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

10 In the Matter of) FPPC No. 14/1253
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ANNIE CAMPBELL WASHINGTON,) STIPULATION, DECISION AND ORDER
ANNIE CAMPBELL WASHINGTON)
FOR OAKLAND CITY COUNCIL 2014,)
and JESSICA LEAVITT, TREASURER,)
Respondents.)

STIPULATION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and respondents, Annie Campbell Washington, Annie Campbell Washington for Oakland City Council 2014, and Jessica Leavitt, agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission (Commission) at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of Annie Campbell Washington, Annie Campbell Washington for Oakland City Council 2014, and Jessica Leavitt.

Annie Campbell Washington, Annie Campbell Washington for Oakland City Council 2014, and Jessica Leavitt understand, and hereby knowingly and voluntarily waive, any and all procedural rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of

1 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to, the right to
2 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
3 its own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena
4 witnesses to testify at the hearing, to have an impartial administrative law judge preside over the
5 hearing as a hearing officer, and to have the matter judicially reviewed.

6 It is further stipulated and agreed that: Annie Campbell Washington and Annie Campbell
7 Washington for Oakland City Council 2014 violated the Political Reform Act by authorizing and
8 paying for 358 and 656 telephone calls that were similar in nature, made by an individual, or
9 individuals, or by electronic means, that advocated support of a candidate, and did not, during the
10 course of each call, disclose the name of the organization that authorized or paid for the call, in
11 violation of Government Code section 84310, subdivision (a) (1 count); and Annie Campbell
12 Washington, Annie Campbell Washington for Oakland City Council 2014, and Jessica Leavitt violated
13 the Political Reform Act by failing to report five expenditures made during the July 1 through
14 September 30, 2014, reporting period and four expenditures made during the October 1 through
15 October 18, 2014, reporting period to the Oakland City Clerk by October 6 and October 23, 2014,
16 respectively, in violation of Government Code section 84211, subdivision (k) (1 count). Each count is
17 described in Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth
18 herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

19 Annie Campbell Washington, Annie Campbell Washington for Oakland City Council 2014, and
20 Jessica Leavitt agree to the issuance of the Decision and Order, which is attached hereto. Annie
21 Campbell Washington, Annie Campbell Washington for Oakland City Council 2014, and Jessica
22 Leavitt also agree to the Commission imposing: 1) upon Annie Campbell Washington and Annie
23 Campbell Washington for Oakland City Council 2014 an administrative penalty in the amount of
24 \$1,500; and 2) upon Annie Campbell Washington, Annie Campbell Washington for Oakland City
25 Council 2014, and Jessica Leavitt an administrative penalty in the amount of \$2,000.

26 A cashier's check from Annie Campbell Washington, Annie Campbell Washington for Oakland
27 City Council 2014, and Jessica Leavitt in said amount, made payable to the "General Fund of the State
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1 of California,” is submitted with this Stipulation as full payment of the administrative penalty, to be
2 held by the State of California until the Commission issues its decision and order regarding this matter.
3 The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become
4 null and void, and within fifteen business days after the Commission meeting at which the Stipulation
5 is rejected, all payments tendered by Annie Campbell Washington, Annie Campbell Washington for
6 Oakland City Council 2014, and Jessica Leavitt in connection with this Stipulation shall be reimbursed
7 to them. Annie Campbell Washington, Annie Campbell Washington for Oakland City Council 2014,
8 and Jessica Leavitt further stipulate and agree that in the event the Commission rejects the Stipulation,
9 and a full evidentiary hearing before the Commission becomes necessary, neither any member of the
10 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this
11 Stipulation.

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14 Dated: _____
15 Galena West, Chief of Enforcement, on behalf of
16 The Enforcement Division of the Fair Political Practices Commission
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18 Dated: _____
19 Annie Campbell Washington, individually and on behalf of
20 Annie Campbell Washington for Oakland City Council 2014,
21 Respondents

22 Dated: _____
23 Jessica Leavitt, Treasurer, individually and on behalf of
24 Annie Campbell Washington for Oakland City Council 2014,
25 Respondents
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1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Annie Campbell Washington, Annie
3 Campbell Washington for Oakland City Council 2014, and Jessica Leavitt, Treasurer” FPPC No.
4 14/1253, 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.

