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

10
11 In the Matter of

FPPC Case No. 17/227

12 HECTOR CHACON and RE-ELECT
13 CHACON FOR SCHOOL BOARD 2013,

STIPULATION, DECISION AND ORDER

14 Respondents.

15
16 **INTRODUCTION**

17 This case arises from a proactive investigation, which was commenced by the Enforcement
18 Division based upon information that was obtained in a separate case (*In the Matter of Art Chacon, Art*
19 *Chacon for Water Board 2014, and Californians for Clean Water* – FPPC Case No. 14/1236).

20 Hector Chacon was a successful candidate for re-election to the Montebello Unified School
21 District Board of Directors in the election that was held November 5, 2013. Re-elect Chacon for School
22 Board 2013 was his candidate controlled committee. (For ease of reference, Hector Chacon is referred to
23 as Chacon—not to be confused with his brother, Art Chacon.)

24 That same year, the Californians for Better Jobs and Education Committee was a general purpose
25 committee that reported making independent expenditures in support of Chacon and other candidates.
26 (For ease of reference, this committee is referred to as the BJE committee.) Paul Fickas was a principal
27 officer of the committee.

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1 This case involves mailers and robocalls in support of Chacon’s re-election, which were paid for
2 by the BJE committee. These mailers and robocalls were coordinated with Chacon, and this coordinated
3 activity was required to be reported as non-monetary contributions from the BJE committee to Chacon on
4 campaign statements and 24-hour reports. However, this activity was improperly reported by the BJE
5 committee as independent expenditures on campaign filings—in violation of the campaign reporting
6 provisions of the Political Reform Act.¹ Also, Chacon and his committee failed to report receipt of these
7 non-monetary contributions on two different 24-hour reports. Additionally, on the last pre-election
8 campaign statement that was filed before the election, Chacon and his committee did report receipt of
9 about 27% of the non-monetary contributions in question, but the remaining amount—roughly 73%—
10 was not reported.

11 This stipulation encompasses violations by Chacon and his committee. Violations by the BJE
12 committee and Fickas are being addressed in a separate case. (As this matter involves 2013 activity, a
13 probable cause report has been issued by the Enforcement Division and served on all parties to toll the
14 statute of limitations.)

15 SUMMARY OF THE LAW

16 The Act and its regulations are amended from time to time. All legal references and discussions
17 of law are intended to be citations to statutes and regulations as they existed in 2013—at the time of the
18 violations in this case.

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

20 When enacting the Political Reform Act, the people of California found and declared that
21 previous laws regulating political practices suffered from inadequate enforcement by state and local
22 authorities.² Thus, it was decreed that the Act “should be liberally construed to accomplish its
23 purposes.”³

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25 ¹ The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections
26 81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission
27 are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references
28 are to this source.

² Section 81001, subdivision (h).

³ Section 81003.

1 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in
2 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
3 practices are inhibited.⁴ Along these lines, the Act includes a comprehensive campaign reporting system.⁵
4 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be
5 “vigorously enforced.”⁶

6 **Distinctions Regarding Independent Expenditures and Contributions**

7 The definition of “independent expenditure” includes an expenditure made by any person in
8 connection with a communication that expressly advocates the election or defeat of a clearly identified
9 candidate, or taken as a whole and in context, unambiguously urges a particular result in an election—
10 where the expenditure is not made to or at the behest of the affected candidate or committee.⁷

11 Generally speaking, a “contribution” includes a payment—except to the extent that full and
12 adequate consideration is received—unless it is clear from the surrounding circumstances that it is not
13 made for political purposes.⁸ When such a payment is made at the behest of a candidate or committee, it
14 is a contribution to the candidate/committee.⁹

15 “Made at the behest of” means made under the control or at the direction of, in cooperation,
16 consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior
17 consent of.¹⁰

18 The most common type of contribution results in the payment of money to a candidate or
19 committee. Such contributions are referred to as “monetary contributions,” but sometimes a contribution
20 of goods or services is made to a candidate or committee—rather than an outright payment to the
21 candidate or committee. Such contributions are referred to as “in-kind” or “non-monetary” contributions.
22 For example, if you pay for mailers and robocalls in support of a candidate at the candidate’s behest, you
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24 ⁴ Section 81002, subdivision (a).

