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8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**
10

11 In the Matter of) FPPC Case No. 16/082
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14) **STIPULATION, DECISION AND ORDER**
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Respondents.

INTRODUCTION

Respondent San Joaquin County Democratic Central Committee (“Committee”) is a state general purpose political party committee which serves as its county’s Democratic central committee. From November 1, 2011 through March 2, 2013, Respondent Dyane Burgos served as treasurer for the Committee.

The Franchise Tax Board (“FTB”) performed an audit of the Committee for the period from January 1, 2011 through December 31, 2012. During that period, the Committee reported receiving contributions totaling \$207,469 and making expenditures totaling \$202,357.

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1 The Political Reform Act (“Act”),¹ requires a political party committee to timely file campaign
2 statements and reports. The Committee and Burgos violated the Act by failing to timely file three
3 preelection campaign statements and two late contribution reports.

4 **SUMMARY OF THE LAW**

5 All legal references and discussions of the law refer to the Act’s provisions as they existed in
6 2012 and 2013.

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

8 When enacting the Political Reform Act, the people of the state of California found and declared
9 that previous laws regulating political practices suffered from inadequate enforcement by state and local
10 authorities.² To that end, the Act must be liberally construed to achieve its purposes.³

11 There are many purposes of the Act. One purpose is to ensure that receipts and expenditures in
12 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
13 practices are inhibited.⁴ Another is to provide adequate enforcement mechanisms so that the Act will be
14 “vigorously enforced.”⁵

15 Duty to File Preelection Campaign Statements

16 Under the Act’s campaign reporting system, political party committees must file periodic
17 campaign statements and reports.⁶ For regular and special elections 2012 and 2013, a political party
18 committee was required to file preelection statements if it received contributions totaling \$1,000 or more
19 or made contributions or independent expenditures totaling \$500 or more during the reporting
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24 ¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references
25 are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of Title
26 2 of the California Code of Regulations, and all regulatory references are to this source.

27 ² § 81001, subd. (h).

28 ³ § 81003.

⁴ § 81002, subd. (a).

⁵ § 81002, subd. (f).

⁶ See § 84200, et seq.

1 period.⁷ In 2012, the preelection reporting periods⁸ for the general election were as follows:

Type of Report	Reporting Period	Statement Due Date	Date of Election
Preelection statement	7/1/2012 to 9/30/2012	10/5/2012	11/6/2012
Preelection statement	10/1/2012 to 10/20/2012	10/25/2012	11/6/2012

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5 In 2013, one of the preelection reporting periods⁹ for the special general election in Senate District 4 was
6 as follows:

Type of Report	Reporting Period	Statement Due Date	Date of Special Election
Preelection statement	10/21/2012 to 11/24/2012	11/29/2012	1/8/2013

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8
9 Duty to File Late Contribution Reports

10 In 2012, when a political party committee made or received a late contribution, the committee
11 was required to disclose the contribution in a late contribution report filed within 24 hours of making or
12 receiving the contribution.¹⁰ A late contribution was a contribution that totaled in the aggregate \$1,000
13 or more and was made to or received by a political party committee before the date of any state election
14 but after the closing date of the last campaign statement required to be filed before the election, which
15 was during the last 16 days before the election.¹¹ For the November 6, 2012 general election, the late
16 contribution reporting period was October 21 through November 5, 2012.

17 Liability of Committee Treasurers

18 Every committee must have a treasurer.¹² It is the duty of a committee's treasurer to ensure that
19 the committee complies with all of the requirements of the Act concerning the receipt and expenditure
20 of funds and the reporting of such funds.¹³ A committee's treasurer may be held jointly and severally
21 liable with the committee for any reporting violations.¹⁴

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24 ⁷ §§ 82022, 84200.5, subd. (h) and 85205 [2012 and 2013].

25 ⁸ § 84200.7, subd. (b) [2012].

26 ⁹ § 84200.8, subd. (a) [2012].

27 ¹⁰ §§ 84203, subd. (b), and 84215 [2012].

28 ¹¹ §§ 82036, subd. (b), and 85205 [2012].

¹² § 84100.

¹³ § 84104 and Reg. 18427, subd. (a).

¹⁴ §§ 83116.5 and 91006.

SUMMARY OF THE FACTS

FTB’s audit found, and the Enforcement Division confirmed, that the Committee and its treasurers substantially complied with the Act’s campaign reporting requirements. But the Committee and Burgos failed to timely file three preelection campaign statements and two late contribution reports. The chart below details the late-filed preelection statements:

State Election	Preelection Reporting Period	Date Due	Date Filed	Days Late	Reported Contributions	Reported Expenditures
State General Election 11/6/2012	7/1/2012 – 9/30/2012	10/5/2012	10/23/2012 (electronic)	18	\$107,510	\$3,898
			10/15/2013 (paper)	375		
State General Election 11/6/2012	10/1/2012 – 10/20/2012	10/25/2012	10/15/2013	355	\$10,800	\$101,325
Special General Election State Senate District 4 1/8/2013	10/21/2012 – 11/24/2012	11/29/2012	3/4/2016	1,191	\$58,000	\$72,889
TOTAL					\$176,310	\$178,112

Of note, the Committee filed its preelection statement due October 5, 2012 in electronic format before the relevant election. In 2016, the Committee filed the preelection statement which was due November 29, 2012, at the request of the Enforcement Division.

