

1 GALENA WEST
Chief of Enforcement
2 CHRISTOPHER BURTON
Senior Commission Counsel
3 Fair Political Practices Commission
1102 Q Street, Suite 3000
4 Sacramento, CA 95811
Telephone: (916) 322-5660

5 Attorneys for Complainant
6 Fair Political Practices Commission, Enforcement Division

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

10
11 In the Matter of:

12 ALHAMBRA KIDS 2016 SUPPORT
MEASURE AE & MEASURE HS,
13 ROBERT GIN, AND STEPHEN PERRY,

14 Respondents.

FPPC Case No. 17/917

STIPULATION, DECISION AND ORDER

15
16 INTRODUCTION

17 Alhambra Kids 2016 Support Measure AE & Measure HS (the “Committee”) was a committee
18 primarily formed to support Alhambra Unified School District Measures AE and HS on the ballot in the
19 November 8, 2016 General Election. Robert Gin (“Gin”) was the treasurer of the Committee and Stephen
20 Perry (“Perry”) was its principal officer.

21 Respondents committed numerous violations of the Political Reform Act (the “Act”)¹ during the
22 life of the Committee, including a failure to timely file certain 24-hour contribution reports, and a failure
23 to comply with the Act’s slate mailer disclosure requirements.

24 ///

25 ///

26
27 ¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the
28 Government Code, unless otherwise indicated. 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 Title 2,
Division 6 of the California Code of Regulations, unless otherwise indicated.

1 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. The violations in this case occurred in
3 2016. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they
4 existed at that time.

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

6 When enacting the Act, the people of California found and declared that previous laws regulating
7 political practices suffered from inadequate enforcement by state and local authorities.² To that end, the
8 Act is to be construed liberally to accomplish its purposes.³

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

14 Duty to File 24-Hour Contribution Reports

15 Each candidate or committee that makes or receives a late contribution must file a report within
16 24 hours of making or receiving the contribution.⁷ A “late contribution” includes a contribution
17 aggregating \$1,000 or more that is made to or received by a candidate, controlled committee, or
18 primarily formed committee within 90 days before the date of the election at which the pertinent
19 candidate or measure is to be voted on.⁸

20 Slate Mailer Disclosure

21 A “slate mailer” is a mass mailing (of more than 200 substantially similar pieces of mail) that
22 supports or opposes a total of four or more candidates or ballot measures.⁹

23
24 ² Section 81001, subd. (h).

25 ³ Section 81003.

26 ⁴ Section 81002, subd. (a).

27 ⁵ Sections 84200, *et seq.*

28 ⁶ Section 81002, subd. (f).

⁷ Section 84203.

⁸ Section 82036.

⁹ Section 82048.3.

1 The Act provides that slate mailers may not be sent without certain disclaimers. A slate mailer
2 must include the name, street address, and city of the slate mailer organization or ballot measure
3 committee sending the mailer.¹⁰ Further, at the top or bottom of the front side or surface of at least one
4 insert—or at the top or bottom of one side or surface of a postcard or other self-mailer—there must be a
5 notice in at least 8-point roman boldface type, which must be easily legible and in a box that is set apart
6 from any other printed matter. The notice must state the following:¹¹

7 NOTICE TO VOTERS THIS DOCUMENT WAS PREPARED BY (name of slate mailer
8 organization or committee primarily formed to support or oppose one or more ballot
9 measures), NOT AN OFFICIAL POLITICAL PARTY ORGANIZATION. Appearance
10 in this mailer does not necessarily imply endorsement of others appearing in this mailer,
11 nor does it imply endorsement of, or opposition to, any issues set forth in this mailer.
12 Appearance is paid for and authorized by each candidate and ballot measure which is
13 designated by an *.

14 Also, no slate mailer may be sent unless each candidate and ballot measure that paid to
15 appear in the slate mailer is designated by an asterisk. Any candidate or ballot measure that has
16 not paid to appear in the slate mailer must not be designated by an asterisk.¹²

17 Joint and Several Liability of Committee, Principal Officer, and Treasurer

18 It is the duty of a committee treasurer to ensure that the committee complies with the campaign
19 reporting provisions of the Act.¹³ It is the duty of the committee's principal officer to authorize the
20 content of communications made by the committee, authorize expenditures made by the committee, and
21 determine the committee's campaign strategy.¹⁴ A treasurer and principal officer may be held jointly and
22 severally liable, along with the committee, for violations committed by the committee.¹⁵

23 **SUMMARY OF THE FACTS**

24 The Committee qualified on September 21, 2016. The Committee's political activity centered
25 around its support of two ballot measures - Alhambra Unified School District Measures AE and HS.
26 Measure AE was successful in the November 8, 2016 General Election, receiving approximately 77
27

28 ¹⁰ Section 84305.5, subd. (a)(1).

