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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of:

FPPC Case No. 16/19663

DAVID ALBANESE FOR OXNARD  
CITY COUNCIL AND DAVID  
ALBANESE,

**STIPULATION, DECISION AND ORDER**

Respondents.

**INTRODUCTION**

Respondent, David Albanese for Oxnard City Council (the “Committee”), is a candidate-controlled committee formed to elect Respondent, David Albanese (“Albanese”), to City Council for the City of Oxnard. Albanese served as the Committee’s treasurer. Albanese was unsuccessful in his bid in the November 8, 2016, General Election. This was the first-time Albanese ran for an elected position.

Respondents violated the Political Reform Act (the “Act”)<sup>1</sup> by failing to deposit all campaign contributions and loans into the designated campaign bank account and by failing to make all campaign expenditures from the designated campaign bank account.

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<sup>1</sup> The Political Reform Act – sometimes simply referred to as 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.

1 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. The violations in this case occurred  
3 in 2016. For this reason, all legal references and discussions of law pertain to the Act’s provisions as  
4 they 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.<sup>2</sup> Thus, it was  
8 decreed the Act “should be liberally construed to accomplish its purposes.<sup>3</sup> A central purpose of the Act  
9 is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”<sup>4</sup>

10 **One Designated Campaign Bank Account**

11 Upon the filing of a statement of intention to run for office, a candidate must establish one  
12 designated campaign bank account.<sup>5</sup> All campaign contributions, made to the candidate, must be  
13 deposited in the designated campaign bank account.<sup>6</sup> All personal funds of the candidate, which the  
14 candidate intends to use to promote his election, must be deposited into the designated campaign bank  
15 account prior to expenditure.<sup>7</sup> All campaign expenditures must be made from the committee’s  
16 designated campaign bank account.<sup>8</sup>

17 **Controlled Committee**

18 A controlled committee means a committee that is controlled directly or indirectly by a  
19 candidate.<sup>9</sup> A candidate controls a committee if he has a significant influence on the actions or decisions  
20 of the committee.<sup>10</sup>

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25 <sup>2</sup> Section 81001, subdivision (h).

26 <sup>3</sup> Section 81003.

27 <sup>4</sup> Section 81002, subdivision (f).

28 <sup>5</sup> Section 85201, subdivision (a).

<sup>6</sup> Section 85201, subdivision (c).

<sup>7</sup> Section 85201, subdivision (d).

<sup>8</sup> Section 85201, subdivision (e).

<sup>9</sup> Section 82016, subdivision (a).

<sup>10</sup> Sections 81004, 84100, and Regulation 18427.

1 **Joint and Several Liability of Committee, Candidate and Treasurer**

2 It is the duty of a committee treasurer to ensure the committee complies with the Act.<sup>10</sup> A  
3 treasurer may be held jointly and severally liable, along with the committee and candidate, for violations  
4 committed by the committee.<sup>11</sup>

5 **Liability for Violations**

6 Any person who violates any provision of the Act, who purposely or negligently causes any  
7 other person to violate any provision of the Act, or who aids and abets any other person in the violation  
8 of any provision of the Act, is liable for administrative penalties up to \$5,000 per violation.<sup>12</sup>

9 **SUMMARY OF THE FACTS**

10 This case was opened in response to a referral from the local filing officer alleging Respondents  
11 violated the Act by failing to timely file required campaign statements. The Committee did not file its  
12 semi-annual campaign statement following the November 8, 2016 election, for the reporting period of  
13 October 23, 2016 to December 31, 2016, however this violation is not being charged separately for  
14 settlement purposes and the statement has been filed as part of this settlement agreement.

15 On October 19, 2016, Albanese opened the Committee’s campaign bank account and deposited  
16 \$100. The campaign bank account statements show, and Albanese stated, that aside from the opening  
17 deposit, no transactions went through the campaign bank account as he paid all campaign expenditures  
18 in cash using his personal funds. By August 29, 2017, the campaign bank account had been completely  
19 depleted due to monthly service charges of \$16 each.

20 Per campaign statements the Committee and Albanese filed, for the reporting period of August  
21 17, 2016 through October 22, 2016, the Committee reported receiving a total of \$5,162 in contributions  
22 and loans and made a total of \$4,200 in expenditures and repayment of loans. However, none of this  
23 activity was sourced through the campaign bank account. Every contribution or loan came directly from  
24 Albanese himself and was reported as nonmonetary contributions and loans to the Committee. A  
25 summary of the reported activity is outlined below.

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28 <sup>10</sup> Sections 81004, 84100, and Regulation 18427.

<sup>11</sup> Sections 83116. 5 and 91006.

<sup>12</sup> Sections 83116 and 83116. 5.

**Summary of Nonmonetary Contributions Received**

Reporting Period	Payor	Description	Amount
08/17/2016 – 09/24/2016	David Albanese	City of Oxnard - Statement	\$1,300
08/17/2016 – 09/24/2016	David Albanese	Appexx Printing – Signs	\$547
08/17/2016 – 09/24/2016	David Albanese	City of Oxnard – Park Rental	\$400
08/17/2016 – 09/24/2016	David Albanese	Appexx Printing – Signs	\$765
<b>TOTAL</b>			<b>\$3,012</b>

**Summary of Loans**

Reporting Period Received	Reporting Period Repaid	Lender	Amount
08/17/2016 – 09/24/2016	09/25/2016 – 10/22/2016	Albanese	\$2,150
<b>TOTAL</b>			<b>\$2,150</b>

**Summary of Expenditures Made**

Reporting Period	Payee	Description	Amount
09/25/2016 – 10/22/2016	City of Oxnard Parks & Recreation	Kick-Off Event	\$400
09/25/2016 – 10/22/2016	Appexx Printing & Graphics	Signs	\$1,310
09/25/2016 – 10/22/2016	Appexx Printing & Graphics	Flyers	\$340
<b>TOTAL</b>			<b>\$2,050</b>

**VIOLATIONS**

**Count 1: One Bank Account**

The Committee and Albanese failed to deposit approximately \$5,162 in contributions and loans into the campaign bank account, and failed to pay approximately \$4,200 in expenditures from the campaign bank account in violation of Government Code Section 85201, subdivision (c), (d) and (e).

