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7
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**

10
11 In the Matter of:

12 TARA FLANAGAN, TARA
13 FLANAGAN FOR SUPERIOR COURT
JUDGE 2012, and CAROL PRANKA,

14 Respondents.

FPPC Case No. 14/600

STIPULATION, DECISION AND ORDER

15
16 **STIPULATION**

17 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
18 Respondents Tara Flanagan, Tara Flanagan for Superior Court Judge 2012, and Carol Pranka hereby
19 agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission
20 at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an additional administrative
23 hearing to determine the liability of Respondents pursuant to Government Code section 83116.

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

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

3 As described in Exhibit 1, it is further stipulated and agreed that Respondents committed two
4 violations of the Political Reform Act. Exhibit 1, which is attached hereto and incorporated by reference
5 as though fully set forth herein, is a true and accurate summary of the facts in this matter.

6 Respondents agree to the issuance of the Decision and Order, which is attached hereto. Also,
7 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
8 \$6,000, of which Respondent Carol Pranka is jointly and severally liable for the full amount, and
9 Respondents Tara Flanagan and Tara Flanagan for Superior Court Judge 2012 are jointly and severally
10 liable for \$4,500. One or more cashier's checks or money orders totaling said amount—to be paid to the
11 General Fund of the State of California—is/are submitted with this Stipulation as full payment of the
12 administrative penalty described above, and same shall be held by the State of California until the
13 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the
14 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen business
15 days after the Commission meeting at which the Stipulation is rejected, all payments tendered by
16 Respondents in connection with this Stipulation shall be reimbursed to Respondents.

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1 Respondents further stipulate and agree that in the event the Commission rejects the Stipulation
2 and a full evidentiary hearing before the Commission becomes necessary, neither any member of the
3 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this
4 Stipulation.

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6 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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10 Dated: _____

Tara Flanagan, individually and on behalf of Tara
Flanagan for Superior Court Judge 2012, Respondents

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14 Dated: _____

Carol Pranka, Respondent

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16 **DECISION AND ORDER**

17 The foregoing Stipulation of the parties “In the Matter of Tara Flanagan, Tara Flanagan for
18 Superior Court Judge 2012, and Carol Pranka,” FPPC Case No. 14/600, including all attached exhibits, is
19 hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon
20 execution below by the Chair.

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22 **IT IS SO ORDERED.**

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24 Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

This matter arose from an audit performed by the Political Reform Audit Program of the Franchise Tax Board.

In 2012, Tara Flanagan was a successful candidate for Alameda County Superior Court Judge. Her controlled committee was Tara Flanagan for Superior Court Judge 2012, and the committee treasurer was Carol Pranka.

This case involves two violations of the Political Reform Act (the “Act”)¹ for failure to report the true source of campaign contributions and failure to file a major donor campaign statement.

SUMMARY OF THE LAW

All legal references and discussions of law pertain to the Act’s provisions as they existed at the time of the violations in this case (2012).

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

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.² To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

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.³ Along these lines, the Act includes a comprehensive campaign reporting system.⁴ Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁵

Definition of Controlled Committee

The Act defines a “committee” to include any person (or combination of persons) who receives contributions totaling \$1,000 or more in a calendar year.⁶ This type of committee

¹ 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 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source.

² Section 81001, subdivision (h).

³ Section 81002, subdivision (a).

⁴ Sections 84200, et seq.

⁵ Section 81002, subdivision (f).

⁶ Section 82013, subdivision (a).

commonly is referred to as a “recipient committee.” A recipient committee that is controlled directly or indirectly by a candidate, or which acts jointly with a candidate in connection with the making of expenditures, is a “controlled committee.”⁷ A candidate controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee.⁸

Definition of Major Donor Committee

The Act provides that any person who directly or indirectly makes contributions of \$10,000 or more during a calendar year is a major donor committee.⁹ Such a committee is subject to certain filing requirements.