25 ⁵ Sections 84200, et seq.

26 ⁶ Section 81002, subdivision (f).

27 ⁷ Section 82031.

28 ⁸ Section 82015, subdivision (a).

⁹ Section 82015, subdivision (b).

¹⁰ Regulation 18225.7, subdivision (a). Also, see Regulation 18550.1, subdivision (a).

1 are making in-kind/non-monetary contributions to the candidate because your money is not going
2 directly to the candidate, but the candidate is receiving the benefit of your money in the form of mailers
3 and robocalls. The terms “in-kind” and “non-monetary” are interchangeable.¹¹

4 An expenditure is not an independent expenditure—and must be treated as a contribution to the
5 candidate on whose behalf, or for whose benefit, the expenditure is made—if the expenditure is made
6 under any of the following circumstances:¹²

- 7 1. the expenditure is made with the cooperation of, or in consultation with, the candidate on whose
8 behalf, or for whose benefit, the expenditure is made, or any controlled committee or any agent of
9 the candidate;
- 10 2. the expenditure is made in concert with, or at the request or suggestion of, the candidate on whose
11 behalf, or for whose benefit, the expenditure is made, or any controlled committee or any agent of
12 the candidate; or
- 13 3. the expenditure is made under any arrangement, coordination, or direction with respect to the
14 candidate or the candidate’s agent and the person making the expenditure.

15 Along these lines, there is a presumption that an expenditure funding a communication that
16 expressly advocates the nomination, election or defeat of a clearly identified candidate is *not* independent
17 of the candidate when the communication:¹³

- 18 1. is based on information about the candidate’s or committee’s campaign needs or plans
19 provided to the expending person by the candidate or committee; or
- 20 2. is made by or through any agent of the candidate or committee in the course of the agent’s
21 involvement in the current campaign; or
- 22 3. is made by a person who retains the services of another person who provides the candidate
23 with professional services related to campaign or fundraising strategy for that same election;
24 or
- 25 4. replicates, reproduces, republishes or disseminates, in whole or in substantial part, a
26 communication designed, produced, paid for or distributed by the candidate or his committee.

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¹¹ See Section 84203.3 as compared to Regulation 18421.1, subdivision (f).

¹² Section 85500, subdivision (b).

¹³ Regulations 18225.7, subdivision (c); and 18550.1, subdivision (b).

1 For similar reasons, an expenditure funding a communication that expressly advocates the
2 nomination, election or defeat of a clearly identified candidate is *not* independent of the candidate when
3 the communication is created, produced or disseminated:¹⁴

- 4 1. after the candidate or committee has made or participated in making any decision regarding
5 the content, timing, location, mode, intended audience, volume of distribution, or frequency
6 of placement of the communication; or
- 7 2. after discussion between the creator, producer or distributor of a communication, or the
8 person paying for that communication, and the candidate or committee, regarding the content,
9 timing, location, mode, intended audience, volume of distribution or frequency of placement
10 of that communication, the result of which is agreement on any of these topics.