FTB noted in its audit report that the Committee’s semi-annual campaign statements filed after the relevant elections disclosed the activity for two of the preelection reporting periods: October 1 to October 20, 2012; and October 21 to November 24, 2012.

The Committee and Burgos received two late contributions totaling \$33,000, which they failed to report in late contribution reports within 24-hours of receipt: \$8,000 from Service Employees International Union Local 1021 Candidate PAC Small Contributor Committee (“SEIU”) on October 24, 2012; and \$25,000 on November 3, 2012 from the Operating Engineers Local No. 3 Statewide PAC (“OE3”). SEIU and OE3 disclosed these two late contributions in late contribution reports filed before the November 6, 2012 election.

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1 **VIOLATIONS**

2 Count 1: Late Filing of Preelection Campaign Statement

3 The Committee and Burgos failed to timely file a preelection campaign statement related to the
4 2012 general election by the due date of October 5, 2012, violating Government Code sections 84200.5,
5 subdivision (h), and 84200.7, subdivision (b)(1).

6 Count 2: Late Filing of Preelection Campaign Statement

7 The Committee and Burgos failed to timely file a preelection campaign statement related to the
8 2012 general election by the due date of October 25, 2012, violating Government Code sections 84200.5,
9 subdivision (h), and 84200.7, subdivision (b)(2).

10 Count 3: Late Filing of Preelection Campaign Statement

11 The Committee and Burgos failed to timely file a preelection campaign statement related to the
12 2013 State Senate District 4 special general election by the due date of November 29, 2012, violating
13 Government Code sections 84200.5, subdivision (h), and 84200.8, subdivision (a).

14 Count 4: Failure to Timely File Late Contribution Reports

15 The Committee and Burgos failed to file late contribution reports for an \$8,000 late contribution
16 received October 24, 2012 and a \$25,000 late contribution received November 3, 2012, violating
17 Government Code section 84203, subdivisions (a) and (b).

18 **PROPOSED PENALTY**

19 This matter consists of four counts of violating the Act, which carries a maximum administrative
20 penalty of \$5,000 per count, totaling \$20,000.¹⁵

21 In determining the appropriate penalty for a particular violation of the Act, the Commission
22 considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis
23 on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and
24 circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d):
25 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3)
26 whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated

27 ¹⁵ § 83116, subd. (c).

1 good faith in consulting with Commission staff; 5) whether there was a pattern of violations and whether
2 the violator has a prior record of violations of the Act or similar laws; and 6) whether, upon learning of
3 the violation, the violator voluntarily provided amendments to provide full disclosure.¹⁶

4 The Commission also considers penalties in prior cases involving similar violations. Recent cases
5 with similar violations include:

6 Counts 1 – 3: Late Filing of Preelection Campaign Statements

7 *In the Matter of California Society of Enrolled Agents Political Action Committee, Cap*
8 *Porterfield, and Don Stacy*, FPPC No. 14/1361. (Commission approved a stipulated decision on March
9 17, 2016.) The respondent committee, a state general purpose committee and its treasurers, failed to
10 timely file two preelection statements prior to the June and November 2012 elections. The committee
11 reported contributions it received on semi-annual campaign statements filed after the relevant elections.
12 Because of the limited activity in both preelection reporting periods, the Commission imposed a penalty
13 of \$2,500 for one combined count.

14 *In the Matter of Apartment Association of Los Angeles PAC and Trevor Grimm*, FPPC No.
15 14/1359. (Commission approved a stipulated decision on October 15, 2015.) The respondent committee,
16 a general purpose committee, and its treasurer, failed to file two preelection campaign statements in
17 connection with a June 5, 2012 primary election. The committee received \$23,884 in contributions and
18 made expenditures of \$52,316 during the two statement periods. Because the amount of activity during
19 each period was significant, and the committee did not disclose the activity until after the election, these
20 violations were charged separately. The Commission imposed a total penalty of \$2,000 per count for
21 these two violations, totaling \$4,000.

22 Count 4: Failure to Timely Report Late Contributions

23 *In the Matter of No on Government Waste, No on Measure B, et. al*, FPPC No. 15/1133.
24 (Commission approved a stipulated decision on December 17, 2015.) The respondent, a major donor
25 sponsoring a ballot measure committee, failed to report late contributions it made to the ballot measure
26 committee on three late contribution reports. The Commission imposed a penalty of \$2,500 the donor's

27 ¹⁶ Reg. 18361.5, subd. (d).

