's attempt to turn Shifren's honest efforts into unlawful conduct chills political activity.

Respondent's arguments are unconvincing, and evidence an unwillingness to accept responsibility. As discussed below, the violations in this matter would not have occurred but for respondent's negligent failure to ensure compliance with campaign laws while he pursued financial contributions.

### *Discussion and Analysis*

#### Contributions Not Made in Donor's Legal Name: Prohibited Earmarking:

32. Counts 1 and 2 of the Accusation (campaign contributions not made in donor's legal name), and counts 3 and 4 (prohibited earmarking of campaign contributions) include the allegation pursuant to Government Code section 83116.5 that respondents purposefully or negligently caused, or aided and abetted, members of the Novelty and Niemann families in committing the violations of campaign finance law. The evidence is clear that Shifren was very active in soliciting contributions from the Novelty family for his own campaign, and arranging for those contributions to be sent to RPLAC. The evidence is also clear that Shifren did not take adequate steps to ensure the contributions he solicited were compliant with campaign finance law. Shifren admitted mistakes were made, which he attributed to negligence. It is not necessary for a decision in this matter to determine whether Shifren intended that members of the Novelty and Niemann families violate the law because he is equally culpable if he negligently caused them to do so.

33. Government Code section 84301 prohibits any campaign contributions "... in a name other than the name by which such person is identified for legal purposes." The evidence clearly established that the contributing members of the Novelty and Niemann

families each wrote checks payable to RPLAC, knowing the money would be used to support Shifren's campaign. Immediately after receiving the checks totaling \$39,000 from the Novelty and Niemann family members, RPLAC wrote a check in the amount of \$32,400 to the Shifren Committee. RPLAC had the money necessary to make the contribution only because it received the contributions from the Novelty and Niemann family members. The evidence is thus clear that RPLAC served as an intermediary for the Novelty and Niemann family contributions, by passing the major portion of their contributions through to the Shifren Committee via a check written on the RPLAC checking account. In this manner, the contributing members of the Novelty and Niemann families contributed money to the Shifren Committee indirectly in the name of RPLAC, in violation of Government Code section 84301.

34. Government Code section 85704 prohibits a person from making "any contribution to a committee on the condition or with the agreement that it will be contributed to any particular candidate . . . ." The essential question with respect to each of the contributing family members is whether they made their respective contributions based on a condition or agreement that the money would ultimately be contributed to the Shifren Campaign. On this point, the contributions were given with the purpose of making good on Tony Novelty's word to help raise \$50,000 to support the Shifren campaign. Each of the contributing members of the Novelty and Niemann families were aware of this purpose, and would not have given their contributions made payable to RPLAC but for their understanding that this purpose would be fulfilled. It is thus clear that the Novelty and Niemann family members made their contributions with knowledge of the condition that at least a portion of the money would go to the Shifren Committee. In this manner, the contributing members of the Novelty and Niemann families gave "earmarked" contributions in violation of Government Code section 85704.

#### Accepting an Over-the-Limit Contribution

35. California law imposes a limit of \$3,900 on the amount an individual can contribute to a candidate's campaign during a single election cycle.<sup>6</sup> Respondents violated this restriction by accepting the check from RPLAC in the amount of \$32,400, which included a substantial portion of Tony Novelty's contribution of \$27,300, far in excess of the \$3,900 limit. RPLAC functioned as an intermediary to facilitate Tony Novelty's contribution to the Shifren Committee, which respondents actively encouraged and readily accepted.

#### Disclosure of False Contributor Information

36. On or about October 4, 2010, respondents filed a pre-election campaign statement for the period of July 1 through September 30, 2010, falsely reporting that the \$32,400 contribution was made by RPLAC. In fact, RPLAC served as an intermediary for

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<sup>6</sup> Government Code section 85301; California Code of Regulations, title 2, section 18545, subdivision (a)(1).

the contributions made by the Novelly and Niemann families, and respondents were required under Government Code section 84211, subdivision (f) to correctly report the contributions as coming from the Novellys and Niemanns.

#### Failure to Maintain Campaign Records

37. Shifren did not produce any records in response to an FPPC subpoena for campaign records, and the records produced by Shifren Committee treasurer Arkow were insufficient to support the amended pre-election campaign statement filed by the Shifren Committee for the period of July 1 through September 30, 2010. This evidence supports a conclusion that respondents failed to maintain campaign records for a period of four years as required by law.<sup>7</sup>

### LEGAL CONCLUSIONS

#### *Standard of Proof*

1. The complainant has the burden of proving the allegations by a preponderance of evidence. (Evid. Code § 115.) The term preponderance of evidence means “more likely than not.” (*Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1388.)