11 **Mandatory Filing of Campaign Statements and Reports**

12 At the core of the Act’s campaign reporting system is the requirement that committees must file
13 campaign statements and reports for certain reporting periods and by certain deadlines.¹⁵

14 For example, each committee that makes or receives a late contribution, must file a Form 497—
15 also known as a 24-Hour Contribution Report (and previously known as a late contribution report)—
16 within 24 hours.¹⁶ A “late contribution” includes a contribution that totals—in the aggregate—\$1,000 or
17 more and is made to or received by a candidate, a controlled committee, or a committee formed or
18 existing primarily to support or oppose a candidate within 90 days before the date of the election.¹⁷

19 In the case of a late contribution that is an in-kind or non-monetary contribution, the normal 24-
20 hour reporting deadline is extended to 48 hours, but only with respect to reporting *receipt* of the
21 contribution; reporting the *making* of such a contribution is subject to the normal 24-hour deadline.¹⁸

22 **Place of Filing**

23 In the case of a committee that is controlled by a school board candidate, campaign statements
24 and reports must be filed with the local filing officer. Usually, this is the county elections official. For
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27 ¹⁴ Regulations 18225.7, subdivision (b); and 18550.1, subdivision (a).

28 ¹⁵ Sections 84200, et seq.

¹⁶ Section 84203, subdivisions (a) and (b).

¹⁷ Section 82036.

¹⁸ Sections 84203, subdivisions (a) and (b); and 84203.3, subdivision (b).

1 example, a candidate for the Montebello Unified School District is required to file with the Los Angeles
2 County Registrar-Recorder/County Clerk.¹⁹

3 **Required Contents of Campaign Statements and Reports**

4 Campaign statements and reports are required to contain truthful and accurate information about
5 receipts and expenditures, including contributions made, contributions received—as well as independent
6 expenditures made.²⁰

7 **Joint and Several Liability of the Candidate and Committee**

8 A candidate may be held jointly and severally liable, along with his committee, for violations of
9 the Act.²¹

10 **SUMMARY OF THE FACTS**

11 Election results from the office of the Los Angeles County Registrar-Recorder/County Clerk
12 reflect that Chacon was a successful candidate for re-election to the Montebello Unified School District
13 Board of Directors in the election that was held November 5, 2013. (Candidates were competing for four
14 seats on the board in the election.) Chacon and his committee were required to file campaign statements
15 and reports with the Los Angeles County Registrar-Recorder/County Clerk.²² In 2013, reported receipts
16 and expenditures for Chacon’s committee were approximately \$64,805 and \$65,406, respectively.

17 That same year, the BJE committee was a general purpose committee that reported making
18 independent expenditures in support of Chacon and other candidates. In 2013, reported receipts and
19 expenditures for the BJE committee were approximately \$58,071 and \$82,958, respectively.

20 In September 2013, Chacon’s 2013 school board committee made a payment in the amount of
21 \$5,000 to PJF Communications. This was pursuant to an arrangement whereby Chacon hired Fickas as a
22 campaign consultant. (Fickas is the Vice President of PJF Communications, and he is a co-founder of the
23 company.) However, after hiring Fickas, Chacon changed plans in order to have the BJE committee send

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27 ¹⁹ See Section 84215, subdivision (c).

²⁰ For example, see Sections 84203, subdivision (a); 84204, subdivision (b); and 84211.

²¹ Sections 83116.5 and 91006.

²² Section 84215, subdivision (c).

1 out a mailer for the Montebello school board, which supported not only Chacon, but three other
2 candidates as well.

3 In 2013, the BJE committee’s reported independent expenditures were made in cooperation and
4 consultation with Chacon. Also, Chacon handled fundraising for the BJE committee. All spending by the
5 BJE committee in support of Chacon was coordinated with Chacon and carried out at his behest—such
6 that the spending amounted to non-monetary contributions from the BJE committee to the Chacon
7 committee.²³ However, Chacon did not report in this manner, as described in more detail below.

8 **Count 1:**

9 *Montebello Mailers of 10/3/13 and 10/8/13*

10 *Chacon’s Non-filing of Form 497’s re: Non-monetary Contributions from BJE*

11 On or about October 3, 2013, the BJE committee sent a mass mailer that supported Hector
12 Chacon, Gerri Guzman, Ben Cardenas, and Paul Montoya for Montebello Unified School District. The
13 cost of the mailer that was attributable to each candidate—after dividing by four—was approximately
14 \$1,454.