6 IT IS SO ORDERED.

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8 Dated: _____

9 Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Annie Campbell Washington was a successful candidate for Oakland City Council in the November 4, 2014, election. Respondent Annie Campbell Washington for Oakland City Council 2014 (Committee) is, and was at all relevant times, Washington's controlled committee. Respondent Jessica Leavitt is, and was at all relevant times, the Committee's treasurer. According to the Committee's campaign statements, the Committee received \$104,021.62 in contributions and made \$119,158.21 in expenditures in 2014. The Committee authorized and paid for 358 and 656 robocalls that did not disclose to each recipient that the Committee paid for and authorized the call, in violation of the Political Reform Act (Act).¹ Additionally, the Committee failed to timely report expenditures it made between July 1 and October 18, 2014, in violation of the Act.

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 violation.

Identification Requirements for Telephone Calls that are Similar in Nature and Aggregate 500 or More in Number

A candidate or committee may not expend campaign funds, directly or indirectly, to pay for telephone calls that are similar in nature and aggregate 500 or more in number, made by an individual, or individuals, or by electronic means and that advocate support of, or opposition to, a candidate, ballot measure, or both, unless during the course of each call the name of the organization that authorized or paid for the call is disclosed to the recipient of the call.² Each call must state that the call "is paid for" or "authorized" by the candidate or committee that paid for or authorized the call.³ A committee pays for a call whether it pays directly for the call or pays another person to make the call on its behalf.⁴ Telephone calls that are similar in nature and are made electronically are often referred to as robocalls.

Campaign Statements

A committee controlled by a candidate for elective office in the City of Oakland in the November 4, 2014, election was required to file a preelection statement for the July 1 through September 30, 2014, reporting period with the City of Oakland Office of the City Clerk (Oakland City Clerk) by October 6, 2014, and another preelection statement for the October 1 through October 18, 2014, reporting period with the Oakland City Clerk by October 23, 2014.⁵

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations.

² Gov. Code § 84310, subd. (a).

³ Cal. Code Reg., tit. 2 § 18440, subd. (b).

⁴ Cal. Code Reg., tit. 2 § 18440, subd. (c)(1).

⁵ Gov. Code §§ 84200.5, subd. (b), and 84200.7, subd. (b).

A committee must disclose the following on each required campaign statement for each person to whom a committee makes an expenditure of \$100 or more during the reporting period covered by the campaign statement: his or her 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.⁶

Joint and Several Liability

The controlling candidate and treasurer of a committee have a duty 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.⁷ The controlling candidate and treasurer of a committee may be held jointly and severally liable, along with the committee, for any violations committed by the committee concerning the receipt and expenditure of funds, and the reporting of such funds.⁸

SUMMARY OF THE FACTS

On October 6, 2014, the Committee filed a preelection statement with the Oakland City Clerk for the July 1 through September 30, 2014, reporting period that did not disclose four expenditures, totaling \$1,370.18, that the Committee made during the reporting period.

On or about October 7, 2014, 358 telephone calls were made with the following automated message in Spanish:

Hello, my name is Melissa, and I am calling on behalf of Anne Campbell Washington for City Council. Anne will work to improve public safety, schools, job creation, and good governance for Oakland. Annie is the kind of leader Oakland needs. You can find more information at annieforoakland.com, or call (510) 210-5345. Thank you and have a great day.

On October 23, 2014, the Committee filed a preelection statement with the Oakland City Clerk for the October 1 through October 18, 2014, reporting period that did not disclose five expenditures, totaling \$687, that the Committee made during the reporting period.

On or about October 29, 2014, 656 telephone calls were made with the following automated message in Chinese:

Hello, my name is Donna. I would like to introduce to you Anne Campbell Washington, who is running for Oakland City Council. Anne will be focusing on the following issues: public safety, quality of education and jobs/employment. Oakland needs a city councilman (sic) like Anne. To find more information on Anne's campaign you can call (510) 210-5345 or visit her website at

⁶ Gov. Code § 84211, subd. (k).

⁷ Gov. Code §§ 81004, subd. (b), and 84100; Cal. Code Reg., tit. 2 § 18427, subd. (a).

⁸ Gov. Code §§ 83116.5 and 91006.

annieforoakland.com.

On or about December 8, 2014, the Committee paid \$5.73 for the aforementioned calls made on October 27, 2014, and \$10.50 for the aforementioned calls made on October 29, 2014.

