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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

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11 In the Matter of:

12 HICKEY FOR DIRECTOR 2014,
13 HARRISON AND GARCIA FOR
14 DIRECTOR 2016 AND JOHN “JACK”
HICKEY,

15 Respondents.

FPPC Case No. 16/19831

STIPULATION, DECISION AND ORDER

16
17 **INTRODUCTION**

18 Respondent John “Jack” Hickey (“Hickey”) was a successful candidate for Sequoia Healthcare
19 District (“SHD”) Director in the November 4, 2014 General Election. Respondent Hickey for Director
20 2014 (“Committee 2014”) was his candidate-controlled committee for the November 4, 2014 General
21 Election. Hickey also served as the Committee 2014’s treasurer. Hickey and the Committee 2014
22 violated the Political Reform Act (the “Act”)¹ by failing to timely three 24-Hour Reports prior to the
23 November 4, 2014 Election.

24 In addition, Harland Harrison and Lois Garcia were candidates for the SHD in the November 8,
25 2016 General Election. Harrison and Garcia for Director 2016 (“Committee 2016”) was formed by
26 Hickey to support their candidacy for the November 8, 2016 General Election. Hickey was the treasurer,

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28 ¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014, and all statutory
references are to this code. The regulations of the Fair Political Practice Commission are contained in Sections 18110
through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

1 controlling candidate and major donor to the Committee 2016. As such, Hickey and the Committee
2 2016 failed to include Hickey in the name of the Committee 2016 as required.

3 **SUMMARY OF THE LAW**

4 The Act and its regulations are amended from time to time. The violations in this case occurred in
5 2014 and 2016. A Probable Cause Report was issued, effectively tolling the statute of limitations in all
6 the named counts. As such, all legal references and discussions of law pertain to the Act’s provisions as
7 they existed at that time.

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

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

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

18 **Candidate Controlled Committee**

19 “Candidate” means an individual who is listed on the ballot or who has qualified to have write-in
20 votes on his or her behalf counted by election officials, for nomination for or election to any elective
21 office, or who receives a contribution or makes an expenditure or gives his or her consent for any other
22 person to receive a contribution or make an expenditure with a view to bringing about his or her
23 nomination or election to any elective office, whether or not the specific elective office for which he or
24 she will seek nomination or election is known at the time the contribution is received or the expenditure
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26 ² Section 81001, subdivision (h).

27 ³ Section 81003.

28 ⁴ Section 81002, subdivision (a).

⁵ Sections 84200, et seq.

⁶ Section 81002, subdivision (f).

1 is made and whether or not he or she has announced his or her candidacy or filed a declaration of
2 candidacy at such time. “Candidate” also includes any officeholder who is the subject of a recall
3 election. An individual who becomes a candidate shall retain his or her status as a candidate until such
4 time as that status is terminated pursuant to Section 84214.⁷

5 Thus, an individual’s status as a candidate does not change until that status is terminated.⁸
6 Candidates terminate their filing obligation pursuant to regulations adopted by the Commission in order
7 to insure that a candidate will have no activity which must be disclosed pursuant to this chapter
8 subsequent to the termination. A candidate is obligated to file campaign statements under the Act the
9 entire time the individual holds office. This status continues until a candidate terminates all controlled
10 committees and left office.⁹

11 A “Controlled committee” means a committee that is controlled directly or indirectly by a
12 candidate or state measure proponent or that acts jointly with a candidate, controlled committee, or state
13 measure proponent in connection with the making of expenditures. A candidate or state measure
14 proponent controls a committee if he or she, his or her agent, or any other committee he or she controls
15 has a significant influence on the actions or decisions of the committee.¹⁰

16 Whether a candidate has “significant influence” on the actions or decisions of a committee
17 depends on all of the facts and circumstances surrounding the candidate’s involvement and the
18 committee’s activities.

19 **Controlled Committee Name and Filing Requirements**

20 At the core of the Act’s campaign reporting system is the requirement that committees must file
21 campaign statements and reports for certain reporting periods and by certain deadlines.¹¹

22 Whenever identification of a committee is required by law, the identification must include the full
23 name of the committee, and in the case of a committee that is controlled by one or more candidates, the
24 name of the committee must include the last name of each controlling candidate.¹²

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26 ⁷ Section 82007.

⁸ Section 84214 and Regulation 18404.

⁹ Regulation 18404, subdivision (d).

¹⁰ Section 82016.

¹¹ Sections 84200, et seq.

¹² Sections 84101; 84102, subdivisions (e) and (g); and Regulation 18402, subdivision (c)(1).

