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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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12 In the Matter of) FPPC No. 14/605
13)
14 UNITED FOOD AND COMMERCIAL)
WORKERS ACTIVE BALLOT CLUB YES) STIPULATION, DECISION and
15 ON PROP. 30, NO ON PROP. 32) ORDER
COMMITTEE and Anthony Perrone,)
16 Respondents.)
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18 Complainant Gary S. Winuk, Enforcement Chief of the Fair Political Practices Commission, and
19 Respondents United Food and Commercial Workers Active Ballot Club Yes on Prop. 30, No on Prop.
20 32 Committee and Anthony Perrone agree that this Stipulation will be submitted for consideration by the
21 Fair Political Practices Commission at its next 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 the 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 Respondents' 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 United Food and Commercial Workers
5 Active Ballot Club Yes on Prop. 30, No on Prop. 32 Committee and Anthony Perrone violated the
6 Political Reform Act by (1) failing to timely file a second pre-election campaign statement by October
7 25, 2012, for the reporting period October 1, 2012 through October 20, 2012, in violation of Sections
8 84200.5, subdivision (b), and 84200.7, subdivision (b) of the Government Code (1 count); (2) failing to
9 timely file a late contribution report disclosing the making of a \$50,000 contribution to Ballot Initiative
10 Strategy Center during the late contribution reporting period before the November 6, 2012 General
11 Election, due on or about October 22, 2012, in violation of Sections 84203, subdivision (a) and 84605,
12 subdivision (a)(2), of the Government Code (1 count); and failing to timely report the receipt of
13 contributions totaling \$600,000 and the making of expenditures totaling \$600,000 on a first pre-election
14 campaign statement for the reporting period January 1, 2012 through September 30, 2012, by the
15 October 5, 2012 due date, in violation of Section 84211, subdivisions (a), (b), (d), (i), and (k), of the
16 Government Code (1 count). These counts are described in Exhibit 1, which is attached hereto and
17 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of
18 the facts in this matter.

19 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
20 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
21 of Six Thousand Five Hundred Dollars (\$6,500). A cashier's check from Respondents in said amount,
22 made payable to the "General Fund of the State of California," is submitted with this Stipulation as full
23 payment of the administrative penalty, to be held by the State of California until the Commission issues
24 its decision and order regarding this matter. The parties agree that in the event the Commission refuses
25 to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
26 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in
27 connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and
28 agree that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the

1 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
2 shall be disqualified because of prior consideration of this Stipulation.

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5 Dated: _____
6 Gary S. Winuk, Chief of Enforcement
7 Fair Political Practices Commission
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9 Dated: _____
10 Respondent Anthony Perrone, Individually and
11 on behalf of United Food and Commercial Workers
12 Active Ballot Club Yes on Prop. 30, No on Prop. 32
13 Committee, Respondent
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1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of United Food and Commercial Workers
3 Active Ballot Club Yes on Prop. 30, No on Prop. 32 Committee and Anthony Perrone,” FPPC No.
4 14/605, including all attached exhibits, is hereby accepted as the final decision and order of the Fair
5 Political Practices Commission, effective upon execution below by the Chair.

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7 IT IS SO ORDERED.

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9 Dated: _____

10 Joann Remke, Chair
11 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent United Food and Commercial Workers Active Ballot Club Yes on Prop. 30, No on Prop. 32 Committee (“Respondent Committee”) was formed on September 18, 2012, as a primarily formed committee to support Proposition 30 and oppose Proposition 32 in the 2012 General Election. The Committee was sponsored by the United Food and Commercial Workers Union. The treasurer for the Committee was Anthony Perrone, Secretary-Treasurer with the United Food and Commercial Workers Union in Washington, D.C. The Committee terminated effective December 28, 2012.

This matter arose from an audit performed by the Franchise Tax Board (“FTB”) for the period of January 1, 2012 through December 28, 2012. During the period covered by the audit, Respondent Committee reported, in unaudited statements, receiving contributions totaling \$949,236 and making expenditures totaling \$949,236. Respondents violated the Political Reform Act (the “Act”)¹ by failing to comply with required reporting provisions.

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

COUNT 1: Respondents United Food and Commercial Workers Active Ballot Club Yes on Prop. 30, No on Prop. 32 Committee, and Anthony Perrone, failed to timely file a second pre-election campaign statement by October 25, 2012, for the reporting period October 1, 2012 through October 20, 2012, in violation of Sections 84200.5, subdivision (b), and 84200.7, subdivision (b) of the Government Code.

COUNT 2: Respondents United Food and Commercial Workers Active Ballot Club Yes on Prop. 30, No on Prop. 32 Committee, and Anthony Perrone, failed to timely file a late contribution report disclosing the making of a \$50,000 contribution to Ballot Initiative Strategy Center during the late contribution reporting period before the November 6, 2012 General Election, due on or about October 22, 2012, in violation of Sections 84203, subdivision (a) and 84605, subdivision (a)(2), of the Government Code.