#### *Applicable Statutes and Regulations*

2. All legal references are to the laws and regulations as they existed in 2010, the time period of respondents’ alleged violations.

3. A “committee” is defined under the Act to include any person or combination of persons who directly or indirectly receive contributions totaling \$1,000 or more in a calendar year. (Gov. Code § 82013, subd. (a).) A “controlled committee” is defined as a committee that is controlled directly or indirectly by a candidate, or which acts jointly with the candidate in connection with the committee expenditures. (Gov. Code § 82013, subd. (a).)

4. A candidate or committee controlled by the candidate may be held liable for any violation of the Act, or for negligently causing or aiding and abetting any other person in committing a violation of the Act. (Gov. Code, § 83116.5.) If two or more parties are responsible for a violation of the Act, they shall be jointly and severally liable. (Gov. Code, § 91006.)

5. Government Code section 84104 imposes recordkeeping requirements, as follows:

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<sup>7</sup> Government Code section 84104; California Code of Regulations, title 2, section 18401, subdivision (b)(2).

It shall be the duty of each candidate, treasurer, and elected officer to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that campaign statements were properly filed, and to otherwise comply with the provisions of this chapter. The detailed accounts, records, bills, and receipts shall be retained by the filer for a period specified by the Commission.

6. California Code of Regulations, title 2, section 18401, subd. (b)(2), requires that a candidate must maintain original documentation related to mandatory disclosures for a period of four years, as follows:

A filer shall maintain the accounts, records, bills and receipts, and original source documentation for a period of four years following the date the campaign statement to which they relate is filed. However, in the case of an elected state officer serving a four-year term, the records for campaign statements filed during the first year following his or her election must be kept for five years following the date the campaign statement to which they relate is filed.

7. Government Code section 84211, subdivision (f), imposes disclosure requirements in a candidate's campaign statements, as follows:

If the cumulative amount of contributions (including loans) received from a person is one hundred dollars (\$100) or more and a contribution or loan has been received from that person during the period covered by the campaign statement, all of the following:

- (1) His or her full name.
- (2) His or her street address.
- (3) His or her occupation.
- (4) The name of his or her employer, or if self-employed, the name of the business.
- (5) The date and amount received for each contribution received during the period covered by the campaign statement and if the contribution is a loan, the interest rate for the loan.
- (6) The cumulative amount of contributions.

8. A candidate is required to verify the accuracy of any campaign statement of a controlled committee subject to the candidate's control. (Gov. Code § 84213; Cal. Code Regs, tit. 2 § 18427.)

9. Government Code section 84301 prohibits a person from making contributions in a name other than the donor's legal name, as follows:

No contribution shall be made, directly or indirectly, by any person in a name other than the name by which such person is identified for legal purposes.

10. Government Code section 84302 imposes disclosure requirements regarding contributions by an intermediary or agent, as follows:

No person shall make a contribution on behalf of another, or while acting as the intermediary or agent of another, without disclosing to the recipient of the contribution both his own full name and street address, occupation, and the name of his employer, if any, or his principal place of business if he is self-employed, and the full name and street address, occupation, and the name of employer, if any, or principal place of business if self-employed, of the other person. The recipient of the contribution shall include in his campaign statement the full name and street address, occupation, and the name of the employer, if any, or the principal place of business if self-employed, of both the intermediary and the contributor.

11. Government Code section 85301, subdivision (a), and Title 2, section 18545, subdivision (a)(1), taken together, impose a \$3,900 limit on contributions from persons, follows:

A person, other than a small contributor committee or political party committee, may not make to any candidate for elective state office other than a candidate for statewide elective office, and a candidate for elective state office other than a candidate for statewide elective office may not accept from a person, any contribution totaling more than three thousand dollars (\$3,000) per election. (Gov. Code § 85301 subd. (a).)

For purposes of Section 85301(a), the adjusted contribution limit in effect for candidates for the Senate or Assembly and candidates for elected seats to the Board of Administration of the Public Employees Retirement System, for an election occurring during the period January 1, 2009 through December 31, 2010 is \$3,900 per person. (Cal. Code Regs, tit. 2 § 18545, subd., (a)(1).)

12. Government Code section 85704 prohibits a person from earmarking contributions, as follows:

A person may not make any contribution to a committee on the condition or with the agreement that it will be contributed to any



particular candidate unless the contribution is fully disclosed pursuant to Section 84302.

