

1 GARY S. WINUK
Chief of Enforcement
2 LUISA MENCHACA
Senior Commission Counsel
3 FAIR POLITICAL PRACTICES COMMISSION
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660

5 Attorneys for Complainant
6
7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10 In the Matter of) FPPC No. 08/423
11)
12 TINA BACA DEL RIO and FRIENDS OF)
TINA BACA DEL RIO,) STIPULATION, DECISION and
13 Respondents.) ORDER
14)
15)

16 Complainant, Roman G. Porter, Executive Director of the Fair Political Practices Commission,
17 and Respondents Tina Baca Del Rio and Friends of Tina Baca Del Rio hereby agree that this Stipulation
18 will be submitted for consideration by the Fair Political Practices Commission at its next regularly
19 scheduled meeting.

20 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
21 matter, and to reach a final disposition without the necessity of holding an administrative hearing to
22 determine the liability of Respondents.

23 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
24 rights set forth in Sections 83115.5, 11503, and 11523 of the Government Code, and in Sections 18361.1
25 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
26 the right to personally appear at any administrative hearing held in this matter, to be represented by an
27 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the
28

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondents Tina Baca Del Rio and Friends of Tina Baca
4 Del Rio violated the Political Reform Act by: 1) failing to file three semi-annual campaign statements by
5 the due dates, in violation of section 84200, subdivision (b), of the Government Code (3 counts),
6 2) failing to file two pre-election campaign statements by the due dates, in violation of sections 84200.5,
7 subdivision (b), and 84200.7, subdivision (b), of the Government Code (2 Counts), and 3) failing to file
8 two pre-election campaign statements by the due dates, in violation of sections 84200.5, subdivision (c),
9 and 84200.8, subdivision (a), of the Government Code (2 Counts), as described in Exhibit 1. Exhibit 1
10 is attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and
11 accurate summary of the facts in this matter.

12 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
13 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
14 of Twenty-Six Thousand Dollars (\$26,000). A cashier's check from Respondents in said amount, made
15 payable to the "General Fund of the State of California," is submitted with this Stipulation as full
16 payment of the administrative penalty, to be held by the State of California until the Commission issues
17 its decision and order regarding this matter. The parties agree that in the event the Commission refuses
18 to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
19 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in
20 connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and
21 agree that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
22 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
23 shall be disqualified because of prior consideration of this Stipulation.

24 Dated: _____

Roman G. Porter,
Executive Director
Fair Political Practices Commission

27 Dated: _____

Tina Baca Del Rio, individually, and on
behalf of Friends of Tina Baca Del Rio, Respondents

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Tina Baca Del Rio and Friends of Tina
3 Baca Del Rio, FPPC No. 08/423,” including all attached exhibits, is hereby accepted as the final
4 decision and order of the Fair Political Practices Commission, effective upon execution below by the
5 Chairman.

6
7 IT IS SO ORDERED.

8
9 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1 INTRODUCTION

Respondent Tina Baca Del Rio (“Respondent Baca Del Rio”) was a member of the Commerce City Council from 2005 until she was recalled in the November 4, 2008 election. Respondent Baca Del Rio was re-elected to the Commerce City Council on March 3, 2009, and is currently a member of the Commerce City Council. Friends of Tina Baca Del Rio (“Respondent Committee”) is Respondent Baca Del Rio’s candidate controlled committee.

This case resulted from referrals from the City Clerk of the City of Commerce as well as from a complaint that Respondent Baca Del Rio had not filed campaign statements for any campaign reporting period subsequent to June 30, 2005. The referrals and the complaint alleged that Respondents failed to file campaign statements as required under the Political Reform Act (the “Act”).¹

The Act requires candidates, their controlled committees, and the treasurers of those committees, to file campaign statements at specific times disclosing information regarding contributions received and expenditures made by their committees. In this matter, for the period July 1, 2007, through February 14, 2009, Respondents failed to file three semi-annual campaign statements and four pre-election campaign statements disclosing the receipt of contributions and the making of expenditures. Respondents failed to make the required disclosures despite receiving numerous notifications and reminders from the City Clerk of the City of Commerce.

