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

11 In the Matter of:

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13 COMMITTEE TO ELECT JIM SMITH,  
SUPERIOR COURT JUDGE, SEAT #3  
14 2014, JAMES S. SMITH, AND  
MICHAEL ARZAGA,  
15

16 Respondents.

FPPC Case No. 17/076

STIPULATION, DECISION AND ORDER

17 **INTRODUCTION**

18 Respondent Committee to Elect Jim Smith, Superior Court Judge, Seat #3 2014 (the “Committee”)  
19 was the candidate controlled committee of Respondent James (Jim) S. Smith (“Smith”). The Committee’s  
20 treasurer at the time of the violations was Respondent Michael Arzaga (“Arzaga”).

21 Smith was an unsuccessful candidate for Superior Court Judge, Imperial County, in the 2014  
22 Statewide Direct Primary Election. The Committee was the subject of a Franchise Tax Board (“FTB”)  
23 audit. The FTB audit report covered the audit period of January 1, 2014 through August 25, 2014. During  
24 the audit period, the Committee reported receiving contributions of approximately \$53,947 and making  
25 expenditures of approximately \$63,557. The FTB audit revealed that Respondents committed violations  
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1 of the Political Reform Act (the “Act”),<sup>1</sup> including failure to keep proper records; failure to timely file a  
2 paper version of the semi-annual campaign statement for the period ending June 30, 2014 with the  
3 Secretary of State (“SOS”); failure to timely file 24-hour contribution reports disclosing contributions  
4 received by the Committee; improperly accepting cash contributions of \$100 or more; and improperly  
5 accepting anonymous contributions of \$100 or more.

## 6 **SUMMARY OF THE LAW**

7 The Act and its regulations are amended from time to time. The violations in this case occurred in  
8 2014. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they  
9 existed at that time.

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

11 When enacting the Act, the people of California found and declared that previous laws regulating  
12 political practices suffered from inadequate enforcement by state and local authorities.<sup>2</sup> For this reason,  
13 the Act is to be construed liberally to accomplish its purposes.<sup>3</sup>

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

### 19 Recordkeeping

20 It is the duty of each candidate, treasurer, principal officer, and elected officer to maintain detailed  
21 accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that campaign  
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24 <sup>1</sup> The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are to this  
25 code. The regulations of the Fair Political Practice Commission are contained in §§ 18110 through 18997 of Title 2 of the  
California Code of Regulations, and all regulatory references are to this source.

26 <sup>2</sup> Section 81001, subd. (h).

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

28 <sup>4</sup> Section 81002, subd. (a).

<sup>5</sup> Sections 84200, *et seq.*

<sup>6</sup> Section 81002, subd. (f).

1 statements were properly filed.<sup>7</sup> The original source documentation must consist of cancelled checks, wire  
2 transfers, credit card charge slips, bills, receipts, invoices, statements, vouchers, and any other documents  
3 reflecting obligations incurred by the candidate, elected officer, campaign treasurer, or committee, and  
4 disbursements made from any checking or savings account, or any other campaign accounts, in any bank  
5 or other financial institution.<sup>8</sup>

#### 6 Campaign Reports and Statements

7 Elected officers, candidates, and committees shall file semiannual statements each year no later  
8 than July 31 for the period ending June 30, and no later than January 31 for the period ending December  
9 31.<sup>9</sup> All candidates and elected officers and their controlled committees, shall file one copy of the  
10 campaign statements required by Section 84200 with the elections official of the county in which the  
11 candidate or elected official is domiciled. In addition, they shall file the original and one copy of the  
12 campaign statement in paper format with the Secretary of State.<sup>10</sup>

#### 13 Duty to File 24-Hour Contribution Reports

14 Each candidate or committee that makes or receives a late contribution must file a report within 24  
15 hours of making or receiving the contribution.<sup>11</sup> A “late contribution” includes a contribution aggregating  
16 \$1,000 or more that is made to or received by a candidate, controlled committee, or primarily formed  
17 committee within 90 days before the date of the election at which the pertinent candidate or measure is to  
18 be voted on.<sup>12</sup>

#### 19 Cash Contributions

20 No contribution of one hundred dollars (\$100) or more shall be made or received in cash.<sup>13</sup> All  
21 contributions of \$100 or more must be made in the form of a written instrument containing the name of  
22 the contributor and the name of the payee, and drawn from the account of the contributor.<sup>14</sup>

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24 <sup>7</sup> Section 84104.

25 <sup>8</sup> Regulation 18401 *et seq.*

26 <sup>9</sup> Section 84200.

27 <sup>10</sup> Section 84215.

28 <sup>11</sup> Section 84203.

<sup>12</sup> Section 82036.

<sup>13</sup> Section 84300.

<sup>14</sup> Section 84300, subd. (c).

