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3 **FAIR POLITICAL PRACTICES COMMISSION**
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
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11
12 In the Matter of) FPPC No. 14/595
13)
14) STIPULATION, DECISION and
ADAM HILL, FRIENDS OF ADAM HILL,) ORDER
COUNTY SUPERVISOR 2012, and SHARON)
15 A. MCMAHAN, TREASURER,)
16 Respondents.)
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18 Complainant, the Fair Political Practices Commission, and respondents Adam Hill, Friends of
19 Adam Hill, County Supervisor 2012, and Sharon A. McMahan (collectively “Respondents”) agree that
20 this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next
21 regularly scheduled meeting.

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

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

1 attorney at the respondent's own expense, to confront and cross-examine all witnesses testifying at the
2 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
3 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondents failed to timely report fifteen payments of
5 \$500 or more, totaling \$68,058.73, made on Respondent Friends of Adam Hill, County Supervisor
6 2012's behalf by Respondent Friends of Adam Hill, County Supervisor 2012's agents or independent
7 contractors during the March 18 through May 19, 2012, and May 20 through June 30, 2012, reporting
8 periods, in violation of Government Code sections 84200, subdivision (a), 84200.5, 84211, subdivision
9 (k), and 84303 (1 count).

10 All counts are described in Exhibit 1, which is attached hereto and incorporated by reference as
11 though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

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1 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
2 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
3 of \$2,500. A cashier's check from Respondents in said amount, made payable to the "General Fund of
4 the State of California," is submitted with this Stipulation as full payment of the administrative penalty,
5 to be held by the State of California until the Commission issues its decision and order regarding this
6 matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall
7 become null and void, and within fifteen business days after the Commission meeting at which the
8 Stipulation is rejected, all payments tendered by Respondents in connection with this Stipulation shall be
9 reimbursed to Respondents. Respondents further stipulate and agree that in the event the Commission
10 rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither
11 any member of the Commission, nor the Chief of Enforcement, shall be disqualified because of prior
12 consideration of this Stipulation.

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14 Dated: _____
15 Gary Winuk, Enforcement Chief,
16 On behalf of Fair Political Practices Commission
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19 Dated: _____
20 Adam Hill, Respondent, Individually and on behalf of
21 Respondent Friends of Adam Hill, County Supervisor 2012
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23 Dated: _____
24 Sharon A. McMahan, Respondent, Individually and on behalf of
25 Respondent Friends of Adam Hill, County Supervisor 2012
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DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Adam Hill, Friends of Adam Hill, County Supervisor 2012, and Sharon A. McMahan, Treasurer” FPPC No. 14/595, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent Adam Hill (“Respondent Hill”), a member of the San Luis Obispo County Board of Supervisors since 2009, was re-elected on June 5, 2012. Respondent Friends of Adam Hill, County Supervisor 2012 (“Respondent Committee”) was his candidate-controlled committee for the June 5, 2012, election, and Respondent Sharon A. McMahan (“Respondent McMahan”) was Respondent Committee’s treasurer at all relevant times.

This matter was referred to the Fair Political Practices Commission (the “Commission”) by the Franchise Tax Board (the “FTB”). An investigation by the Commission’s Enforcement Division (the “Enforcement Division”) revealed that Respondent Hill, Respondent Committee, and Respondent McMahan (collectively “Respondents”) failed to timely report fifteen payments of \$500 or more, totaling \$68,058.73, made on Respondent Committee’s behalf by Respondent Committee’s agents or independent contractors during the March 18 through May 19, 2012, and May 20 through June 30, 2012, reporting periods, in violation of the Political Reform Act (the “Act”).¹

For the purpose of this Stipulation, Respondents’ violation of the Act is stated as follows:

COUNT 1: Respondent Adam Hill, Respondent Friends of Adam Hill, County Supervisor 2012, and Respondent Sharon A. McMahan failed to timely report fifteen payments of \$500 or more, totaling \$68,058.73, made on Respondent Friends of Adam Hill, County Supervisor 2012’s behalf by Respondent Friends of Adam Hill, County Supervisor 2012’s agents or independent contractors during the March 18 through May 19, 2012, and May 20 through June 30, 2012, reporting periods, in violation of Government Code sections 84200, subdivision (a), 84200.5, 84211, subdivision (k), and 84303.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violations.

Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the 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. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

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.

One of the purposes of the Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited. (Section 81002, subd. (a).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.” (Section 81002, subd. (f).)

