



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich, and Commissioners Cardenas, Hatch, Hayward, and Wilson

From: Loressa Hon, Acting Executive Director
Galena West, Chief of Enforcement
Christopher Burton, Senior Commission Counsel

Date: August 10, 2020

RE: Assignment of Hearing to Administrative Law Judge

Case Name: Gabrielle Dolphin; FPPC Case No. 18/1423

I. INTRODUCTION

Gabrielle Dolphin (the “Committee”) qualified as an independent expenditure committee that opposed Alameda (City) Measure K in the November 6, 2018 General Election. The Committee made \$2,568 in independent expenditures in advance of the election, thereby meeting the \$1,000 threshold, and qualifying as an independent expenditure committee with reporting and disclosure obligations under the Political Reform Act (the “Act”).¹ The Committee failed to meet those obligations by failing to timely file two 24-hour independent expenditure reports, and failing to include the required disclosures on two print advertisements.

II. COMMISISON ACTION ONLY REQUIRED IF THE COMMISSION DESIRES TO PARTICIPATE IN THE ADMINISTRATIVE HEARING

The Acting Executive Director and the Chief of Enforcement are recommending an administrative law judge (“ALJ”) conduct the hearing pursuant to Government Code section 11512, subdivision (a). The ALJ will then make a recommendation to the Commission on the findings of fact, law, and penalty, if applicable, in the matter. The Commission will then make the final determination on the case.

This memorandum is submitted to each member of the Commission pursuant to Regulation 18361.5, subdivision (b), which provides:

If the Executive Director determines that a hearing on the merits should be conducted before an administrative law judge alone pursuant to Government Code section 11512(a), he or she shall provide a copy of the accusation as well as a memorandum describing the issues involved to each member of the Commission. If, at the next regularly scheduled meeting, two or more Commissioners indicate a

¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practice Commission are contained in §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an administrative law judge is available.

Thus, no Commission action is required if the Commission approves the recommendation that the administrative hearing in this matter should be conducted before an ALJ. However, two or more Commissioners may vote to keep the matter with the Commission if so desired.

III. PROCEDURAL HISTORY

The Enforcement Division initiated this administrative action against Respondent by serving a Report in Support of a Finding of Probable Cause (the “PC Report”) on October 23, 2019. Although the Committee originally requested a probable cause conference, it later withdrew the request. The Committee, further, did not submit a written response to the PC Report.

By means of an Ex Parte Request for a Finding of Probable Cause and on Order that an Accusation be Prepared and Served, dated February 18, 2020, the Enforcement Division submitted the matter to the Hearing Officer for a determination of probable cause. On or about February 26, 2020, the Hearing Officer issued an order finding that there was probable cause to believe the Committee violated the Act, as alleged in the PC Report, and directed the Enforcement Division to issue an accusation against the Committee in accordance with the finding.

The Enforcement Division served an Accusation on Respondent on June 14, 2020 by personal service. Respondent later returned a notice of defense dated July 13, 2020 to the Enforcement Division, requesting an administrative hearing on this matter.

IV. HEARING OPTIONS

Every hearing in a contested case must be presided over by an ALJ. The agency itself shall determine whether the ALJ is to hear the case alone or whether the agency itself is to hear the case with the ALJ.²

When the agency itself hears the case, the ALJ shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law; the agency itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the ALJ. When the ALJ hears a case, he or she shall exercise all powers relating to the conduct of the hearing. A rule of the ALJ admitting or excluding evidence is subject to review in the same manner and to the same extent as the ALJ’s proposed decision in the proceeding.³

V. SUMMARY OF THE ACCUSATION

The Accusation alleges Respondent violated the Political Reform Act as follows:

Count 1: Failure to Timely File 24-Hour Independent Expenditure Report

² See Gov. Code § 11512, subd. (a).

³ See Gov. Code § 11512, subd. (b).

The Committee failed to timely file a 24-hour independent expenditure report for a late independent expenditure in the amount of \$1,284 made on October 18, 2018, in violation of Section 84204.

Count 2: Failure to Timely File 24-Hour Independent Expenditure Report

The Committee failed to timely file a 24-hour independent expenditure report for a late independent expenditure in the amount of \$1,284 made on November 1, 2018, in violation of Section 84204.

Count 3: Failure to Comply With Disclosure Requirements for Political Advertisement

The Committee failed to print the language “Paid for by” and disclose the name of the Committee on a print advertisement, in violation of Section 84502.

Count 4: Failure to Comply With Disclosure Requirements for Political Advertisement

The Committee failed to print the language “Paid for by” and disclose the name of the Committee on a print advertisement, in violation of Section 84502.