1 Anonymous Contributions

2 No person shall make an anonymous contribution or contributions to a candidate, committee or  
3 any other person totaling one hundred dollars (\$100) or more in a calendar year.<sup>15</sup> An anonymous  
4 contribution of one hundred dollars (\$100) or more shall not be kept by the intended recipient but instead  
5 shall be promptly paid to the Secretary of State for deposit in the General Fund of the state.

6 Joint and Several Liability of Committee, Controlling Candidate, and Treasurer

7 Every committee must have a treasurer.<sup>16</sup> It is the duty of a committee’s treasurer to ensure that the  
8 committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds  
9 and the reporting of such funds.<sup>17</sup> Any person who violates any provision of the Act, who purposely or  
10 negligently causes any other person to violate any provision of the Act, or who aids and abets any other  
11 person in the violation of the Act is liable under the Act if the person has filing or reporting obligations  
12 under the Act, or is paid to provide services regulated by the Act.<sup>18</sup> If two or more persons are responsible  
13 for a violation of the Act they are jointly and severally liable.<sup>19</sup> It is the duty of a committee treasurer to  
14 ensure that the committee complies with the campaign reporting provisions of the Act.<sup>20</sup>

15 **SUMMARY OF THE FACTS**

16 The Committee was controlled by Smith, a candidate for Superior Court Judge, Imperial County,  
17 in the 2014 Statewide Direct Primary Election. The Committee electronically filed a form 460 termination  
18 statement on September 4, 2014. The Committee reported receiving \$53,947 and spending \$63,557 during  
19 the audit period of January 1, 2014 through August 25, 2014.

20 Failure to Keep Full and Accurate Records

21 FTB requested all invoices and receipts for the audit period, however invoices and/or receipts were  
22 not maintained for expenditures made totaling \$11,159. Bank statements, canceled checks, check stubs,  
23 and a check register were provided for the expenditures.

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26 <sup>15</sup> Section 84304.

27 <sup>16</sup> Section 84100.

28 <sup>17</sup> Section 84104 and Regulation 18427, subd. (a).

<sup>18</sup> Section 83116.5.

<sup>19</sup> Section 83116.5.

<sup>20</sup> Sections 81004, 84100, 84104, and 84213; Regulation 18427.  
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1 Failure to Timely File 24-Hour Contribution Reports and Timely File a Semi-Annual Campaign

2 Statement in Paper Format

3 24-hour contribution reports were filed with the SOS between 1 and 54 days late for 8 loans totaling  
4 \$16,575, reported as received from the candidate, as follows:

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6 <b>Statement/ Report Type</b>	<b>Date Received</b>	<b>Due Date</b>	<b>Date Filed</b>	<b>Amount of Payment</b>
7 24-hour 8 contribution	03/06/14	3/07/14	4/20/14	\$1,550
9 24-hour 10 contribution	3/20/14	3/21/14	4/20/14	\$2,000
11 24-hour 12 contribution	3/21/14	3/24/14	4/20/14	\$1,000
13 24-hour 14 contribution	3/27/14	3/28/14	4/20/14	\$4,000
15 24-hour 16 contribution	4/11/14	4/14/14	4/20/14	\$1,000
17 24-hour 18 contribution	4/22/14	4/23/14	4/29/14	\$2,000
19 24-hour 20 contribution	5/15/14	5/16/14	5/17/14	\$2,125
21 24-hour 22 contribution	5/29/14	5/30/14	7/23/14	\$2,900
<b>TOTAL:</b>				<b>\$16,575</b>

23 The contribution of \$2,000 received on April 22, 2014 (deposited on April 23, 2014) was a cash  
24 contribution, reported as a loan from Smith, but the source could not be verified. On April 8, 2014, a single  
25 24-hour contribution report was filed in paper format for contributions received on March 20, 21, and 27,  
26 2014, but the report was rejected by the SOS. If accepted by the SOS, the April 8, 2014 report would have  
27 still been delinquent for those three contributions. Reports were timely filed for 3 other loans totaling  
28 \$23,000 received from the candidate.

1 The semi-annual campaign statement filed for the period ending June 30, 2014, was not filed with  
2 the SOS in paper format. Receipts and expenditures during this period totaled \$7,099 and \$7,840,  
3 respectively. Of these amounts, only \$300 in receipts and \$714 in expenditures were reported on the pre-  
4 election campaign statement filed on the May 27, 2014. The rest of the activity, \$6,799 in receipts and  
5 \$7,126 in expenditures was not reported until September 4, 2014 when a campaign statement covering the  
6 period of May 23 through August 25, 2014 was filed late, in electronic format. The semi-annual campaign  
7 statement for the period of May 18, 2014 through June 30, 2014 was due July 31, 2014.