1 failure to timely file two of the reports, which would have disclosed numerous late contributions totaling
2 \$32,586, and no disclosure was made by either the respondent or the recipient before the election. But
3 the Commission imposed a penalty of \$2,000 for the respondent's failure to timely file a third late
4 contribution report disclosing \$22,000 when the recipient filed a late contribution report after receiving
5 the \$22,000.

6 A central purpose of the Act is to ensure receipts and expenditures in election campaigns are fully
7 and truthfully disclosed.¹⁷ In this case, the Committee and its treasurers failed to timely disclose
8 contributions and expenditures before the relevant elections when they failed to timely file five
9 preelection campaign statements and two late contribution reports. Except for the electronically filed
10 preelection statement due October 5, 2012, the untimely filed preelection statements were filed an
11 average of 640 days late, and all of the late-filed preelection statements constituted 85% of the
12 Committee's contributions and 88% of the Committee's expenditures during the audit period.

13 The activity untimely disclosed – \$176,310 in contributions and \$178,112 in expenditures – for
14 the reporting periods identified in Counts 1, 2 and 3 was significantly higher than the activity identified
15 in the *Apartment Association* case. Regarding Count 1, the Committee's preelection statement was filed
16 electronically only 18 days late, disclosing preelection activity in one format before the election for the
17 reporting period July 1, 2012 through September 30, 2012. So a penalty of \$2,000 is warranted for
18 Count 1. But for Counts 2 and 3, the two preelection statements were filed nearly one year late and over
19 three years late, well after the relevant elections. Charging these late-filed preelection campaign
20 statements as separate counts in Counts 2 and 3 for a total penalty per count of \$2,500 is warranted.

21 Regarding Count 4, the Committee and Burgos failed to timely disclose receiving two late
22 contributions totaling \$33,000, but, similarly to one of the counts in the *No on Government Waste* case,
23 the late contributions were disclosed before the election by the contributors, lessening the public harm
24 caused by the Committee's and Burgos' failure to file these late contribution reports. Charging the failure
25 to file these two late contribution reports as one combined count with a total penalty of \$2,000 is
26 warranted.

27 ¹⁷ § 81002, subd. (a).

1 In mitigation, the Committee and Burgos, cooperated with the Enforcement Division's
2 investigation of this case. Burgos was a volunteer treasurer with no professional training and little prior
3 experience with the Act. The Committee and Burgos have no prior enforcement history. The FTB's audit
4 findings showed that the Committee and Burgos otherwise substantially complied with the Act's
5 campaign reporting requirements. Additionally, the campaign activity which occurred during the
6 preelection periods was disclosed on timely filed semi-annual campaign statements filed after the relevant
7 elections.

8 For the foregoing reasons, a penalty of \$2,000 for Counts 1 and 4, and \$2,500 for Counts 2 and 3
9 is recommended, for a total administrative penalty in the amount of \$9,000.

10 CONCLUSION

11 Complainant, the Enforcement Division of the Fair Political Practices Commission, Respondents,
12 San Joaquin County Democratic Central Committee and Dyane Burgos, hereby agree as follows:

13 1. Respondents violated the Act as described in the foregoing pages, which are a true and
14 accurate summary of the facts in this matter.

15 2. This Stipulation will be submitted for consideration by the Fair Political Practices
16 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

17 3. This Stipulation resolves all factual and legal issues raised in this matter—for the purpose
18 of reaching a final disposition without the necessity of holding an administrative hearing to determine
19 the liability of Respondents pursuant to Section 83116.

20 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all
21 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
22 This includes, but is not limited to the right to appear personally at any administrative hearing held in
23 this matter, to be represented by an attorney at Respondents' own expense, to confront and cross-examine
24 all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
25 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
26 reviewed.

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1 5. Respondents agree to the issuance of the decision and order set forth below. Also,
2 Respondents agree to the Commission imposing against it an administrative penalty in the amount of
3 \$9,000. One or more cashier’s checks or money orders totaling said amount—to be paid to the General
4 Fund of the State of California—is/are submitted with this Stipulation as full payment of the
5 administrative penalty described above, and same shall be held by the State of California until the
6 Commission issues its decision and order regarding this matter.

7 6. If the Commission refuses to approve this Stipulation, this Stipulation shall become null
8 and void, and within fifteen business days after the Commission meeting at which the Stipulation is
9 rejected, all payments tendered by Respondents in connection with this Stipulation shall be reimbursed
10 to Respondents. If this Stipulation is not approved by the Commission, and if a full evidentiary hearing
11 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
12 Director, shall be disqualified because of prior consideration of this Stipulation.

13 7. The parties to this agreement may execute their respective signature pages separately. A
14 copy of any party’s executed signature page including a hardcopy of a signature page transmitted via fax
15 or as a PDF email attachment is as effective and binding as the original.

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17 Dated: _____
18 Galena West, Chief, on Behalf of the Enforcement Division
19 Fair Political Practices Commission

20 Dated: _____
21 Gregory Sanborn
22 On behalf of San Joaquin County Democratic Central
23 Committee, Respondent

24 Dated: _____
25 Dyane Burgos, Respondent

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