Duty to File Campaign Statements

The Act includes within the definition of “committee” any person or combination of persons who receives contributions of \$1,000 or more during a calendar year. (Section 82013, subd. (a).) A controlled committee is a committee that is controlled directly or indirectly by a candidate. 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 of the committee. (Section 82016, subd. (a).)

Candidates being voted upon the first Tuesday after the first Monday in June or November of an even-numbered year, and their controlled committees, are required to file a preelection statement for the reporting period ending 17 days before the election no later than 12 days before the election, and a semiannual statement by July 31 for the period ending June 30. (Sections 84200, subd. (a), 84200.5, subd. (b), and 84200.7, subd. (a)(2).)²

Candidates for San Luis Obispo County Board of Supervisors and their controlled committees must file all required campaign statements with the San Luis Obispo County Clerk-Recorder. (Section 84215, subd. (c).)

Required Reporting of Expenditures

Section 82025 defines “expenditure” as a payment, forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. “An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.” (Section 82025.)

Section 84211, subdivisions (b) and (i), require committees to disclose on each campaign statement: (1) the total amount of expenditures made during the period covered by the campaign statement; and (2) the total amount of expenditures made during the period covered by the campaign statement to persons who have received \$100 or more.

Pursuant to Section 84211, subdivision (k), for each person to whom an expenditure of \$100 or more has been made during the period covered by the campaign statement, the following

² Under Regulation 18116, whenever the Act requires that a statement or report (other than late contribution reports required by Section 84203, late independent expenditure reports required by Section 84204, or notice by the contributor of a late in-kind contribution required by Section 84203.3) be filed prior to or not later than a specified date or during or within a specified period, and the deadline falls on a Saturday, Sunday or official state holiday, the filing deadline for such a statement or report shall be extended to the next regular business day.

information must be disclosed on the campaign statement: (1) the recipient's full name; (2) the recipient's street address; (3) the amount of each expenditure; and (4) the description of the consideration for which each expenditure was made.

Required Reporting of Subvendor Information

Section 84303 provides that no expenditure of \$500 or more shall be made, other than for overhead and normal operating expenses, by an agent or independent contractor, including, but not limited to, an advertising agency, on behalf of, or for the benefit of, any committee, unless the expenditure is reported by the committee as if the expenditure were made directly by the committee. This type of information reported by a committee is commonly referred to as "subvendor information." Regulation 18431, subdivision (a), provides that expenditures of the type that must be reported pursuant to section 84303 include:

1. Expenditures for expert advice, expert analysis, or campaign management services, including but not limited to analysis, advice, or management services in connection with:
 - a. development of campaign strategy;
 - b. campaign management;
 - c. design or management of campaign literature or advertising;
 - d. campaign fund raising;
2. Expenditure for product or services which show how the campaign is conducted, including but not limited to expenditures for:
 - a. printed campaign literature;
 - b. advertising time or space;
 - c. campaign buttons and other campaign paraphernalia;
 - d. surveys, polls, signature gathering and door-to-door solicitation of voters;
 - e. facilities, invitations, or entertainment for fundraising events;
 - f. postage for campaign mailings; and
3. Expenditures to printers of mass mailings.

Section 84211, subdivision (k)(6), requires the disclosure of such subvendor information as part of the contents of any campaign statement required to be filed by the committee. Specifically, the following information must be provided: (1) the subvendor's full name; (2) his or her street address; (3) the amount of each expenditure; and (4) a brief description of the consideration for which each expenditure was made. (Section 84211, subs. (k)(1)-(4) and (6).)

Treasurer and Candidate Liability

Under Sections 81004, subdivision (b), and 84100, and Regulation 18427, subdivisions (a), (b), and (c), it is the duty of a candidate and the treasurer of his or her controlled committee to ensure that the committee complies with all the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such. A committee's treasurer and candidate may

be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee under Sections 83116.5 and 91006.

SUMMARY OF THE FACTS

On or about May 23, 2012, Respondents filed with the San Luis Obispo County Clerk-Recorder a preelection statement for the March 18 through May 19, 2012, reporting period. On the statement, Respondents reported that Respondent Committee made expenditures totaling \$82,070.14, but failed to report eleven payments of \$500 or more, totaling \$62,786.99, made on Respondent Committee's behalf by Respondent Committee's agents and/or independent contractors during the March 18 through May 19, 2012, period.

On or about July 25, 2012, Respondents filed a semiannual statement for the May 20 through June 30, 2012, reporting period. On the statement, Respondents reported that Respondent Committee made expenditures totaling \$10,727.59, but failed to report four payments of \$500 or more, totaling \$5,271.74, made on Respondent Committee's behalf by Respondent Committee's agents or independent contractors during the May 20 through June 30, 2012, period.