Duty to File Campaign Statements

At the core of the Act’s campaign reporting system is the requirement that committees must file campaign statements and reports for certain periods and by certain deadlines. The Act requires committees, candidates and their controlled committees to file campaign statements at specific times disclosing information regarding contributions received and expenditures made by the campaign committees.¹³

24-Hour Reports

A “late contribution,” in relevant part, is a contribution, including a loan, which totals in the aggregate one thousand dollars or more that is made to or received by a candidate or controlled committee or a committee formed or existing primarily to support or oppose a candidate or measure within 90 days before the date of the election at which the candidate or measure is to be voted on.¹⁴ Section 82036 was amended to include a late contribution made on the date of the election.¹⁵ Each committee that makes a late contribution must report the following: the full name and street address of the person to whom the late contribution has been made, the office sought or the ballot measure number or letter, and the date and amount of the late contribution.¹⁶ A late contribution must be reported within 24 hours of the time it is made and must be reported on subsequent campaign statements.¹⁷ When a committee makes or receives a late contribution, the committee must disclose the late contribution in a late contribution report within 24 hours of making or receiving the contribution.¹⁸

Candidate and Treasurer Liability

Under the Act, it is a duty of the candidate and the treasurer of a controlled committee to ensure that the committee complies with all the requirements of the Act concerning the receipt, expenditure, and reporting of funds.¹⁹ The candidate and treasurer may be held jointly and severally liable, along with the committee, for violations committed by the committee.²⁰

¹³ Section 84200, *et seq.*

¹⁴ Former Section 82036, subd. (a).

¹⁵ Section 82036, subd. (a), effective January 1, 2016.

¹⁶ Section 84203, subd. (a).

¹⁷ Section 84203, subd. (b).

¹⁸ Section 84203, subds. (a) and (b).

¹⁹ Sections 81004, 84100, 84104, and 84213; Regulation 18427.

²⁰ Sections 83116.5 and 91006.

1 **SUMMARY OF THE FACTS**

2 Hickey was a successful candidate for SHD in the November 4, 2014 General Election. He was
3 first elected to the SHD Board in 2002 and has been out of office since 2018. The Committee 2014 was
4 his candidate-controlled committee for the November 4, 2014 General Election. Hickey served as the
5 Committee 2014's treasurer. Hickey and the Committee 2014 failed to timely three 24-Hour Reports
6 prior to the November 4, 2014 Election. The Committee 2014 filed one campaign statement for the
7 incorrect reporting period July 1, 2015, through December 31, 2016, disclosing no contributions
8 received and approximately \$162 in expenditures, which was filed on December 28, 2016. This is not
9 being charged for settlement purposes.

10 The Committee 2014 bank account was closed on August 23, 2016. The Committee 2014 filed a
11 termination campaign statement on December 24, 2016. As such, Hickey remained a candidate under
12 the Act while the Committee 2014 remained open and he remained in office.

13 Further, Harland Harrison and Lois Garcia were candidates for the SHD in the November 8,
14 2016 General Election, whom Hickey supported. In 2016, Hickey was in office and not running for re-
15 election. The Committee 2016 was the candidate-controlled committee for the election of Harrison and
16 Garcia in the November 8, 2016 General Election. Hickey was the treasurer, controlling candidate and
17 major donor to the Committee 2016. In fact, Hickey largely funded this campaign. While Harrison and
18 Garcia collaborated with him to design a campaign mass mailing, Hickey was the only individual with
19 access to the Committee 2016 bank account, he decided which vendors to use and decided how to spend
20 the Committee 2016 campaign money. The Committee 2016 qualified on September 14, 2016, the same
21 date the campaign bank account was opened, and was terminated on December 24, 2016.

22 Although Hickey did disclose himself as the treasurer on the Committee 2016 filings, he was
23 required to include his name as a controlling candidate in the name of the Committee 2016. Hickey and
24 the Committee 2016 failed to include his name in the Committee 2016 name as a controlling candidate.

25 Lastly, Hickey contributed over \$10,000 to the Committee 2016, qualifying as a Major Donor.
26 Hickey contributed, including a loan, approximately \$20,000 to the Committee 2016. After contact with
27 the Enforcement Division, Hickey filed a 24-Hour Report disclosing a \$10,000 contribution from
28 himself to the Committee 2016 on October 28, 2016; filed a 24-Hour Report disclosing a \$3,000

1 contribution from himself to the Committee 2016 on October 28, 2016; and filed a 24-Hour Report
2 disclosing a \$7,000 loan from himself to the Committee 2016 on October 28, 2016. Although these 24-
3 Hour Reports were late, they were filed prior to the relevant election. Hickey disclosed his contributions
4 to the Committee 2016 prior to the election, albeit late, and timely disclosed his contributions on the
5 Committee 2016 campaign reports. As such, this is not being charged for settlement purposes.