*Causes for Monetary Penalties*

13. Good cause exists to impose monetary penalties in Accusation counts 1 through 7, as follows:

Count 1: Based on the Factual Findings and Legal Conclusions, cause exists to impose a monetary penalty against respondents for purposefully or negligently causing Tony Novelty to make a financial contribution to the Shifren Committee in the name of RPLAC, in violation of Government Code sections 84301 and 83116.5.

Count 2: Based on the Factual Findings and Legal Conclusions, cause exists to impose a monetary penalty against respondents for purposefully or negligently causing Jared Novelty, Chandra Neiman, and Thomas Neiman to make financial contributions to the Shifren Committee in the name of RPLAC, in violation of Government Code sections 84301 and 83116.5.

Count 3: Based on the Factual Findings and Legal Conclusions, cause exists to impose a monetary penalty against respondents for purposefully or negligently causing Tony Novelty to make a financial contribution to RPLAC on the condition that the contribution would be directed to the Shifren Committee, in violation of Government Code sections 85704 and 83116.5.

Count 4: Based on the Factual Findings and Legal Conclusions, cause exists to impose a monetary penalty against respondents for purposefully or negligently causing Jared Novelty, Chandra Niemann, and Thomas Niemann to make a financial contribution to RPLAC on the condition that the contribution would be directed in whole or in part to the Shifren Committee, in violation of Government Code sections 85704 and 83116.5.

Count 5: Based on the Factual Findings and Legal Conclusions, cause exists to impose a monetary penalty against respondents in that on or about August 25, 2010, respondents received a campaign contribution from Tony Novelty in excess of the \$3,900 individual contribution limits, in violation of Government Code section 85301 and California Code of Regulations, title 2, section 18545, subdivision (a)(1).

Count 6: Based on the Factual Findings and Legal Conclusions, cause exists to impose a monetary penalty against respondents in that on or about October 4, 2010, respondents filed a pre-election campaign statement for the reporting period of July 1 through September 30, 2010, falsely reporting that the \$32,400 contribution was received from RPLAC when the contribution was actually made by members of the the Novelty and Niemann families, in violation of Government Code section 84211, subdivision (f).



Count 7: Based on the Factual Findings and Legal Conclusions, cause exists to impose a monetary penalty against respondents in that respondent's failed to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that campaign statements were properly filed, and to comply with campaign reporting requirements during January 1 through December 31, 2010, in violation of Government Code section 84104.

*Level of Penalties*

14. Each violation of the Act is punishable by a monetary penalty of up to \$5,000. (Gov. Code, § 83116, subd. (c).) Title 2, section 18361.5, subdivision (d), provides that in framing a proposed order following a finding of a violation pursuant to Government Code section 83116, the FPPC and the administrative law judge shall consider all the circumstances including but not limited to:

- (1) The seriousness of the violation;
- (2) The presence or absence of any intention to conceal, deceive or mislead;
- (3) Whether the violation was deliberate, negligent or inadvertent;
- (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);
- (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
- (6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.


15. Applying the criteria set forth above, the evidence does not weigh in favor of respondent. Respondents' violations are serious. Compliance with campaign finance laws is essential to fair elections. Respondent Shifren evidenced intent to conceal the true source of the campaign contributions by filing a false pre-election campaign statement. Moreover, Shifren's statements to the FPPC investigator lacked credibility and evidenced a desire to conceal his misconduct. Shifren's conduct demonstrated, at best, a negligent disregard for campaign finance laws when he urged members of the Novelli family to contribute to his campaign through RPLAC. Shifren did not make any effort to consult the FPPC or any other government agency to determine whether the methods of financing he promoted to the Novelli family were legally permissible. The single factor weighing in favor of respondents

is that there is no record of previous violations. This, however, is substantially outweighed by the other evidence. For these reasons, the maximum monetary penalty of \$5,000 for each violation is appropriate.

#### ORDER

1. Accusation Counts 1 through 7 are SUSTAINED.
2. Per the Legal Conclusions, total liability for violations of the Act is assessed at \$35,000. The monetary penalty shall not exceed this amount. Accounting for joint and several liability respondents are each liable, and shall pay monetary penalties to the Fair Political Practices Commission up to \$35,000.

DATED: February 21, 2017

DocuSigned by:  
  
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TMOTHY J. ASPINWALL  
Administrative Law Judge  
Office of Administrative Hearings