VI. CONCLUSION

If, at the next regularly scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, likely to take place in Oakland, the matter will be scheduled for a hearing before the Commission when an ALJ is available.⁴ Otherwise, hearing of this matter will be conducted before an ALJ alone pursuant to Government Code Section 11512, subdivision (a).

⁴ Reg. § 18361.5, subd. (b).

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5 Attorneys for Complainant
6
7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

9 STATE OF CALIFORNIA

10 In the Matter of) FPPC No. 18/1423
11)
12 GABRIELLE DOLPHIN,) **ACCUSATION**
13)
14 Respondents.) (Gov. Code § 11503)
15)

16 Complainant, the Enforcement Division of the Fair Political Practices Commission, after a
17 finding of probable cause pursuant to Government Code Section 83115.5, alleges the following:

18 **JURISDICTION**

19 1. Complainant is the Enforcement Division of the Fair Political Practices Commission
20 (the "Commission") and makes this Accusation in its official capacity and in the public interest.

21 2. The authority to bring this action is derived from Title 2, California Code of
22 Regulations, Sections 18361 and 18361.4, subdivision (e), and the statutory law of the State of
23 California, specifically including, but not limited to, Government Code Sections 83111, 83116, and
24 91000.5, which assign to the Enforcement Division the duty to administer, implement, and enforce the
25 provisions of the Political Reform Act, found at Government Code Sections 81000 through 91014.

26 3. When enacting the Political Reform Act (the "Act"),¹ California voters specifically

27 _____
28 ¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. The regulations of the
Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of
Regulations.

1 found and declared that previous laws regulating political practices had suffered from inadequate
2 enforcement, and it was their purpose to ensure that the Act be vigorously enforced.²

3 4. To that end, Section 81003 requires that the Act be liberally construed to achieve its
4 purposes.

5 5. One of the stated purposes of the Act is to promote transparency by ensuring that
6 receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are
7 fully informed and improper practices are inhibited.³ Along these lines, the Act includes a
8 comprehensive campaign reporting system.⁴

9 RESPONDENTS

10 6. Gabrielle Dolphin (the “Committee” or “Respondent”) was an independent expenditure
11 committee that opposed Alameda (City) Measure K in the November 6, 2018 General Election.

12 APPLICABLE LAW

13 7. All applicable law in this Accusation is the law as it existed during the relevant time for
14 the violations alleged.

15 **A. Independent Expenditure Committee**

16 8. Any person who makes independent expenditures totaling \$1,000 or more in a calendar
17 year qualifies as an independent expenditure committee.⁵

18 9. An “independent expenditure” is an expenditure by any person in connection with a
19 communication which expressly advocates the election or defeat of a clearly identified candidate or the
20 qualification, passage, or defeat of a clearly identified ballot measure, or taken as a whole and in
21 context, unambiguously urges a particular result in an election but which is not made to or at the behest
22 of the affected candidate or committee.⁶

23 **B. Mandatory Filing of Campaign Statements**

24 10. At the core of the Act’s campaign reporting system is the requirement that committees
25 file campaign statements and reports for certain reporting periods and by certain deadlines.

26 ² Sections 81001, subd. (h), and 81002, subd. (f).

27 ³ Section 81002, subd. (a).

28 ⁴ Sections 84200, *et seq.*

⁵ Section 82013, subd. (b).

⁶ Section 82031.

1 11. The Act requires independent expenditure committees to file semiannual campaign
2 statements each year no later than July 31 for the period ending June 30, and no later than January 31
3 for the period ending December 31, if they have made contributions or independent expenditures
4 during the respective six-month period.

5 **C. Duty to File 24-Hour Independent Expenditure Reports**

6 12. When a committee makes a late independent expenditure, the committee must disclose
7 the expenditure in a 24-hour independent expenditure report filed in the places where it would be
8 required to file campaign statements as if it were formed or existing primarily to support or oppose the
9 candidate or measure for or against which it is making the late independent expenditure within 24 hours
10 of making the late independent expenditure.⁷

11 13. A “late independent expenditure” means any independent expenditure which totals in
12 the aggregate \$1,000 or more and is made for or against any specific candidate or measure involved in
13 an election within 90 days before the date of the election or on the date of the election.⁸

14 **D. Advertising Disclosure**

15 14. An “advertisement” under the Act means any general or public communication that is
16 authorized and paid for by a committee for the purpose of supporting or opposing a candidate(s) for
17 elective office or a ballot measure(s).⁹

18 15. Under the Act, any advertisement paid for by an independent expenditure committee
19 shall include the words “Paid for by” followed by the name of the committee.¹⁰

20 16. The Act also sets out certain display requirements for these disclosures as displayed on
21 print advertisements. Print ad disclosures must appear in a printed or drawn box with a solid white
22 background on the bottom of at least one page, set apart from other printed matter, and must use text
23 that is in a contrasting color.¹¹ Disclosures on ads individually distributed, including newspaper ads,
24 must use text that is in Arial font, at least 10-point in size.¹²

25
26 ⁷ Section 84204.