15 The amount attributable to Chacon was a late non-monetary contribution. Within 48 hours of this
16 activity, Chacon’s 2013 school board committee was required to report receipt of a non-monetary
17 contribution from the BJE committee in the approximate amount of \$1,454 by filing a Form 497 with the
18 Los Angeles County Registrar-Recorder/County Clerk. However, that report was not filed.

19 On or about October 8, 2013, the BJE committee sent another mailer in support of Hector
20 Chacon, Gerri Guzman, Ben Cardenas, and Paul Montoya for Montebello Unified School District. Also,
21 on or about this same date, the BJE committee paid for robocalls in support of each candidate. The cost
22 of the mailer and robocalls that was attributable to each candidate—after dividing by four—was
23 approximately \$1,264 (of this amount, approximately \$234 was for the robocalls).

24 The amount attributable to Chacon was a late non-monetary contribution. Within 48 hours of this
25 activity, Chacon’s 2013 school board committee was required to report receipt of a non-monetary

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28 ²³ See Sections 82015, subdivision (b); 85500; Regulations 18225.7; and 18550.1.

1 contribution from the BJE committee in the approximate amount of \$1,264 by filing a Form 497 with the
2 Los Angeles County Registrar-Recorder/County Clerk. However, that report was not filed.

3 In this way, Chacon and his committee violated Sections 84203, subdivisions (a) and (b); and
4 84203.3, subdivision (b).

5 **Count 2:**

6 *Montebello Mailers of 10/3/13 and 10/8/13*

7 *Chacon's Non-reporting on Pre-election Statement for Period Ending October 19, 2013*

8 On or about October 25, 2013, the Chacon committee filed a pre-election campaign statement for
9 the period ending October 19, 2013. This filing disclosed a non-monetary contribution from the BJE
10 committee in the approximate amount of \$742 for "Mailer & Postage," which was reported as received
11 by the Chacon committee on October 1, 2013. However, this filing did not disclose the foregoing non-
12 monetary contributions of October 3rd and 8th, 2013, in the approximate amounts of \$1,454 and \$1,264,
13 respectively. In this way, Chacon and his committee violated Section 84211, subdivisions (a), (c), and (f).

14 **PROPOSED PENALTY**

15 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per
16 count.²⁴

17 In determining the appropriate penalty for a particular violation of the Act, the Commission
18 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
19 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
20 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
21 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
22 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
23 record of violations.²⁵ Additionally, the Commission considers penalties in prior cases with comparable
24 violations.

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²⁴ Section 83116, subdivision (c).

28 ²⁵ Regulation 18361.5, subdivision (d).

1 The public harm inherent in campaign reporting violations is that the public is deprived of
2 important, time-sensitive information regarding political contributions and expenditures. The
3 Commission has found disclosure to be essential, especially before an election. In this case, the
4 Enforcement Division found evidence of negligence—at the least—with respect to Counts 1 and 2, and
5 based on the evidence, cannot rule out (nor conclusively prove) intentional concealment or deception.
6 Chacon maintains that his violations were not deliberate.

7 Recently, the Commission considered another stipulation involving non-monetary contributions
8 that improperly were treated/reported as independent expenditures. *In the Matter of Patrick J. Furey, Pat*
9 *Furey for Mayor 2014, Torrance Voters PAC to Support Pat Furey for Mayor 2014, Richard Roesch,*
10 *and Tina McKinnor*; FPPC Case No. 14/1118 (approved Mar. 17, 2016), the Commission imposed a
11 penalty in the amount of \$4,500 per count against a candidate and his committee for three counts
12 involving the same type of scheme and statutory violations as Counts 1 and 2 of the current case. Both
13 cases involve candidates who failed to report receipt of non-monetary contributions that improperly were
14 reported by the contributing committees as independent expenditures. Also, both cases involve
15 sophisticated candidates—who had ample reason to be familiar with the Act. (Furey was an attorney who
16 had served as city councilman for several years before running for mayor. Chacon is a professional
17 campaign consultant with approximately 20 years of experience serving on the Montebello Unified
18 School District Board of Directors. Neither candidate has/had a history of prior, similar violations of the
19 Act.)