¹¹ Section 84305.5, subd. (a)(2).

¹² Section 84305.5, subd. (a)(4).

¹³ Sections 81004, 84100, 84104, and 84213; Regulation 18427.

¹⁴ Section 82047.6; Regulation 18402.1, subd. (b).

¹⁵ Sections 83116.5 and 91006.

1 percent of the vote. Measure HS was also successful in the same election, with approximately 76 percent
 2 of voters voting in favor of the measure. Each measure approved the repair and upgrade of local schools
 3 in order to attract and retain quality teachers.

4 The Committee received a total of \$36,487 in contributions and made \$32,160 in expenditures in
 5 2016. The Committee terminated as of January 16, 2017.

6 The Committee failed to timely file 24-hour contribution reports for the following contributions
 7 received during the late reporting period:

8 9	Statement/ Report Type	Payment Date	Due Date	Date Filed	Amount of Payment	Contributor
10	24-Hour Contribution	10/10/2016	10/11/2016	10/13/2016	\$5,000	TKR, LLC
11	24-Hour Contribution	10/12/2016	10/13/2016	N/A	\$5,000	BRJ & Associates
12	24-Hour Contribution	10/12/2016	10/13/2016	N/A	\$3,500	Mun Leu Architect Inc
13	24-Hour Contribution	10/12/2016	10/13/2016	N/A	\$1,500	Mun Leu Architect Inc
14	24-Hour Contribution	10/12/2016	10/13/2016	N/A	\$2,500	Hancock Park DeLong Inc
15	24-Hour Contribution	10/12/2016	10/13/2016	N/A	\$2,000	Fagen Friedman & Fulfrost LLP
16	24-Hour Contribution	10/13/2016	10/14/2016	10/17/2016	\$2,500	A4E Inc
17	24-Hour Contribution	10/17/2016	10/18/2016	None	\$4,000	Nazarian Group
18	24-Hour Contribution	10/25/2016	10/26/2018	10/28/2016	\$1,000	Sparks Youth
19	TOTAL:				\$27,000	

20 Although the respective 24-hour reports were not timely filed by the Committee, each of the
 21 subject late contributions was disclosed prior to the election, either on a campaign statement or late-filed
 22 24-hour report.

23 The Committee also paid for a slate mailer that did not comply with the disclosure requirements

1 of the Act. The Committee paid for 6,728 copies of a slate mailer sent out prior to the election. The
2 mailer advocated for Measures AE and HS, as well as candidates Ed Chau for State Assembly, Jeff
3 Maloney and David Media for Alhambra City Council, and Patricia Rodriguez-Mackintosh for Alhambra
4 Unified School District, along with Hillary Clinton for President and Judy Chu for U.S. Representative,
5 and purported to be the “Official Alhambra Democratic Voters Guide.” The mailer also stated that
6 “leaders of the Alhambra Democratic Movement urge you to support this Democratic slate.” The return
7 label on the mailer stated “Alhambra Kids 2016” and the committee identification number, but failed to
8 state the accurate full name of the Committee. The mailer also did not disclose the street address and city
9 of the Committee, as required. Finally, although present, the required “Notice to Voters” provided that
10 the slate mailer was prepared by the “Alhambra Democratic Movement,” and not the Committee.

11 **VIOLATIONS**

12 Count 1: Failure to Timely File 24-Hour Contribution Reports

13 The Committee, Gin, and Perry failed to timely file five 24-hour contribution reports for late
14 contributions totaling \$27,000, in violation of Section 84203.

15 Count 2: Failure to Comply With Disclosure Requirements for Slate Mailers

16 The Committee and Perry failed to include the required disclosures on a slate mailer, in violation
17 of Section 84305.5.

18 **PROPOSED PENALTY**

19 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per
20 count. Thus, the maximum penalty that may be imposed is \$10,000.¹⁶

21 In determining the appropriate penalty for a particular violation of the Act, the Commission
22 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
23 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
24 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
25 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
26 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
27

28 ¹⁶ Section 83116, subd. (c).

1 record of violations.¹⁷

2 In this case, the Enforcement Division found no evidence that Respondents intended to conceal,
3 deceive, or mislead the public. Further, Respondents do not have a prior history of violating the Act.
4 However, the violations arising from the Committee's distribution of a slate mailer are serious given the
5 elevated level of public confusion caused by the Committee's identification of a group other than the true
6 sender on the mailer.

