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

10  
11 In the Matter of:

12 JAMES GORE, JAMES GORE FOR  
SUPERVISOR 2014, and REBECCA  
13 OLSON,

14 Respondents.

FPPC Case No. 14/609

STIPULATION, DECISION AND ORDER

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16 **STIPULATION**

17 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
18 Respondents James Gore, James Gore for Supervisor 2014, and Rebecca Olson hereby agree that this  
19 Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next  
20 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 and 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 one  
4 violation 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 \$2,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General  
9 Fund of the State of California—is/are submitted with this Stipulation as full payment of the  
10 administrative penalty described above, and same shall be held by the State of California until the  
11 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the  
12 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen business  
13 days after the Commission meeting at which the Stipulation is rejected, all payments tendered by  
14 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: \_\_\_\_\_

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James Gore, individually and on behalf of James Gore  
for Supervisor 2014, Respondents

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13 Dated: \_\_\_\_\_

\_\_\_\_\_  
Rebecca Olson, Respondent

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16 **DECISION AND ORDER**

17 The foregoing Stipulation of the parties “In the Matter of James Gore, James Gore for Supervisor  
18 2014, and Rebecca Olson,” FPPC Case No. 14/609, including all attached exhibits, is hereby accepted as  
19 the final decision and order of the Fair Political Practices Commission, effective upon execution below  
20 by the Chair.

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22 IT IS SO ORDERED.

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24 Dated: \_\_\_\_\_

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Joann Remke, Chair  
Fair Political Practices Commission

## **EXHIBIT 1**

### **INTRODUCTION**

In 2014, James Gore was a successful candidate for Sonoma County Supervisor. His candidate controlled committee was James Gore for Supervisor 2014, and the committee treasurer was Rebecca Olson.

This case involves violation of the Political Reform Act (the “Act”)<sup>1</sup> for failure to timely report accrued expenses.

### **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 described above (2013-2014).

#### **Required Reporting of Expenditures, Including Accrued Expenses**

An “expenditure” is 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.<sup>2</sup> An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.<sup>3</sup> An accrued expense is when the second of these occurs and goods or services are received but payment has not been made.

Campaign statements are required to disclose certain information about campaign expenditures, including the following:<sup>4</sup>

- ❖ the total amount of expenditures made during the period and the total cumulative amount of expenditures made;
- ❖ the total amount of expenditures made during the period to persons who received \$100 or more—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; and
  - a brief description of the consideration for which each expenditure was made.

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<sup>1</sup> 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.

<sup>2</sup> Section 82025.

<sup>3</sup> *Ibid.*

<sup>4</sup> Sections 84211, subdivisions (b), (i), and (k).

Additionally, accrued expenses (excluding loans) that remain outstanding must be reported on each campaign statement until they are extinguished.<sup>5</sup> Such accrued expenses must be reported as of the date on which the goods or services first are received.<sup>6</sup>

#### 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.<sup>7</sup> A treasurer may be held jointly and severally liable, along with the committee, for violations committed by the committee.<sup>8</sup>

### **SUMMARY OF THE FACTS**

In 2014, James Gore was a successful candidate for Sonoma County Supervisor. His candidate controlled committee was James Gore for Supervisor 2014, and the committee treasurer was Rebecca Olson.

The primary election was held on June 3, 2014. Gore finished second with approximately 34.9% of the vote, and Deb Fudge finished first with approximately 36.8%.

The runoff election was held on November 4, 2014. Gore won with approximately 58.3% of the vote, and Fudge lost with approximately 41.2%.

Prior to the election, in approximately December 2013, Gore entered into a campaign consulting agreement with Robert Muelrath, President of Muelrath Public Affairs, Inc.

The services to be provided under the contract included advertising, printing, phone banking, and polling. Muelrath's costs in connection with providing these services were to be reimbursed by Gore's committee. In addition to these reimbursements, the contract called for Muelrath to receive three separate fees in the amounts of \$15,000 each.

Although the contract called for the first fee to be invoiced on June 4, 2014, the day after the primary election, this fee became an accrued expense (an unpaid bill) before the primary election when Gore began receiving services under the contract. As such, this fee was required to be reported on pre-election filings by Gore, his committee, and his treasurer. However, this fee was not reported until after the primary on a campaign statement for the period ending June 30, 2014.