COUNT 3: Respondents United Food and Commercial Workers Active Ballot Club Yes on Prop. 30, No on Prop. 32 Committee, and Anthony Perrone, failed to timely file report the receipt of contributions totaling \$600,000 and the making of expenditures totaling \$600,000 on a first pre-election campaign statement for the reporting period January 1, 2012 through September 30, 2012, by the October 5, 2012 due date, in violation of Section 84211, subdivisions (a), (b), (d), (i), and (k), of the Government Code.

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 18109 through 18997 of Title 2, California Code of Regulations. All regulatory references are to Title 2, Division 6, of the California Code of Regulations, unless otherwise indicated.

SUMMARY OF THE LAW

State General Purpose Committee

Under the Act's campaign reporting system, recipient committees, as defined in Section 82013, subdivision (a), are required to file certain specified campaign statements and reports.

Under the Act, there are different types of recipient committees, defined by the type of election activity in which they engage. A recipient committee that is formed or exists primarily to support or oppose candidates or measures voted on in a state election or in more than one county is defined, in Section 82027.5, subdivision (b), as a "state general purpose committee."

Duty to File Pre-election 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, so that voters may be fully informed, and improper practices may be inhibited. The Act, therefore, establishes a campaign reporting system designed to accomplish this purpose of disclosure.

For an election held in June or November of an even-numbered year, committees are required to file two pre-election campaign statements according to a specified schedule. (Sections 84200.5, subdivision (b), and 84200.7, subdivision (b).)

In this case, the first pre-election campaign statement for the reporting period July 1, 2012 through September 30, 2012, was due by October 5, 2012. The second pre-election campaign statement for the reporting period October 1, 2012 through October 20, 2012, was due by October 25, 2012.

Duty to File Late Contribution Reports

A "late contribution" is a contribution which totals in the aggregate one thousand dollars (\$1,000) or more that is made to or received by a candidate, a controlled committee, or a committee formed or existing primarily to support or oppose a candidate or measure before an election, but after the closing date of the last campaign statement that is required to be filed before the election. (Section 82036.) Each candidate or committee that makes or receives a late contribution shall report the late contribution to each office with which the candidate or committee is required to file its next campaign statement pursuant to Section 84215 within 24 hours of making or receiving the contribution. (Section 84203.) For an election held in June or November of an even-numbered year, the late contribution period covers the last 16 days before the election. (Sections 82036, subdivision (a), and 84200.7, subdivision (b).)

Duty to Disclose Contributions and Expenditures on Campaign Statements

Section 82015 defines a contribution as a payment made for political purposes. Section 84211, subdivision (a), requires committees to disclose the total amount of contributions received during the period covered by the campaign statement. Section 84211, subdivision (c), requires a committee to disclose on each of its campaign statements the total amount of

contributions received during the period from persons who had given a cumulative amount of \$100 or more. Additionally, Section 84211, subdivision (d), requires a committee to disclose on each of its campaign statements the total amount of contributions received during the period from persons who had given a cumulative amount of less than \$100. "Cumulative amount" means the amount of contributions received in the calendar year. (Section 82018, subdivision (a).)

Section 84211, subdivision (b), requires committees to disclose the total amount of expenditures made during the period covered by the campaign statement. Additionally, Section 84211, subdivisions (i) and (k), require a committee to disclose on each of its campaign statements the total amount of expenditures made during the reporting period to persons who have received \$100 or more as well as: (1) the recipient's full name; (2) the recipient's street address; (3) the amount of each expenditure; (4) the description of the consideration for which each expenditure was made; (5) in the case of an expenditure which is a contribution to a committee, in addition to the information required in paragraphs (1) to (4) above, the date of the contribution, the cumulative amount of contributions made to the committee; the number or letter of the measure; and the jurisdiction in which the measure is voted upon.

Liability of Committee Treasurers

Under Section 81004, subdivision (b), Section 84100, and Regulation 18427, subdivision (c), it is the duty of a committee's treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. A committee's treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee. (Sections 83116.5 and 91006.)

SUMMARY OF THE FACTS

Respondent United Food and Commercial Workers Active Ballot Club Yes on Prop. 30, No on Prop. 32 Committee ("Respondent Committee") was formed on September 18, 2012, as a primarily formed committee to support Proposition 30 and oppose Proposition 32 in the 2012 General Election. The Committee was sponsored by the United Food and Commercial Workers Union. The treasurer for the Committee was Anthony Perrone.

This matter arose from an audit performed by the Franchise Tax Board ("FTB") for the period of January 1, 2012 through December 28, 2012.

The FTB audit report found, and the Enforcement Division confirmed, that Respondents failed to file a second pre-election campaign statement, for the period from October 1 through October 20, 2012. During this period, the Committee should have disclosed \$202,441 in receipts, and \$0 in expenditures. Respondents made a Late Contribution of \$50,000 to the Ballot Initiative Strategy Center on October 22, 2012. A Late Contribution Report was filed after the election, on December 17, 2012. In addition, Respondents failed to timely report contributions and expenditures on a second pre-election campaign statement.