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1 **PROPOSED PENALTY**

2 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per  
3 count. Thus, the maximum penalty that may be imposed here is \$5,000.<sup>13</sup>

4 In determining the appropriate penalty for a particular violation of the Act, the Commission  
5 considers the facts of the case, the public harm involved, and the purposes of the Act. Further, the  
6 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of  
7 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or  
8 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective  
9 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior  
10 record of violations.<sup>14</sup>

11 A violation of the designated campaign bank account rule is considered inherently serious as the  
12 rule is considered key to ensuring committees accurately disclose their contributions and expenditures.  
13 In this case, the evidence supports that there was no intent to conceal, deceive or mislead the public as to  
14 the Committee’s contributions and expenditures because the Committee and Albanese filed all required  
15 preelection campaign statements prior to the election. Here, the violation appears to be negligent, not  
16 deliberate, as the Committee activity was disclosed on its preelection campaign statements. The  
17 violation committed here was an isolated incident as Albanese has not had prior campaign experience or  
18 enforcement history.

19 The Commission considers penalties in prior cases with the same or similar violations and  
20 comparable facts. *In the Matter of Donna Munoz for County Supervisor 2016, Donna Munoz, and Max*  
21 *Hazard*, FPPC Nos. 17/140. Respondents, an unsuccessful candidate for the Board of Supervisors, her  
22 controlled committee, and its treasurer, made a total of \$30,836 in campaign expenditures. From that  
23 total, \$2,362.93 worth of expenditures were paid using personal funds of the candidate who neglected to  
24 source the funds through the campaign bank account. Aside from \$945, all personally funded  
25 expenditures were disclosed on a campaign statement prior to the pertinent election. In April, 2018, the  
26 Commission approved a penalty of \$1,500 for this count.

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28 <sup>13</sup> Section 83116, subdivision (c).

<sup>14</sup> Regulation 18361. 5, subdivision (d).

1 A penalty similar to the one approved in *Munoz* is recommended here given the analogous facts  
2 involved. In aggravation, like in *Munoz*, the Committee and Albanese committed additional violations of  
3 the Act, which are not being charged here for purposes of settlement. These violations include failure to  
4 timely file campaign statements and 24-Hour Contribution Reports to report Albanese's contributions to  
5 the Committee (although the information was reported on pre-election campaign statements filed before  
6 the election), and accepting cash contributions and making cash expenditures of \$100 or more.

7 In mitigation, the Committee and Albanese disclosed the contributions, loans and expenditures  
8 on campaign statements prior to the election. In *Munoz*, a portion of expenditures went undisclosed prior  
9 to the pertinent election. Further, Albanese was not sophisticated with the Act and the many  
10 requirements involved in campaigning. In *Munoz*, the candidate had the assistance and guidance of an  
11 experienced treasurer. Finally, like in *Munoz*, the Committee and Albanese do not have any prior  
12 enforcement history.

13 Based on the foregoing, a penalty in the amount of \$1,500 is recommended.

#### 14 CONCLUSION

15 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
16 Respondents David Albanese for Oxnard City Council and David Albanese hereby agrees as follows:

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

19 2. This stipulation will be submitted for consideration by the Fair Political Practices  
20 Commission at its next regularly scheduled meeting – or as soon thereafter as the matter may be  
21 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  
24 determine the liability of Respondents pursuant to Section 83116.

25 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all  
26 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through  
27 18361.9. This includes, but is not limited to the right to appear personally at any administrative  
28 hearing held in this matter, to be represented by an attorney at Respondents' own expense, to

1 confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to  
2 testify at the hearing, to have an impartial administrative law judge preside over the hearing as a  
3 hearing officer, and to have the matter judicially reviewed.

4 5. Respondents agree to the issuance of the decision and orders set forth below. Also,  
5 Respondents agree to the Commission imposing against them an administrative penalty in the  
6 amount of \$1,500. One or more cashier's checks or money orders totaling said amount – to be  
7 paid to the General Fund of the State of California – is/are submitted with this stipulation as full  
8 payment of the administrative penalty described above, and same shall be held by the State of  
9 California until the Commission issues its decision and order regarding this matter.

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

17 7. The parties to this agreement may execute their respective signature pages separately. A  
18 copy of any party's executed signature page, including a hardcopy of a signature page  
19 transmitted via fax or as a PDF email attachment, is as effective and binding as the original.  
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21 Dated: \_\_\_\_\_

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Galena West, Chief of Enforcement  
Fair Political Practices Commission

23 Dated: \_\_\_\_\_

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David Albanese, individually and on behalf of  
David Albanese for Oxnard City Council,  
Respondents

1           The foregoing stipulation of the parties “In the Matter of David Albanese For Oxnard City  
2 Council and David Albanese,” FPPC Case No. 16/19663, is hereby accepted as the final decision and  
3 order of the Fair Political Practices Commission, effective upon execution by the Chair.  
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5 IT IS SO ORDERED.

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7 Dated: \_\_\_\_\_

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Richard C. Miadich, Chair  
Fair Political Practices Commission