20 Despite the similarities between these cases, a lower penalty is warranted in the current case
21 because *Furey* involved more egregious facts, which included a scheme to circumvent local contribution
22 limits—something not present in the current case. Also, *Furey* involved almost 13 times the spending as
23 the current case. (In *Furey*, the non-monetary contributions in question totaled approximately \$35,174—
24 roughly 37% of the candidate’s year-to-date reported receipts, as of the end of the post-election reporting
25 period. The current case involves approximately \$2,718, which is about four percent of Chacon’s
26 reported receipts for 2013.) Additionally, in the current case, despite the fact that the BJE committee
27 improperly reported its spending in support of Chacon as independent expenditures—roughly one-quarter
28 of this spending was reported by the Chacon campaign before the election as a non-monetary

1 contribution from the BJE committee. (On a pre-election campaign statement that was filed on October
2 25, 2013 for the period ending October 19, 2013, the Chacon committee reported receipt of a non-
3 monetary contribution in the approximate amount of \$742 for mailing and postage, which equates to
4 about 27% of the spending that is the subject of Counts 1 and 2.)

5 Under these circumstances, the following agreed upon penalty is recommended:

Count	Violation	Penalty
1	Failure to file Form 497's re: receipt of non-monetary contributions	\$2,500
2	Failure to report receipt of non-monetary contributions on pre-election statement	\$2,000
		Total: \$4,500

9 Lower penalties are not being sought because Chacon helped Fickas with respect to the BJE
10 committee's purported independent expenditures, including the expenditures that supported Chacon's
11 own candidacy. (In contrast, no direct evidence was found in the *Furey* case that the candidate knew
12 about the coordinated activity in question, which was carried out by agents.)

13 Higher penalties are not being sought because the parties have cooperated by agreeing to a
14 settlement in advance of the probable cause conference that otherwise would have been held.

15 CONCLUSION

16 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
17 Respondents Hector Chacon and Re-Elect Chacon for School Board 2013 hereby agree as follows:

- 18 1. Respondents violated the Act as described in the foregoing pages, which are a true and
19 accurate summary of the facts in this matter.
- 20 2. This stipulation will be submitted for consideration by the Fair Political Practices
21 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
- 22 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
23 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
24 liability of Respondents pursuant to Section 83116.
- 25 4. Respondents have consulted with their attorney, Richard Rios—with the law firm of
26 Olson Hagel & Fishburn LLP. Respondents understand and hereby knowingly and voluntarily waive, any
27 and all procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through
28 18361.9. This includes, but is not limited to the right to appear personally at any administrative hearing

1 held in this matter, to be represented by an attorney at Respondents' own expense, to confront and cross-
2 examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an
3 impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter
4 judicially reviewed.

5 5. Respondents agree to the issuance of the decision and order set forth below. Also,
6 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
7 \$4,500. One or more payments totaling this amount—to be paid to the General Fund of the State of
8 California—is/are submitted with this stipulation as full payment of the administrative penalty described
9 above, and they will be held by the State of California until the Commission issues its decision and order
10 regarding this matter.

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

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

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6 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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10 Dated: _____

Hector Chacon, individually, and on behalf of Re-elect
Chacon for School Board 2013, Respondents

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13 The foregoing stipulation of the parties “In the Matter of Hector Chacon and Re-elect Chacon for
14 School Board 2013,” FPPC Case No. 17/227, is hereby accepted as the final decision and order of the
15 Fair Political Practices Commission, effective upon execution below by the Chair.

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17 IT IS SO ORDERED.

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19 Dated: _____

Alice T. Germond, Chair
Fair Political Practices Commission