For the purposes of this Stipulation, Respondents’ violations of the Act are stated as follows:

- COUNT 1: Respondents Tina Baca Del Rio and Friends of Tina Baca Del Rio failed to timely file a semi-annual campaign statement for the reporting period July 1, 2007, through December 31, 2007, by the due date of January 31, 2008, in violation of Section 84200, subdivision (a).
- COUNT 2: Respondents Tina Baca Del Rio and Friends of Tina Baca Del Rio failed to timely file a semi-annual campaign statement for the reporting period January 1, 2008, through June 30, 2008, by the due date of July 31, 2008, in violation of Section 84200, subdivision (a).
- COUNT 3: Respondents Tina Baca Del Rio and Friends of Tina Baca Del Rio failed to timely file a pre-election campaign statement for the reporting period July 1, 2008, through September 30, 2008, by the due date of October 6, 2008, in violation of Sections 84200.5, subdivision (b), and 84200.7, subdivision (b).

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

- COUNT 4: Respondents Tina Baca Del Rio and Friends of Tina Baca Del Rio failed to timely file a pre-election campaign statement for the reporting period October 1, 2008, through October 18, 2008, by the due date of October 23, 2008, in violation of Sections 84200.5, subdivision (b), and 84200.7, subdivision (b).
- COUNT 5: Respondents Tina Baca Del Rio and Friends of Tina Baca Del Rio failed to timely file a semi-annual campaign statement for the reporting period October 19, 2008, through December 31, 2008, by the due date of February 2, 2009, in violation of Section 84200, subdivision (a).
- COUNT 6: Respondents Tina Baca Del Rio and Friends of Tina Baca Del Rio failed to timely file a pre-election campaign statement for the reporting period January 1, 2009, through January 17, 2009, by the due date of January 22, 2009, in violation of Sections 84200.5, subdivision (c), and 84200.8, subdivision (a).
- COUNT 7: Respondents Tina Baca Del Rio and Friends of Tina Baca Del Rio failed to timely file a pre-election campaign statement for the reporting period January 18, 2009, through February 14, 2009, by the due date of February 19, 2009, in violation of Sections 84200.5, subdivision (c), and 84200.8, subdivision (b).

SUMMARY OF THE LAW

A. Duty to File Campaign Statements

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited. To that end, the Act sets forth a comprehensive campaign reporting system designed to accomplish these purposes of disclosure.

Section 82013, subdivision (a), includes within the definition of “committee” any person or combination of persons who directly or indirectly receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year. This type of committee is commonly referred to as a “recipient committee.” Under Section 82016, a recipient committee that is controlled directly or indirectly by a candidate is a “controlled committee.” In relevant part, a candidate means an individual who is listed on the ballot for election to any elective office. The definition of “candidate” includes any officeholder who is the subject of a recall election. (Section 82007.)

B. Duty to File Semi-Annual Campaign Statements

Section 84200, subdivision (a), requires candidates, elected officers, and recipient committees to file semi-annual campaign statements each year no later than July 31 for the reporting period ending on June 30, and no later than January 31 of the following year for the semi-annual reporting period ending December 31.

All filing obligations continue until the recipient committee is terminated by filing a statement of termination (Form 410) with the Secretary of State (“SOS”) and a copy with the

local filing officer receiving the committee's original campaign statements. (Section 84214 and Regulation 18404.)

C. Duty to File Pre-Election Campaign Statements

In addition to the semi-annual campaign statement requirements, Section 84200.5, subdivision (b), requires that, in an even-numbered year in which a candidate is being voted upon on the first Tuesday after the first Monday in November, candidates and their controlled committees shall file the pre-election campaign statements specified in Section 84200.7, subdivision (b), in the case of a November election.

Section 84200.7, subdivision (b), provides for the filing of two pre-election campaign statements covering two reporting periods prior to the elections held in November. For the period ending September 30, a statement is to be filed no later than October 5.² For the period ending 17 days before the election, a statement is to be filed no later than 12 days before the election.

Additionally, Section 84200.5, subdivision (c), requires that all candidates being voted upon on a date other than the first Tuesday after the first Monday in June or November, candidates and their controlled committees shall file pre-election campaign statements specified in Section 84200.8.

Section 84200.8, subdivision (a), provides for the filing of a pre-election campaign statement for the period ending 45 days before the election, which shall be filed no later than 40 days before the election. Section 84200.8, subdivision (b), provides for the filing of a pre-election campaign statement for the period ending 17 days before the election, the statement shall be filed no later than 12 days before the election.

D. Filing Officers

Section 84215, subdivision (e), requires all city elected officers, candidates for city office, and their controlled committees to file campaign statements with the clerk of the city.