⁸ Section 82036.5.

⁹ Section 84501.

¹⁰ Section 84502, subd. (b).

¹¹ Section 84504.2, subd. (a)(1).

¹² Section 84504.2, subd. (a)(2).

1 **E. Factors to be Considered by the Fair Political Practices Commission and Administrative**
2 **Law Judge**

3 17. In framing a proposed order following a finding of a violation pursuant to Section 83116,
4 the Commission and the administrative law judge shall consider all the surrounding circumstances
5 including but not limited to: (1) The seriousness of the violation; (2) The presence or absence of any
6 intention to conceal, deceive or mislead; (3) Whether the violation was deliberate, negligent or
7 inadvertent; (4) Whether the violator demonstrated good faith by consulting the Commission staff or any
8 other government agency in a manner not constituting a complete defense under Section 83114(b); (5)
9 Whether the violation was isolated or part of a pattern and whether the violator has a prior record of
10 violations of the Act or similar laws; and (6) Whether the violator, upon learning of a reporting
11 violation, voluntarily filed amendments to provide full disclosure.¹³

12 **GENERAL FACTS**

13 18. Complainant incorporates paragraph 6 of this Accusation, as though completely set forth
14 herein.

15 19. Measure K appeared on the November 6, 2018 General Election ballot in the City of
16 Alameda. Measure K proposed a charter amendment regarding the city's rent control law.

17 20. Measure K was not successful, receiving approximately 39.69 percent of the vote.

18 21. The Committee became an independent expenditure committee when it made an
19 independent expenditure in the amount of \$1,284 on October 18, 2018, thereby reaching the \$1,000
20 threshold required of independent expenditure committees. Specifically, the Committee paid for a
21 newspaper advertisement in the Alameda Sun that opposed Measure K prior to the election.

22 22. The Committee made a second independent expenditure in the amount of \$1,284 on
23 November 1, 2018, for another newspaper ad in the Alameda Sun opposing Measure K prior to the
24 election.

25 23. The newspaper ads' language included statements such as "Vote NO on K!" and "Vote
26 No on Measure K."

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¹³ Regulation 18361.5, subd. (d).

1 24. Therefore, the advertisements' express advocacy against Measure K was clear; and, as a
2 result, the related payments made by the Committee were independent expenditures, thereby qualifying
3 the Committee as an independent expenditure committee.

4 25. The advertisements failed to include the required disclosure providing that they were
5 "Paid for by" the Committee, and did not contain any other identifying information that would assist the
6 reader in determining who paid for the ads.

7 26. The Committee was required to file two 24-hour independent expenditure reports within
8 24 hours of making the aforementioned late independent expenditures.

9 27. However, the Committee did not timely file these documents.

10 28. After contact from the Enforcement Division, the Committee filed a Form 461 campaign
11 statement on October 31, 2018 that reported the subject independent expenditures.

12 29. Further, on November 5, 2018 the day before the election, the Committee filed the
13 missing 24-hour reports disclosing the two independent expenditures.

14 **PROCEDURAL HISTORY**

15 30. The Enforcement Division initiated an administrative action against Respondent in this
16 matter by serving it with a packet containing a cover letter, a Report in Support of a Finding of
17 Probable Cause (the "PC Report"), a fact sheet regarding probable cause proceedings, selected sections
18 of the Government Code regarding probable cause proceedings for the Commission, and selected
19 regulations of the Commission regarding probable cause proceedings.

20 31. Respondent was served with the PC Report on October 23, 2019. The information
21 contained in the PC Report packet advised Respondent that it had 21 days in which to request a
22 probable cause conference, file a written response to the PC Report, or both.

23 32. On or about October 31, 2019, Respondent requested a probable cause conference with
24 the Hearing Officer. However, Respondent later withdrew the request.

25 33. By means of an Ex Parte Request for a Finding of Probable Cause and on Order that an
26 Accusation be Prepared and Served (the "Ex Parte Request"), dated February 18, 2020, the Enforcement
27 Division submitted the matter to the Hearing Officer for a determination of probable cause.

1 34. On or about February 26, 2020, the Hearing Officer issued an order finding, based on the
2 PC Report, that there was probable cause to believe Respondent violated the Act, as alleged in the PC
3 Report, and directed the Enforcement Division to issue an accusation against Respondent in accordance
4 with the finding.