8 Improper Acceptance of Cash and Anonymous Contributions of \$100 or More

9 The Committee reported accepted contributions of \$100 or more in the form of cash from the  
10 following:

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<b>Date of Deposit</b>	<b>Amount of Contribution</b>	<b>Contributor</b>
3/4/14	\$1,000	Michael Arzaga
3/18/14	\$130	Thomas Crumby
3/21/14	\$1,000	James S. Smith
3/27/14	\$4,000	James S. Smith
4/23/14	\$2,000	Unknown
5/23/14	\$900	James S. Smith
5/29/14	\$2,000	James S. Smith
6/6/14	\$2,200	James S. Smith
<b>TOTAL:</b>		<b>\$13,230</b>

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21 Contributions of \$100 or more totaling \$13,230 were received in the form of cash. For other cash  
22 deposits totaling \$790, a daily record of receipts, or a contributor list was not maintained to determine  
23 whether cash contributions of \$100 or more were received from a single contributor.

24 The contribution of \$2,000 deposited on April 23, 2014 in the chart above was a cash contribution,  
25 reported as a loan from Smith, but the source could not be verified.

26 **VIOLATIONS**

27 Count 1: Failure to Keep Adequate Records

28 For the reporting periods covering 2014, the Committee, Smith, and Arzaga failed to maintain

1 detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that  
2 campaign statements were properly filed, in violation of Section 84104 and Regulation 18401.

3 Count 2: Failure to Timely File 24-Hour Contribution Reports

4 In 2014, the Committee, Smith, and Arzaga failed to timely file eight 24-hour contribution reports  
5 for late contributions received totaling approximately \$16,575, in violation of Section 84203.

6 Count 3: Impermissible Acceptance of Cash Contributions of \$100 or More

7 In 2014, the Committee, Smith, and Arzaga improperly accepted cash contributions of \$100 or  
8 more totaling approximately \$13,230, in violation of Section 84300.

9 **PROPOSED PENALTY**

10 This matter consists of three counts. The maximum penalty that may be imposed is \$5,000 per  
11 count. Thus, the maximum penalty that may be imposed is \$15,000.<sup>21</sup>

12 In determining the appropriate penalty for a particular violation of the Act, the Commission  
13 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission  
14 considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention  
15 to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d)  
16 whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were  
17 filed to provide full disclosure; and (f) whether the violator has a prior record of violations.<sup>22</sup>

18 A central purpose of the Act is to ensure receipts and expenditures in election campaigns are fully  
19 and truthfully disclosed. Cash transactions make it very difficult for the public to track and verify the  
20 contributions and expenditures of a committee. Respondents' acceptance of cash contributions over \$100,  
21 filing tardiness, and recordkeeping errors harm the public because when sources of contributions cannot  
22 be verified, and aren't disclosed in a timely manner, the public's ability to determine the full extent of the  
23 Committee's campaign activity, and then make an informed decision when voting, is hindered by a lack of  
24 transparency. Respondents' actions in this case denied the public important information that the Act  
25 requires candidates and committees to provide.

26 The Enforcement Division found no evidence that Respondents intended to conceal, deceive, or  
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28 <sup>21</sup> Section 83116, subd. (c).

<sup>22</sup> Regulation 18361.5, subd. (d).

1 mislead the public. In mitigation of all counts, Arzaga stated that both he and the candidate were not fully  
2 aware of the political reform laws, that they tried their best to comply with the law, and they were unaware  
3 that cash contributions of \$100 or more could not be accepted. Further, Respondents do not have a prior  
4 history of violations.

5 The Commission also considers penalties in prior cases involving similar violations. Recent similar  
6 cases involving a committee's failure to keep adequate records include the following:

- 7 • *In the Matter of Violeta Alvarez, Re-Elect Violeta Alvarez for Bell City Council 2015 and Mario*  
8 *Estrada; FPPC No. 15/150.* Violeta Alvarez, an unsuccessful incumbent candidate for the Bell City  
9 Council, her committee, Re-Elect Violeta Alvarez for City Council 2015, and the treasurer Mario  
10 Estrada failed to maintain supporting records for \$9,235.24 in contributions and \$9,899.24 in  
11 expenditures, in violation of Government Code Section 84104. On October 18, 2018, the  
12 Commission imposed a penalty of \$1,000 for this violation.

13 Here, invoices and/or receipts were not maintained for expenditures made totaling \$11,159.  
14 Because the amount of expenditures lacking adequate records maintained is similar to the comparable case,  
15 Respondents are deserving of a penalty similar to that in *Alvarez*.