6 **VIOLATIONS**

7 **Committee 2014 and Hickey**

8 **Count 1**

9 *Failure to File 24-Hour Reports*

10 The Committee 2014 and Hickey failed to file three 24-Hour Reports for: a contribution of
11 \$2,500 by the October 9, 2014 due date; a contribution of \$2,000 by the October 23, 2014 due date; and
12 a contribution of \$1,500 by the October 30, 2014 due date, each contribution was from Hickey
13 personally, in connection with the November 4, 2014 General Election, in violation of Section 84203.

14 **Committee 2016 and Hickey**

15 **Count 2**

16 *Failure to Disclose Controlling Candidate Relationship in the Committee Name*

17 As the controlling candidate, Hickey's last name was required to be included as part of the
18 Committee 2016 name for all purposes. The Committee 2016 campaign statements never disclosed
19 Hickey as the controlling candidate. In this way, the Committee 2016 and Hickey violated Sections
20 84102, subdivisions (e) and (g); 84211, subdivision (p); and Regulation 18402, subdivision (c).

21 **PROPOSED PENALTY**

22 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per
23 count. Thus, the maximum penalty that may be imposed is \$10,000.²¹

24 In determining the appropriate penalty for a particular violation of the Act, the Commission
25 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
26 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
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28 ²¹ Section 83116, subdivision (c).

1 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
2 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
3 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
4 record of violations.²² Additionally, the Commission considers penalties in prior cases with comparable
5 violations.

6 The Enforcement Division did not obtain evidence of an intent to conceal, but rather the
7 violations in this matter appear to be the result of negligence. Further, Hickey, Committee 2014 and
8 Committee 2016 have no prior history with the Enforcement Division.

9 The Commission has found disclosure to be essential, especially before an election. The public
10 harm inherent in campaign reporting violations is that the public is deprived of important, time-sensitive
11 information regarding political contributions.

12 Regarding Count 1, the Commission considered a settlement involving similar violations. *In the*
13 *Matter of Burbank Hospitality Association*, FPPC No. 18/113 (the Commission approved a stipulated
14 decision on June 21, 2018.) Burbank Hospitality Association failed to timely file a 24-Hour Report
15 disclosing a contribution of \$50,000 at the time it was made. The Commission imposed a penalty of
16 \$2,500 for this violation.

17 In this case, the Committee 2014 and Hickey failed to timely file three 24-Hour Reports, two of
18 which were not disclosed until after the election on the post-election semi-annual campaign statement.
19 While the amount of the late contributions only totaled \$6,000, the failure to timely file the semi-annual
20 campaign statements is considered aggravating. Under these circumstances, a penalty in the amount of
21 \$2,500 is recommended for Count 1.

22 Regarding Count 2, the Commission considered a settlement involving a similar violation. *In the*
23 *Matter of Citizens for Oakland, Harold Smith, and Robert Spears*; FPPC No. 16/20098. Citizens for
24 Oakland was primarily formed committee to support and oppose certain candidates. Robert Spears was
25 the Committee's principal officer and Harold Smith was the treasurer. In relevant part, the Committee,
26 Spears and Smith failed to identify the Committee as primarily formed and failed to fulfill naming
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28 ²² Regulation 18361.5, subdivision (d).

1 requirements for as a primarily formed committee on its Statement of Organization. In May 2019, the
2 Commission approved a penalty of \$2,500 for this violation.

3 In this case, the Committee 2016 and Hickey were required to include Hickey's name as a
4 candidate controlling the Committee 2016. The public harm in excluding Hickey's name is great in that
5 he was controlling a committee for candidates to the SHD in which he was a member for many years. In
6 mitigation, Hickey was the named treasurer of the Committee 2016, signed the campaign statements and
7 made public statements in newspapers and interviews regarding his participation with the Committee
8 2016. Hickey contends that he closed the Committee 2014 bank account prior to opening the Committee
9 2016 bank account and believed that would avoid violations under the Act. Under these circumstances, a
10 penalty in the amount of \$2,500 is recommended for Count 2.

11 Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty
12 in the amount of \$5,000 is justified.

13 CONCLUSION

14 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
15 Respondents Hickey for Director 2014, Harrison and Garcia for Director 2016 and John "Jack" Hickey
16 hereby agree as follows:

17 1. Respondents violated the Act as described in the foregoing pages, which are a true and
18 accurate 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 heard.

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

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

1 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
2 reviewed.

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

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

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

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Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

Dated: _____

John "Jack" Hickey, individually, and on behalf of
Hickey for Director 2014 and Harrison and Garcia for
Director 2016, Respondents

1 The foregoing stipulation of the parties “In the Matter of Hickey for Director 2014, Harrison and
2 Garcia for Director 2016 and John “Jack” Hickey,” FPPC Case No. 16/19831, is hereby accepted as the
3 final decision and order of the Fair Political Practices Commission, effective upon execution below by
4 the Chair.

5
6 IT IS SO ORDERED.

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8 Dated: _____

Richard C. Miadich, Chair
Fair Political Practices Commission