5 **VIOLATIONS**

6 35. The Committee committed four violations of the Act as follows:

7 **Count 1**

8 **Failure to Timely File 24-Hour Independent Expenditure Report**

9 36. Complainant incorporates paragraphs 1 through 35 of this Accusation, as though
10 completely set forth herein.

11 37. The Committee had a duty to file a 24-hour independent expenditure report for a late
12 independent expenditure in the amount of \$1,284 made on October 18, 2018.

13 38. The Committee failed to timely file a 24-hour independent expenditure report for a late
14 independent expenditure in the amount of \$1,284 made on October 18, 2018

15 39. By failing to timely file a 24-hour independent expenditure report disclosing the \$1,284
16 independent expenditure, the Committee violated Section 84204.

17 **Count 2**

18 **Failure to Timely File 24-Hour Independent Expenditure Report**

19 40. Complainant incorporates paragraphs 1 through 39 of this Accusation, as though
20 completely set forth herein.

21 41. The Committee had a duty to file a 24-hour independent expenditure report for a late
22 independent expenditure in the amount of \$1,284 made on November 1, 2018.

23 42. The Committee failed to timely file a 24-hour independent expenditure report for a late
24 independent expenditure in the amount of \$1,284 made on November 1, 2018

25 43. By failing to timely file a 24-hour independent expenditure report disclosing the \$1,284
26 independent expenditure, the Committee violated Section 84204.

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1 **Count 3**

2 **Failure to Comply With Disclosure Requirements for Political Advertisements**

3 44. Complainant incorporates paragraphs 1 through 43 of this Accusation, as though
4 completely set forth herein.

5 45. The Committee had a duty to print the language “Paid for by” and disclose the name of
6 the committee on print advertisements paid for by the Committee.

7 46. The Committee failed to print the language “Paid for by” and disclose the name of the
8 committee on a print advertisement paid for by the Committee on October 18, 2018.

9 47. By failing to print the language “Paid for by” and disclose the name of the committee on
10 a print advertisement paid for by the Committee, the Committee violated Section 84502.

11 **Count 4**

12 **Failure to Comply With Disclosure Requirements for Political Advertisements**

13 48. Complainant incorporates paragraphs 1 through 47 of this Accusation, as though
14 completely set forth herein.

15 49. The Committee had a duty to print the language “Paid for by” and disclose the name of
16 the committee on print advertisements paid for by the Committee.

17 50. The Committee failed to print the language “Paid for by” and disclose the name of the
18 committee on a print advertisement paid for by the Committee on November 1, 2018.

19 51. By failing to print the language “Paid for by” and disclose the name of the committee on
20 a print advertisement paid for by the Committee, the Committee violated Section 84502.

21 **MITIGATING OR EXCULPATORY FACTORS**

22 52. Respondent was cooperative with the Enforcement Division in their investigation into
23 the potential violations in this case.

24 53. Respondent claims that it was inexperienced with the Act.

25 54. Respondent does not have a prior history of violating the Act.

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PRAYER

WHEREFORE, Complainant prays as follows:

1. That the Fair Political Practices Commission hold a hearing pursuant to Section 83116 and Regulation 18361.5, and at such hearing find that Gabrielle Dolphin violated the Act as alleged herein;
2. That the Fair Political Practices Commission, pursuant to Section 83116, subdivision (c), order Gabrielle Dolphin to pay a monetary penalty of up to \$5,000 for the violation of the Political Reform Act alleged in **Count 1**;
3. That the Fair Political Practices Commission, pursuant to Section 83116, subdivision (c), order Gabrielle Dolphin to pay a monetary penalty of up to \$5,000 for the violation of the Political Reform Act alleged in **Count 2**;
4. That the Fair Political Practices Commission, pursuant to Section 83116, subdivision (c), order Gabrielle Dolphin to pay a monetary penalty of up to \$5,000 for the violation of the Political Reform Act alleged in **Count 3**;
5. That the Fair Political Practices Commission, pursuant to Section 83116, subdivision (c), order Gabrielle Dolphin to pay a monetary penalty of up to \$5,000 for the violation of the Political Reform Act alleged in **Count 4**;
6. That the Fair Political Practices Commission, pursuant to Regulation 18361.5, subdivision (d), consider the following factors in framing a proposed order following a finding of a violation pursuant to Section 83116: (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 Section 83114, subdivision (b); (5) whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Act or similar laws; and (6) whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure;

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7. That the Fair Political Practices Commission grant such other and further relief as it deems just and proper.

Dated: 2 June 2020



Galena West
Chief of Enforcement
Fair Political Practices Commission