The contract provided that the second fee was contingent upon Gore finishing in first or second place in the primary election—but the contract called for the fee not to be invoiced until November 5, 2014, the day after the runoff election. Since this fee was contingent upon success in the primary election, the fee became an unpaid bill when Gore succeeded in the primary

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<sup>5</sup> Regulation 18421.6, subdivision (a).

<sup>6</sup> Regulation 18421.6, subdivision (b).

<sup>7</sup> Sections 81004, 84100, and Regulation 18427.

<sup>8</sup> Sections 83116.5 and 91006.

election. For this reason, the fee was required to be reported by Gore, his committee, and his treasurer as an accrued expense on the campaign statement for the period ending June 30, 2014. However, the fee was not reported until after the runoff election on a campaign statement for the period ending December 31, 2014.

The third fee was contingent upon Gore winning the runoff election. This fee properly was reported on a campaign statement for the period ending December 31, 2014.

For settlement purposes, the violations in this case are charged as a single count as follows:

## **VIOLATIONS**

### Count 1: Failure to Timely Report Accrued Expenses

As described above, James Gore, James Gore for Supervisor 2014, and Rebecca Olson failed to timely report the first consultant fee to Muelrath (in the amount of \$15,000) as an accrued expense on the campaign statements filed during the reporting periods leading up to the 2014 primary election. Also, they failed to timely report the second consultant fee to Muelrath (in the amount of \$15,000) as an accrued expense on the campaign statement filed for the reporting period ending June 30, 2014. In this way, James Gore, James Gore for Supervisor 2014, and Rebecca Olson violated Section 84211, subdivisions (b), (i), and (k), and Regulation 18421.6.

## **PROPOSED PENALTY**

This matter consists of one count, and the maximum penalty that may be imposed is \$5,000.<sup>9</sup>

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.<sup>10</sup> 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 it was supposed to have prior to an election.

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<sup>9</sup> See Section 83116, subdivision (c).

<sup>10</sup> Regulation 18361.5, subdivision (d).

Regarding Count 1 (failure to timely report accrued expenses), the Commission recently approved a settlement imposing a penalty in the mid-range for this type of violation. See *In the Matter of Green Technology Leadership Group PAC, No on Prop 23, and Rita Copeland, Treasurer*, FPPC Case No. 14/258 (approved Jan. 15, 2015), where a penalty in the amount of \$2,500 was imposed against a state general purpose committee primarily formed to oppose Proposition 23 in the November 2, 2010 election for failure to timely report accrued expenses totaling approximately \$33,820, which were required to be reported prior to the election. The accrued expenses comprised approximately 21% of the committee's expenditures for the year.

In the current case, a reduced penalty of \$2,000 for Count 1 is warranted. As in the comparable case discussed above, the current case involves accrued expenses that should have been—but were not—disclosed to the public prior to election day (prior to the primary election in the case of the first consultant fee, and prior to the runoff election in the case of the second consultant fee). However, the amount in question for Count 1 (\$30,000) comprised only approximately 5.1% of the Gore committee's reported expenditures for 2014—as opposed to 21% in the comparable case discussed above. Also, there is precedent for collapsing multiple reporting periods into a single count as *In the Matter of Zack Scrivner, Scrivner for Supervisor 2010, and Shawn Kelly*, FPPC Case No. 10/1099 (approved Dec. 13, 2012), where a penalty in the amount of \$2,500 was imposed against a successful county supervisor candidate for failure to timely report accrued expenses totaling approximately \$99,685 on four campaign statements for reporting periods spanning January 1 through September 30, 2010. (Of these accrued expenses totaling \$99,685 that were reported late, roughly \$28,509 should have been—but were not—reported prior to election day.)

A higher penalty is not being sought in the current case because Gore, his committee, and his treasurer cooperated with the Enforcement Division by agreeing to an early settlement and filing required corrective amendments. Also, they do not have a history of prior violations of the Act regarding campaign disclosure. Additionally, Gore contends that he believed the fees were not payable unless he succeeded in the primary election (in the case of the first consultant fee) and the runoff election (in the case of the second consultant fee).

## CONCLUSION

For the foregoing reasons, an agreed upon penalty of \$2,000 is recommended.