Required Filing of Campaign Statements

At the core of the Act’s campaign reporting system is the requirement that committees, including candidate controlled committees and major donor committees, must file campaign statements and reports for certain reporting periods and by certain deadlines.¹⁰

For example, in connection with the election held June 5, 2012, major donor committees were required to file semi-annual campaign statements for the reporting period from January 1 through June 30, 2012 by the deadline of July 31, 2012.¹¹

Required Reporting of Contributions and Expenditures, Including Loans

A loan received by a candidate or committee is a contribution unless the loan is received from a commercial lending institution in the ordinary course of business, or it is clear from the surrounding circumstances that it is not made for political purposes.¹²

Campaign statements are required to disclose certain information about receipts and expenditures, including the following information about the making and receipt of contributions and loans:¹³

- ❖ the total amount of contributions received during the period covered by the campaign statement, including loans, and the total cumulative amount of contributions received;
- ❖ the total amount of contributions received during the period from persons who gave a cumulative amount of \$100 or more, including loans—along with the following additional information about each such contributor:

⁷ Section 82016.

⁸ Section 82016, subdivision (a).

⁹ Section 82013, subdivision (c).

¹⁰ Sections 84200, et seq.

¹¹ Section 84200, subdivision (b).

¹² Section 84216.

¹³ Sections 84211, subdivisions (a), (b), (c), (f), (g), (i), (k); and 84216.

- the contributor's full name;
- his or her street address;
- his or her occupation;
- the name of his or her employer, or if self-employed, the name of the business;
- the date and amount received for each contribution received during the period, and if the contribution is a loan, the interest rate for the loan;
- the cumulative amount of contributions;
- ❖ the total amount of expenditures made during the period, including contributions/loans, and the total cumulative amount of expenditures made;
- ❖ the total amount of expenditures made during the period to persons who received \$100 or more, including contributions/loans—along with the following information about each recipient of such expenditures:
 - the recipient's full name;
 - his or her street address;
 - the amount of each expenditure;
 - a brief description of the consideration for which each expenditure was made;
 - in the case of an expenditure which is a contribution to a candidate, elected officer, or committee, the date of the contribution, the cumulative amount of contributions made to that recipient, the full name of the recipient, and the office and district/jurisdiction for which he or she seeks nomination or election;
- ❖ if the cumulative amount of loans received from or made to a person is \$100 or more and a loan has been received from or made to a person during the period, or is outstanding during the period, the following additional information must be reported for each such person/loan:
 - the person's full name;
 - his or her street address;
 - his or her occupation;
 - the name of his or her employer, or if self-employed, the name of the business;
 - the original date and amount of each loan;
 - the due date and interest rate of the loan;
 - the cumulative payment made or received, to date, at the end of the period;
 - the balance outstanding at the end of the period; and
 - the cumulative amount of contributions.

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Joint and Several Liability of Committee and Treasurer

It is the duty of a committee treasurer to ensure that the committee complies with the Act.¹⁴ A treasurer may be held jointly and severally liable, along with the committee, for violations committed by the committee.¹⁵

SUMMARY OF THE FACTS

In 2012, Tara Flanagan was a successful, first-time candidate for Alameda County Superior Court Judge. Her controlled committee was Tara Flanagan for Superior Court Judge 2012. Her committee treasurer and close, personal friend was Carol Pranka. Pranka maintains that this was her first and only time serving as a committee treasurer. She volunteered because she was a long-time friend of Flanagan.

The election was held on June 5, 2012. Flanagan won with approximately 50.75% of the vote. Her closest competitor was Andrew Wiener—with approximately 29.87% of the vote.

Earlier that year, in March or April 2012, Pranka made a loan to Flanagan in the form of a cashier's check for \$10,000. The loan was for political purposes, but the check was made payable to Flanagan, personally—not to her campaign.

On April 30, 2012, the check was deposited into Flanagan's business account for her law office. On May 2, 2012, the same amount of money was withdrawn from this account and deposited into the campaign bank account held by Tara Flanagan for Superior Court Judge 2012.

Shortly before the loan was made, Flanagan executed a promissory note whereby she agreed to repay \$10,000 to Pranka—with no interest. Also, Flanagan executed another promissory note on behalf of her committee whereby the committee agreed to repay \$10,000 to Flanagan—with 10% interest.

In mid-May 2012, Pranka made another loan to Flanagan in the form of a check for \$15,000. As before, the loan was for political purposes, but Pranka wrote "Personal Loan" on the check and made it payable to Flanagan, personally—not to her campaign.

On May 14, 2012, the check was deposited into Flanagan's personal account. On or about May 19, 2012, Flanagan wrote a personal check to her committee from the same account and for the same amount of money—which cleared the bank on or about May 21, 2012.