E. Treasurer Liability

Under Section 81004, subdivision (b), Section 84100, and Regulation 18427, subdivision (a), a committee's treasurer has the duty to ensure compliance with all requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds.

SUMMARY OF THE FACTS

Respondent Baca Del Rio was a member of the Commerce City Council from 2005 until she was recalled in the November 4, 2008 election. Respondent Baca Del Rio was re-elected to the Commerce City Council in the March 3, 2009, election and is currently a member of the

² Regulation 18116 provides that when a filing deadline falls on a Saturday, Sunday, or official state holiday, the filing deadline is extended to the next business day.

Commerce City Council. Respondent Committee is Respondent Baca Del Rio's candidate controlled committee.

From on or about 2005 to 2008, the City Clerk of the City of Commerce notified, in writing, Respondent Baca Del Rio of filing requirements for each campaign statement due to be filed. For almost all of the reporting periods, the City Clerk of the City of Commerce provided multiple written reminders of filing requirements to Respondent Baca Del Rio. Despite these reminders, following the filing of the semi-annual report for the period ending June 30, 2005, Respondent Baca Del Rio failed to file semi-annual campaign statements and pre-election campaign statements disclosing the receipt of contributions and the making of expenditures.

COUNT 1

Failure to Timely File Semi-Annual Campaign Statement

Respondent Baca Del Rio and Respondent Committee had a duty to file with the City Clerk of the City of Commerce a semi-annual campaign statement for the July 1, 2007, through December 31, 2007, reporting period which was due on or before January 31, 2008. Respondents failed to timely file the required semi-annual campaign statement. Respondents filed the statement on March 9, 2010, and amendments to the statement on November 8, 2010. Respondents' campaign activity for that period included approximately \$17,455 in contributions and \$14,971 in expenditures. By failing to file this semi-annual campaign statement by the January 31, 2008, due date, Respondents violated Section 84200, subdivision (a).

COUNT 2

Failure to Timely File Semi-Annual Campaign Statement

Respondent Baca Del Rio and Respondent Committee had a duty to file with the City Clerk of the City of Commerce a semi-annual campaign statement for the January 1, 2008, through June 30, 2008, reporting period which was due on or before July 31, 2008. Respondents failed to timely file the required semi-annual campaign statement. Respondents filed the statement on March 9, 2010, and amendments to the statement on November 8, 2010. Respondents' campaign activity for that period included approximately \$799 in contributions received and \$3,294 in expenditures made. By failing to file this semi-annual campaign statement by the July 31, 2008, due date, Respondents violated Section 84200, subdivision (a).

COUNT 3

Failure to Timely File Pre-Election Campaign Statement

As an officeholder who was the subject of a recall election in the November 4, 2008, election, Respondent Baca Del Rio and Respondent Committee had a duty to file with the City Clerk of the City of Commerce a pre-election campaign statement for the July 1, 2008, through September 30, 2008, reporting period which was due on or before October 6, 2008. Respondents failed to timely file the required pre-election campaign statement. Respondents filed the statement on March 9, 2010, and amendments to the statement on November 8, 2010. Respondents' campaign activity for that period included approximately \$1,273 in contributions received and \$1,250 in expenditures made. By failing to file this pre-election campaign

statement by the October 6, 2008, due date, Respondents violated Sections 84200.5, subdivision (b) and 84200.7, subdivision (b).

COUNT 4

Failure to Timely File Pre-Election Campaign Statement

As an officeholder who was the subject of a recall election in the November 4, 2008, election, Respondent Baca Del Rio and Respondent Committee had a duty to file with the City Clerk of the City of Commerce a pre-election campaign statement for the October 1, 2008, through October 18, 2008, reporting period which was due on or before October 23, 2008. Respondents failed to timely file the required pre-election campaign statement. Respondents filed the statement on March 9, 2010, and amendments to the statement on November 8, 2010. Respondents' campaign activity for that period included approximately \$3,500 in contributions received and \$1,500 in expenditures made. By failing to file this pre-election campaign statement by the October 23, 2008, due date, Respondents violated Sections 84200.5, subdivision (b), and 84200.7, subdivision (b).