16 Recent similar cases involving a failure to timely file 24-hour contribution reports include the  
17 following:

- 18 • *In the Matter of the Committee to Elect Gus Kramer and Gus Kramer; FPPC No. 17/142.* Gus  
19 Kramer, a successful candidate for re-election for Contra Costa County Assessor, and his candidate-  
20 controlled committee, Committee to Elect Gus Kramer, failed to timely file nine 24-hour  
21 contribution reports totaling approximately \$23,375, in violation of Government Code Section  
22 84203 (1 count). On May 16, 2019, the Commission imposed a penalty of \$2,500 for this violation.
- 23 • *In the Matter of Citizens for Oakland, Harold Smith, and Robert Spears; FPPC No. 16/20098* The  
24 committee, Citizens for Oakland, its principal officer Robert Spears, and its treasurer Harold Smith  
25 failed to timely file a 24-hour contribution report for 15 late contributions received totaling  
26 approximately \$64,750, in violation of Government Code Section 84203 (1 count). On May 16,  
27 2019, the Commission imposed a penalty of \$2,500 for this violation.

28 Here the number of contributions not timely reported is similar to that of the comparable cases, but



1 the amount in this case is lower than in the comparable cases. However, in aggravation of this charge the  
2 Committee also failed to timely file a semi-annual campaign statement for the reporting period of May 18,  
3 2014 - June 30, 2014, with the Secretary of State (“SOS”) in paper format or electronically. Therefore,  
4 Respondents are deserving of a penalty higher than the comparable cases.

5 Recent similar cases involving a cash and anonymous contributions include the following:

- 6 • *In the Matter of Committee to Elect David Combellack Judge 2014, David W. Combellack, and*  
7 *Verne G. Sanders, Jr.; FPPC No. 17/077.* David Combellack, an unsuccessful candidate for  
8 Superior Court Judge of El Dorado County, his candidate-controlled committee, Committee to  
9 Elect David Combellack Judge 2014, and the committee’s treasurer, Verne Sanders accepted seven  
10 unlawful cash contributions totaling \$1,025, in violation of Government Code Section 84300,  
11 subdivision (a) (1 count). On February 21, 2019, the Commission imposed a penalty of \$1,500 for  
12 this violation.

13 Here, Respondents accepted eight cash contributions of \$100, similar to the comparable case.  
14 However, they are deserving of a penalty higher than the comparable case because the amount here is  
15 higher (\$13,230) and one of the cash contributions for \$2,000, Smith alleged was a loan to the Committee  
16 from himself, although that could not be verified because of the lack of complete recordkeeping. A higher  
17 penalty is further justified because the public harm from cash transactions is high in that it makes it very  
18 difficult for the public to track and verify the contributions and expenditures of a committee.

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

Count	Violation	Proposed Penalty
1	Failure to Keep Adequate Records	\$1,000
2	Failure to Timely File 24-Hour Reports	\$3,000
3	Impermissible Acceptance of Cash Contributions of \$100 of More	\$2,500
	<b>TOTAL:</b>	<b>\$6,500</b>

### 24 CONCLUSION

25 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
26 Respondents, Committee to Elect Jim Smith, Superior Court Judge, Seat #3 2014, James S. Smith, and  
27 Michael Arzaga, hereby agree as follows:  
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1           1.       Respondents violated the Act as described in the foregoing pages, which are a true and  
2 accurate summary of the facts in this matter.

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

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

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

15           5.       Respondents agree to the issuance of the decision and order set forth below. Also,  
16 Respondents agree to the Commission imposing against them an administrative penalty in the amount of  
17 \$6,500. One or more payments totaling this amount, to be paid to the General Fund of the State of  
18 California, is/are submitted with this stipulation as full payment of the administrative penalty described  
19 above, and they will be held by the State of California until the Commission issues its decision and order  
20 regarding this matter.

21           6.       If the Commission declines to approve this stipulation—then this stipulation shall become  
22 null and void, and within fifteen business days after the Commission meeting at which the stipulation is  
23 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to  
24 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing before  
25 the Commission becomes necessary, neither any member of the Commission, nor the Executive Director,  
26 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 fax  
3 or as a PDF email attachment is as effective and binding as the original.  
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5           Dated:       \_\_\_\_\_               \_\_\_\_\_  
6    Galena West, Chief of Enforcement  
7    Fair Political Practices Commission

8           Dated:       \_\_\_\_\_               \_\_\_\_\_  
9    James S. Smith individually and on behalf of  
10   Committee to Elect Jim Smith, Superior Court Judge,  
11   Seat #3 2014

12          Dated:       \_\_\_\_\_               \_\_\_\_\_  
13    Michael Arzaga individually and on behalf of  
14   Committee to Elect Jim Smith, Superior Court Judge,  
15   Seat #3 2014  
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1 The foregoing stipulation of the parties “Committee to Elect Jim Smith, Superior Court Judge, Seat  
2 #3 2014, James S. Smith, and Michael Arzaga,” FPPC Case No. 17/076 is hereby accepted as the final  
3 decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.  
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5 IT IS SO ORDERED.  
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7 Dated: \_\_\_\_\_

8 Richard C. Miadich, Chair  
9 Fair Political Practices Commission  
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