Shortly before this second loan was made, Flanagan executed another promissory note whereby she agreed to repay \$15,000 to Pranka—with no interest. Also, Flanagan executed another promissory note on behalf of her committee whereby the committee agreed to repay \$15,000 to Flanagan—with 10% interest.

¹⁴ Sections 81004, 84100, and Regulation 18427.

¹⁵ Sections 83116.5 and 91006.

Regarding the first loan from Pranka in the amount of \$10,000, Flanagan maintains that she used her personal checking account to write repayment checks to Pranka—between March 2013 and April 2014—which totaled \$8,000. Flanagan and Pranka claim that the balance due, \$2,000, was in fact repaid by Flanagan—who used her own personal funds to pay for things for Pranka, but they were unable to provide supporting documentation in this regard.

Regarding the second loan from Pranka in the amount of \$15,000, Flanagan and Pranka maintain that the loan was repaid as follows:

- ❖ On or about September 28, 2012, Flanagan’s committee issued a check to Flanagan in the amount of \$15,000 as partial repayment of an outstanding loan that Flanagan previously had made to her own committee.
- ❖ On or about October 1, 2012, Flanagan deposited the check into her personal checking account.
- ❖ The next day, on or about October 2, 2012, Flanagan wrote a check for \$13,715.58 from her personal account to Pranka as partial repayment of the loan in the amount of \$15,000 that had been received from Pranka.
- ❖ Both Flanagan and Pranka claim that the balance of that loan, approximately \$1,284, was repaid by Flanagan—who paid some of Pranka’s share of the expenses for a vacation to Kona (approximately \$1,034) and who paid for a gala ticket for Pranka (another \$250).

Thus, Flanagan and Pranka contend Flanagan repaid the loans in full.

Additional facts that are specific to each violation are set forth below. For settlement purposes, the violations are charged as follows:

VIOLATIONS

Count 1: Failure to Report the True Source of Campaign Contributions

Both loans from Pranka to Flanagan totaled \$25,000, which comprised approximately 23% of reported receipts for Flanagan’s committee for 2012. These loans were campaign contributions because they were made for political purposes.¹⁶

On or about May 23, 2012, Flanagan and Pranka caused to be filed a pre-election campaign statement on behalf of Tara Flanagan for Superior Court Judge 2012 for the reporting period of March 18 through May 19, 2012. Both contributions from Pranka were disclosed on the filing. However, instead of reporting that Pranka was the true source of the loans, the contributions were disclosed as personal loans from Flanagan to her own committee. No mention was made of Pranka.

¹⁶ Section 84216.

In this way, Flanagan, Tara Flanagan for Superior Court Judge 2012, and Pranka violated Sections 84211, subdivisions (f) and (g), and 84216—which require truthful reporting of information about the sources of contributions received.

Count 2: Failure to File Major Donor Campaign Statement

In making the two contributions described above, which totaled \$25,000, Pranka qualified as a major donor committee. As such, she was required to file a major donor semi-annual campaign statement (Form 461) for the reporting period of January 1 through June 30, 2012 by the deadline of July 31, 2012. However, she failed to do so.

In this way, Pranka violated Section 84200, subdivision (b).

PROPOSED PENALTY

This matter consists of two counts. The maximum penalty that may be imposed per count is \$5,000—for a total of \$10,000.¹⁷

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d) whether the violation was isolated or part of a pattern; and (e) whether the violator has a prior record of violations.¹⁸ Additionally, the Commission considers penalties in prior cases with similar violations.

The public harm inherent in campaign reporting violations is that the public is deprived of important, time-sensitive information regarding contributions and expenditures made in support of a candidate. The harm is even greater when the public is deprived of information that was required to be disclosed prior to an election because this has the potential to affect how votes are cast.

Regarding Count 1 (failure to report the true source of campaign contributions), the Commission recently approved a settlement that imposed the maximum penalty for this type of violation. See *In the Matter of Reginald Byron Jones-Sawyer Sr. and Reginald Jones-Sawyer for Assembly 2012*, FPPC Case No. 14/22 (approved Jun. 19, 2014), where a penalty in the amount of \$5,000 was imposed against a candidate for the California State Assembly who falsely reported that he was the source of a personal loan in the amount of \$50,000 to his own committee—when in fact, his significant other was the true source of funds. The false reporting occurred on a campaign statement that was filed before the election, and the true identity of the contributor was further concealed by the manner in which the candidate repaid the loan. Instead of repaying his significant other by writing a check to her straight from the committee bank account, the candidate repaid himself for the amount of the loan first. Then the candidate deposited the check into his own, personal checking account and issued another check in the

¹⁷ See Section 83116, subdivision (c).