COUNT 5

Failure to Timely File Semi-Annual Campaign Statement

As an officeholder who was the subject of a recall election in the November 4, 2008, election, Respondent Baca Del Rio and Respondent Committee had a duty to file with the City Clerk of the City of Commerce a semi-annual campaign statement for the October 19, 2008, through December 31, 2008, reporting period which was due on or before February 2, 2009. Respondents failed to timely file the required semi-annual campaign statement. Respondents filed the statement on November 8, 2010. Respondents' campaign activity for that period included approximately \$2,670 in contributions received and \$4,239 in expenditures made. By failing to file this semi-annual campaign statement by the February 2, 2009, due date, Respondents violated Section 84200, subdivision (a).

COUNT 6

Failure to Timely File Pre-Election Campaign Statement

As a candidate in the March 3, 2009 election, Respondent Baca Del Rio and Respondent Committee had a duty to file with the City Clerk of the City of Commerce, a pre-election campaign statement for the January 1, 2009, through January 17, 2009, reporting period which was due on or before January 22, 2009. Respondents failed to timely file the required pre-election campaign statement. Respondents filed the statement on November 8, 2010. Respondents' campaign activity for that period included approximately \$3,025 in contributions received and \$200 in expenditures made. By failing to file this pre-election campaign statement by the January 22, 2009, due date, Respondents violated Sections 84200.5, subdivision (c), and 84200.8, subdivision (a).

COUNT 7

Failure to Timely File Pre-Election Campaign Statement

As a candidate in the March 3, 2009 election, Respondent Baca Del Rio and Respondent Committee had a duty to file with the City Clerk of the City of Commerce, a pre-election

campaign statement for the January 18, 2009, through February 14, 2009, reporting period which was due on or before February 19, 2009. Respondents failed to file the required pre-election campaign statement. Respondents filed the statement on November 8, 2010. Respondents' campaign activity for that period included approximately \$1,000 in contributions received and \$1,221 in expenditures made. By failing to timely file this pre-election campaign statement by the February 19, 2009, due date, Respondents violated Sections 84200.5, subdivision (c), and 84200.8, subdivision (b).

AGGRAVATING FACTORS

In aggravation, Respondents received and ignored repeated notifications and reminders from the City Clerk of the City of Commerce concerning their obligations to file campaign statements covering a period of July 1, 2005 to February 14, 2009. In this case, Respondents failed to file three semi-annual campaign statements and four pre-election campaign statements, even after multiple notifications from the City Clerk of the City of Commerce. This indicates a pattern of negligence. This failure to file semi-annual campaign statements and pre-election campaign statements deprived the public of important information about Respondents' contributors and financial activity in connection with Respondent Baca Del Rio's defense of a recall in November 2008 and in connection with her reelection in March 2009.

MITIGATING FACTORS

Respondents filed the delinquent statements with the applicable schedules as a condition of this settlement.

CONCLUSION

This matter involves seven counts of violating the Act which carries an administrative penalty of \$5,000 per violation, for a total maximum penalty of Thirty Five Thousand Dollars (\$35,000).

Failure to file campaign statements is a serious violation of the Act. The public harm inherent in Respondents' reporting and disclosure violations is that the public was deprived of important information such as the source and amounts of contributions to Respondent Committee, and the nature and amounts of expenditures made by Respondent Committee.

Regarding Counts 1-7, the typical stipulated administrative penalty for failing to file semi-annual campaign statements and pre-election campaign statements has varied depending on the circumstances. In this matter, a per count penalty near the higher end of the allowed penalty range is warranted.

With respect to Count 1, Respondents failed to report campaign activity in the latter part of 2007 exceeding \$17,000 in contributions and \$14,000 in expenditures. A penalty of \$3,500 is warranted.

With respect to Counts 2-4, Respondents failed to report campaign activity in connection with Respondent Tina Baca Del Rio's defense of a recall in November 2008 depriving the public

of any information regarding her campaign activity. This warrants a per count penalty of \$3,500 for Counts 2-4.

With respect to Counts 5-7, Respondent Tina Baca Del Rio failed to report campaign activity just prior to her reelection in March 2009, and did not file the three delinquent statements until November 8, 2010. However Respondents only filed the cover sheets and did not include with the filings any of the campaign schedules showing specific campaign activity, justifying an administrative penalty of \$4,000 per count.

In addition, the overall pattern of negligence in this case justifies the administrative penalties proposed.

PENALTY

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of the agreed upon administrative penalty of Twenty Six Thousand Dollars (\$26,000).