On January 13, 2015, after it was informed that it was being investigated by the Fair Political Practices Commission's (Commission) Enforcement Division, the Committee filed with the Oakland City Clerk: an amended preelection statement for the July 1 through September 30, 2014, reporting period that disclosed the four expenditures that it failed to disclose on the preelection statement it filed with the Oakland City Clerk on October 6, 2014; and an amended preelection statement for the October 1 through October 18, 2014, reporting period that disclosed the five expenditures that it failed to disclose on the preelection statement it filed with the Oakland City Clerk on October 23, 2014.

Count 1: Failure to Include Identification in Robocalls

By authorizing and paying for 358 and 656 telephone calls that were similar in nature, made by an individual, or individuals, or by electronic means, that advocated support of a candidate, and did not, during the course of each call, disclose the name of the organization that authorized or paid for the call, the Committee and Washington violated Government Code section 84310, subdivision (a).

Count 2: Failure to Timely Report Expenditures Made

By failing to report five expenditures made during the July 1 through September 30, 2014, reporting period and four expenditures made during the October 1 through October 18, 2014, reporting period to the Oakland City Clerk by October 6 and October 23, 2014, respectively, the Committee, Washington, and Leavitt violated Government Code section 84211, subdivision (k).

CONCLUSION

This matter consists of two counts of violating the Act, which carries a maximum administrative penalty of \$10,000.

In determining the appropriate penalty for a particular violation of the Act, the Commission 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 Commission considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d): 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether, upon learning of the violation, the violator voluntarily provided amendments to provide full disclosure.

Count 1: Failure to Include Identification in Robocalls (Washington and the Committee only)

On September 22, 2011, the Commission imposed a \$1,500 penalty on a committee for paying for and authorizing 1,000 robocalls that did not disclose the name of the committee to the recipient of each telephone call. (*In the Matter of Neighbors Opposing Tebbs, Eason, & Hailey For Fire Board 2010, and Thomas J. Francl, Treasurer*, FPPC No. 10/1090.)

In this matter, the violation is aggravated by the following facts: two sets of robocalls, totaling 1,014 calls, were made without proper disclosure; and the calls were made within a week of the pertinent election. However, Washington and the Committee fully cooperated with the Enforcement Division's investigation into this matter and have no prior history of violating the Act; and there is no evidence that the violation was intentional or that it was meant to deceive the voting public. Therefore it is recommended that a \$1,500 penalty is imposed on Washington and the Committee for Count 1.

Count 2: Failure to Timely Report Expenditures Made (Washington, the Committee, and Leavitt)

On July 14, 2014, the Commission imposed a \$2,000 penalty on a successful candidate for city council and her controlled committee for failing to timely report an expenditure that represented less than 3% of the committee's expenditures during the calendar year. (*In the Matter of Amy Bublak, Amy Bublak for City Council, and Milton Richards*, FPPC No. 08/0814.)

On April 17, 2014, the Commission imposed a \$2,500 penalty on a successful candidate for mayor and her controlled committee for failing to timely report five expenditures that represented approximately 51% of the committee's total expenditures made during the calendar year. (*In the Matter of Kathleen DeRosa and Committee to Elect Kathleen DeRosa for Mayor*, FPPC No. 12/867.)

In this matter, the Committee failed to timely report expenditures that represented approximately 2% of the total amount of expenditures that the Committee reported making during 2014. The violation is aggravated by the following facts: all nine of the expenditures should have been reported prior to the pertinent election but were not disclosed until after the pertinent election; five of the expenditures were for advertisements; and two of the expenditures were for robocalls. The violation is mitigated by the following facts: Washington, the Committee, and Leavitt fully cooperated with the Enforcement Division's investigation into this matter, have no prior history of violating the Act, and, upon learning of the violation, voluntarily provided amendments to provide full disclosure; there is no evidence that the violation was intentional or that it was meant to deceive the voting public; and the expenditures represent only 2% of the Committee's total expenditures reported for 2014. Therefore it is recommended that a \$2,000 penalty is imposed on Washington, the Committee, and Leavitt for Count 2.

PROPOSED PENALTY

After considering the factors listed in Regulation §18361.5, prior similar cases, and other relevant factors, it is recommended that a \$1,500 penalty is imposed on Washington and the Committee and a \$2,000 penalty is imposed on Washington, the Committee, and Leavitt.

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