¹⁸ Regulation 18361.5, subdivision (d).

same amount to his significant other. Circumvention of campaign contribution limits was involved as well, but this was charged as a separate, additional count.

The current case also involves failure to report the true source of campaign contributions on a campaign statement that was filed before the election. Also, in the current case, more than half of the loan in question was repaid in a manner that was very similar to the manner described in the above case, which tended to further conceal the identity of Pranka as the true source of the loan. However, the current case did not involve circumvention of campaign contribution limits. Also, smaller contributions were involved in the current case (\$25,000 as opposed to \$50,000 in the case above). For this reason, a lesser penalty in the amount of \$4,500 is recommended for Count 1.

Regarding Count 2 (failure to file a major donor campaign statement), the Commission has approved settlements in the mid-range and in the high range for this type of violation in recent years. See *In the Matter of Citizens in Charge and Howard Rich*, FPPC Case No. 13/336 (approved Feb. 19, 2015), where a penalty in the amount of \$4,000 was imposed against an individual (who was the true source of funds in a money laundering scheme) for failure to file two major donor campaign statements. The undisclosed contributions totaled approximately \$245,000 over two reporting periods, which were charged as a single count—and the donor had reason to be familiar with the Act because he had a history of filing as a major donor. Also, see *In the Matter of Tony Bushala*, FPPC Case No. 12/831 (approved May 16, 2013), where a penalty in the amount of \$2,000 was imposed against an individual who failed to file a major donor campaign statement regarding reportable activity in the approximate amount of \$14,531. Additionally, that case involved three more counts of failure to file major donor campaign statements, which settled for a penalty in the amount of \$2,500 per count—with reportable activity ranging from approximately \$37,000 to \$46,304 per count. All four filings in that case reflected disclosure due pre-election.

The current case involves failure to file for one reporting period only, which makes it distinguishable from the *Citizens in Charge and Howard Rich* case (where two reporting periods were charged as one count). Also, the amount of unreported activity in the current case—\$25,000—is much closer to the amounts in question in the *Tony Bushala* case. However, unlike that case, the major donor campaign statement in the current case was not required to be filed until after the election. This warrants a reduced penalty of \$1,500 for Count 2 because the public was not deprived of a pre-election filing as in the *Tony Bushala* case.

On the one hand, Flanagan and Pranka cooperated with the Enforcement Division by providing all requested documents and information, taking steps to correct their filing deficiencies, and by agreeing to an early settlement of this matter. Also, they do not have a history of prior violations of the Act. Additionally, they maintain they were under the mistaken impression that Pranka's loans to Flanagan could be treated as Flanagan's personal funds—which Flanagan thereafter could contribute to her own committee, without reporting Pranka as the source of funds. Their mistaken belief in this regard is consistent with the fact that they had no experience dealing with the Act; this was Flanagan's first time running for office, and it was Pranka's first time serving as a committee treasurer. Also, unlike the *Byron Jones-Sawyer* case

discussed above, the current case does not involve circumvention or attempted circumvention (intentional or otherwise) of campaign contribution limits.

On the other hand, a lower penalty is not being sought because Flanagan was an attorney who should have understood that her actions, and the actions of her treasurer, were contrary to the Act's promotion of transparency and truthful reporting. Also, Pranka's first contribution to Flanagan was made in the form of a cashier's check in violation of Section 84300, subdivision (c). (In the interest of settlement, this is not being charged as a separate count; rather, it is being noted as an aggravating factor).

CONCLUSION

For the foregoing reasons, the following agreed upon penalty is recommended:

Count	Violation	Respondents	Penalty
1	Failure to Report the True Source of Campaign Contributions	Tara Flanagan Tara Flanagan for Superior Court Judge 2012 Carol Pranka	\$4,500
2	Failure to File Major Donor Campaign Statement	Carol Pranka	\$1,500
TOTAL:			\$6,000