COUNT 1

Failure to File a Second Pre-Election Campaign Statement

In connection with an election held on November 6, 2012, Respondents has a duty to file the second pre-election campaign statement covering October 1, 2012 through October 20, 2012, by the October 25, 2012, due date. No pre-election statement was filed prior to the election.

By failing to timely file a second pre-election statement; Respondents violated Sections 84200.5, subdivision (b), and 84200.7, subdivision (b) of the Government Code.

COUNT 2

Failure to Timely File a Late Contribution Report

In connection with an election held on November 6, 2012, Respondents were also required to file late contribution reports within 24 hours of receiving or making contributions of \$1,000 or more during the late reporting period, October 21, 2012 through November 5, 2012. Respondents failed to timely file one late contribution report for that election for a contribution made of \$1,000 or more. In this case, Respondents made a late contribution of \$50,000 to the Ballot Initiative Strategy Center on October 22, 2012.

By failing to disclose the late contributions in properly filed late contribution report, Respondents violated Section 84203, subdivision (a).

COUNT 3

Failure to Timely Report Contributions and Expenditures

Respondents had a duty to timely report the total amount of contributions received during the period covered by the campaign statement. Respondents United Food and Commercial Workers Active Ballot Club Yes on Prop. 30, No on Prop. 32 Committee, and Anthony Perrone, failed to timely file report the receipt of contributions totaling \$600,000, and expenditures consisting of a \$500,000 contribution to the No on 32 Stop Corp. Special Exemptions from Campaign Finance Rules Committee, and \$100,000 to the Californians to Protect Schools Universities and Public Safety Committee, on a first pre-election campaign statement for the reporting period January 1, 2012 through September 30, 2012, by the October 5, 2012 due date.

An amendment was filed to disclose these contributions and expenditures after the election, on December 31, 2012. This represents a failure to timely disclose 62.2% of the Committee's total receipts. The contributions were unitemized member contributions to the United Food and Commercial Workers union.

By failing to disclose contributions and expenditures on a first pre-election campaign statement, Respondents violated Section 84211, subdivisions (a), (b), (d), (i), and (k), of the Government Code.

CONCLUSION

This matter consists of three counts, which carries a maximum possible administrative penalty of Five Thousand Dollars (\$5,000) per count, for a total of Fifteen Thousand Dollars (\$15,000).

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. The Enforcement Division also considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6), which include: 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 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 amendment to provide full disclosure. Additionally, liability under the Act is governed in significant part by the provisions of Section 91001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

A recent stipulation involving failure to file pre-election campaign statements settled two counts with similar underlying fact patterns for \$2,000 per count.

In the Matter of Sacramento County Democratic Central Committee and William Guy Crouch, FPPC No. 09/740. Respondents failed to timely file two pre-election campaign statements, disclosing contributions totaling approximately \$11,550. The Commission approved settlement of this case in August 12, 2010, and the agreed upon penalty for each of these violations was \$2,000 per count.

The typical administrative penalty for failing to timely file a late contribution reports has been in the middle of the penalty range, depending on the circumstances.

Another similar case regarding a failure to file a late contribution report for a contribution received that has been recently approved by the Commission includes:

In the Matter of the Monterey County Republican Central Committee and Chris Steinbruner, FPPC No. 08/761. In this matter, Respondents Monterey County Republican Central Committee and Chris Steinbruner failed to timely file late contribution reports disclosing a contribution received in the amount of \$20,000. A \$2,000 penalty for this count was approved by the Commission on October 13, 2011.

The typical administrative penalty for failing to timely report expenditures has been in the middle of the penalty range, depending on the circumstances.

Another similar case regarding a failure to report contributions and expenditures that has been recently approved by the Commission includes:

In the Matter of Black Women Organized for Political Action State PAC, and Beryl Crumpton Potter, Treasurer, FPPC No. 10/957. In this matter, Respondents failed to disclose approximately \$13,409 in contributions received and approximately \$12,801 in expenditures made by the committee on two consecutive semi-annual campaign statements. A \$2,500 penalty for this count was approved by the Commission on December 8, 2011.

The public harm inherent in these types of violations, where pertinent information is not disclosed by the committee, is that the public is deprived of a means to discover the identity of contributors, the amounts contributed, and the nature of the committee's campaign expenses. In this case, Respondents failed to timely file required campaign reports, which were due before the election, and to disclose contributions and expenditures. In mitigation, the recipients of the three contributions discussed above all properly reported the receipt of those contributions prior to the election. Respondents' violations of the Act were deliberate at worst and negligent at best. Respondents have no prior enforcement history.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the Respondent's pattern of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Two Thousand Dollars (\$2,000) per count for Counts One and Two, and a penalty of Two Thousand Five Hundred Dollars (\$2,500) for Count Three, for a total of Six Thousand Five Hundred Dollars (\$6,500) is recommended.