In 2014, the FTB audited Respondent Committee for the July 1, 2008, through June 30, 2012, period, and found that Respondents violated the Act by failing to report payments of \$500 or more made on Respondent Committee's behalf by Respondent Committee's agents or independent contractors during the audit period. On or about June 30, 2014, the FTB referred the matter to the Enforcement Division.

Subsequently, the Enforcement Division conducted an investigation based on the FTB's findings. The Enforcement Division's investigation found that Respondents failed to report sixteen payments of \$500 or more, totaling \$68,058.73, made on Respondent Committee's behalf by Respondent Committee's agents or independent contractors during the March 18 through May 19, 2012, and May 20 through June 30, 2012, reporting periods. The aforementioned payments represented all payments of \$500 or more made on Respondent Committee's behalf by Respondent Committee's agents and independent contractors during the July 1, 2008, through June 30, 2012, period. During the July 1, 2008, through June 30, 2012, period, Respondent Committee's expenditures totaled \$133,343.

In January 2015, after being contacted by the Enforcement Division regarding this matter, Respondents amended Respondent Committee's statements for the March 18 through May 19, 2012, and May 20 through June 30, 2012, reporting periods to properly reflect the fifteen payments that Respondents failed to timely report.

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Accordingly, Respondents committed the following violation of the Act:

Count 1

Failure to Report Subvendor Payments

As a candidate for San Luis Obispo County Board of Supervisors in the June 5, 2012, election, his controlled committee, and the committee's treasurer, Respondents had a duty to report to the San Luis Obispo County Clerk-Recorder by May 24, 2012, all payments of \$500 or more made on Respondent Committee's behalf by Respondent Committee's agents and independent contractors during the March 18 through May 19, 2012, reporting period. Respondents also had a duty to report to the San Luis Obispo County Clerk-Recorder by July 31, 2012, all payments of \$500 or more made on Respondent Committee's behalf by Respondent Committee's agents and independent contractors during the May 20 through June 30, 2012, reporting period.

Respondents failed to timely report fifteen payments of \$500 or more, totaling \$68,058.73, made on Respondent Committee's behalf by Respondent Committee's agents and independent contractors during the March 18 through May 19, 2012, and May 20 through June 30, 2012, reporting periods, in violation of Sections 84200, subd. (a), 84200.5, 84211, subdivision (k), and 84303.

CONCLUSION

This matter consists of a single count of violating the Act, which carries a maximum administrative penalty of \$5,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the respondent(s) demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the respondent voluntarily filed amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

Failing to timely and accurately report expenditures is a serious violation of the Act as it deprives the public of important information about a committee's financial activities.

Count 1: In April of 2014, the Commission approved a fine of \$2,000 for failing to timely report, on a semiannual statement, subvendor information for payments totaling \$90,636, which accounted for 100% of the respondents' reportable subvendor payments and 60.2% of the respondents' total expenditures. The subvendor payments were not reported until after the pertinent election, but the respondents cooperated with the investigation and agreed to an early resolution of the matter. (*In the Matter of Brown for Governor 2010 - Sponsored by the San*

Diego and Imperial Counties Labor Council: El Cambio Empieza El Martes to Support Jerry and Xavier Martinez, FPPC No. 13/087.)

In September of 2013, the Commission approved a fine of \$2,500 for failing to timely report, on a preelection and semiannual statement, subvendor payments totaling \$614,185, which accounted for 44% of the respondents' total expenditures during that particular year. The subvendor payments were not reported until after the pertinent election, but the respondents agreed to an early resolution of the matter. (*In the Matter of Hector De La Torre, DeLaTorre for Insurance Commissioner 2010, and Jane Leiderman, FPPC No. 12/211.*)

In this matter, Respondents failed to timely report subvendor payments totaling \$68,058.73, which accounted for over all of Respondent Committee's reportable subvendor payments for the audited period, and 51% of Respondent Committee's total expenditures during the audit period. Additionally, a majority of the subvendor payments that Respondents failed to timely report were required to be reported prior to the pertinent election and were not reported until after the pertinent election.

Additionally, Respondents have a prior enforcement action. On March 25, 2014, the Enforcement Division sent Respondents a warning letter for failing to state the correct employer of the source of a contribution of \$100 or more on a semiannual statement, in violation of Section 84211. (FPPC No. 14/294.)

However, Respondents were fully cooperative in the FTB's audit. Additionally, there is no evidence that the violation was intentional and Respondents have agreed to an early resolution of the matter.

PROPOSED PENALTY

Accordingly, the imposition of a \$2,500 administrative penalty is recommended.

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