7 Additionally, the Commission considers penalties in prior cases involving similar violations.
8 Recent similar cases involving a failure to timely file 24-hour reports include the following:

- 9 • *In the Matter of Committee to Elect Gus Kramer and Gus Kramer*; FPPC No. 17/142.

10 Respondents, a candidate-treasurer and his controlled committee, failed to timely file nine 24-hour
11 contribution reports for late contributions totaling \$25,375, in violation of Section 84203. In May 2019,
12 the Commission approved a penalty of \$2,500 on one count.

13 As to Count 1, Respondents are deserving of a penalty similar to that approved in the *Kramer*
14 case given the similar amount of late contributions that were not disclosed on timely-filed 24-hour
15 reports. Further, in both cases, the subject contributions were reported in some fashion prior to the
16 pertinent election.

17 Recent similar cases involving a committee's failure to comply with the advertising disclosure
18 requirements of the Act include the following:

19 • *In the Matter of Southwest Teachers Association PAC, Ben Swearingen, and Michelle Gates*;
20 FPPC No. 17/403. Respondents, a general purpose committee and its principal officer and treasurer,
21 failed to include the required "Paid for by" phrase and committee name on a billboard advertisement; and
22 failed to print a disclosure statement that measured at least five percent of the height of the advertisement
23 on a banner advertisement, in violation of Sections 84506 and 84506.5, and Regulation 18450.4. In
24 December 2018, the Commission approved a fine of \$3,000 on one count.

25 As to Count 2, a penalty higher than that approved in the *Southwest Teachers* case is warranted
26 given the elevated level of public confusion caused by the Committee's identification of a person other
27

28

¹⁷ Regulation 18361.5, subd. (d).

1 than the true sender on a slate mailer.

2 In aggravation of Count 2, the Committee also failed to include the necessary “Paid for by”
3 phrase and/or print the full committee name on five different mass mailings. However, in the interest of
4 settlement, these additional violations are not being charged herein.

5 In aggravation of all counts, Respondents committed additional violations of the Act that are not
6 being charged in the interest of settlement. In particular, Respondents failed to timely report a \$4,325
7 loan, including the accompanying accrued expense and subvendor payment, on the Committee’s
8 preelection campaign statement for the reporting period of July 1, 2016 to September 24, 2016; and a
9 \$3,083 accrued expense, and accompanying subvendor payment, an additional \$5,400.52 in accrued
10 expenses, and a \$750 independent expenditure on the Committee’s preelection campaign statement for
11 the reporting period of September 25, 2016 to October 22, 2016.

12 In mitigation, Respondents contend that they were simply interested community members,
13 inexperienced with the Act, and that they made good faith attempts to comply with the Act.

14 Based on the foregoing, the following penalties are recommended:

15

Count	Violation	Proposed Penalty
1	Failure to Timely File 24-Hour Contribution Reports	\$2,500
2	Failure to Comply With Disclosure Requirements for Slate Mailers	\$3,500
TOTAL:		\$6,000

16
17
18
19

20

21 CONCLUSION

22 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
23 Respondents, Alhambra Kids 2016 Support Measure AE & Measure HS, Robert Gin, and Stephen Perry,
24 hereby agree as follows:

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

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

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

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

11 5. Respondents agree to the issuance of the decision and order set forth below. Also,
12 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
13 \$6,000. One or more payments totaling this amount, to be paid to the General Fund of the State of
14 California, is/are submitted with this stipulation as full payment of the administrative penalty described
15 above, and they will be held by the State of California until the Commission issues its decision and order
16 regarding this matter.

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____
Galena West, Chief of Enforcement
Fair Political Practices Commission

Dated: _____
Robert Gin, individually and on behalf of Alhambra
Kids 2016 Support Measure AE & Measure HS

Dated: _____
Stephen Perry, individually and on behalf of Alhambra
Kids 2016 Support Measure AE & Measure HS

1 The foregoing stipulation of the parties “In the Matter of Alhambra Kids 2016 Support Measure AE &
2 Measure HS, Robert Gin, and Stephen Perry,” FPPC Case No. 17/917 is hereby accepted as the final
3 decision and order of the Fair Political Practices Commission, effective upon execution below by the
4 Chair.

5
6 IT IS SO ORDERED.

7
8 Dated: _____
9 Richard C. Miadich, Chair
10 Fair Political Practices Commission
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28