

1 ANGELA J. BRERETON  
Chief of Enforcement  
2 CHRISTOPHER B. BURTON  
Assistant Chief of Enforcement  
3 Fair Political Practices Commission  
1102 Q Street, Suite 3000  
4 Sacramento, CA 95811

5 Telephone: (916) 322-5021  
6 Email: cburton@fppc.ca.gov

7 Attorneys for Complainant  
Fair Political Practices Commission, Enforcement Division

8  
9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

10 STATE OF CALIFORNIA

11  
12 In the Matter of:

13 NICK FOR LAKE FOREST CITY  
COUNCIL 2016; ADAM NICK,  
14 individually; BRYAN BURCH; and  
ADAM NICK, as major donor committee,  
15  
16 Respondents.

FPPC Case No. 16/20096

STIPULATION, DECISION AND ORDER

17 INTRODUCTION

18 Adam Nick (“Nick”) was an unsuccessful candidate for Lake Forest City Council in the  
19 November 8, 2016 General Election. Nick for Lake Forest City Council 2016 (the “Candidate  
20 Committee”) is the candidate-controlled committee of Nick in conjunction with his campaign. Bryan  
21 Burch (“Burch”) is the treasurer of the Candidate Committee. Nick also qualified as a major donor  
22 committee in 2016 (the “Major Donor Committee”).

23 Respondents committed numerous violations of the Political Reform Act (the “Act”),<sup>1</sup> including a  
24 failure to timely report financial activity on campaign statements, and violations of the one bank account  
25 rule.

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28 <sup>1</sup> The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the  
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 and 2017. For this reason, all legal references and discussions of law pertain to the Act’s provisions  
4 as they existed at that time. The applicable statute of limitations has been tolled by a tolling agreement,  
5 effective from August 24, 2021 to November 24, 2021, and a report in support of a finding of probable  
6 cause, served on November 21, 2021.

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

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

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

16 Disclosure of Contributions and Expenditures

17 A committee must disclose on campaign statements the total amount of all contributions  
18 received and expenditures made. For contributions and expenditures of \$100 or more, the statements  
19 must provide certain identifying information about the source of a contribution and the recipient of an  
20 expenditure.<sup>7</sup>

21 One Bank Account Rule

22 To ensure full disclosure of campaign activity and to guard against improper use of campaign  
23 funds, a candidate must establish a single, designated campaign bank account upon filing a statement of  
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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).

<sup>7</sup> Section 84211, subs. (a), (b), (c), (f), (i), and (k).

1 intention to be a candidate.<sup>8</sup> All campaign contributions and loans must be deposited into the campaign  
2 account.<sup>9</sup> Personal funds of the candidate that will be used for the campaign must be deposited in the  
3 campaign account prior to expenditure.<sup>10</sup> All campaign expenditures must be made from the campaign  
4 account.<sup>11</sup>

5 Joint and Several Liability of Candidate, Committee, and Treasurer

6 Every committee must have a treasurer.<sup>12</sup> It is the duty of a committee treasurer to ensure that the  
7 committee complies with the campaign reporting provisions of the Act.<sup>13</sup> A treasurer may be held jointly  
8 and severally liable, along with the candidate and the committee, for violations committed by the  
9 committee.<sup>14</sup>

10 **SUMMARY OF THE FACTS**

11 Nick for Lake Forest City Council 2016

12 The Candidate Committee qualified on June 20, 2012 in conjunction with Nick’s successful  
13 campaign for Lake Forest City Council in 2012, and was previously named Nick for Lake Forest City  
14 Council 2012. The Candidate Committee reported receiving \$164,078 in contributions and making  
15 \$100,886 in expenditures in 2016. The Candidate Committee was largely self-funded by Nick. Nick was  
16 unsuccessful in the election, receiving approximately 19.2 percent of the vote. The Candidate Committee  
17 remains active.

18 The Candidate Committee failed to timely report certain financial activity on its campaign  
19 statements. Much of the activity relates to payments made for communications supporting both Nick and  
20 Leah Basile (“Basile”), who ran as a slate for election to the Lake Forest City Council in the November  
21 8, 2016 General Election. The following chart summarizes the missing activity:

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<sup>8</sup> Section 85201, subd. (a).

26 <sup>9</sup> Section 85201, subd. (c).

27 <sup>10</sup> Section 85201, subd. (d).

<sup>11</sup> Section 85201, subd. (e).

<sup>12</sup> Section 84100.

28 <sup>13</sup> Sections 81004, 84100, 84104, and 84213; Regulation 18427.

<sup>14</sup> Sections 83116.5 and 91006.

<b>Campaign Statement</b>	<b>Missing Activity</b>	<b>Date Due</b>	<b>Date Reported</b>
Preelection (7/1/16 – 9/24/16)	\$500 accrued expenses/\$490 subvendor payments/\$12,466 contributions and expenditures	9/29/16	11/3/16 (accrued expenses & subvendor payments); 8/18/17 (expenditures)
Preelection (9/25/16 – 10/22/16)	\$7,838 nonmonetary contributions	10/27/16	9/6/17
Semiannual (10/23/16 – 12/31/16)	\$1,112 nonmonetary contributions received/\$1,112 nonmonetary contributions made	1/31/17	8/18/17

The Candidate Committee also failed to use one designated campaign bank account during the preelection reporting period of July 1, 2016 to September 24, 2016. In particular, the Candidate Committee made \$12,466 in expenditures outside of the designated bank account. Instead of first depositing the funds into the designated bank account, Nick made payments directly to vendors using personal funds and reported the activity late as nonmonetary contributions.

Adam Nick, as major donor committee

Nick also qualified as a major donor committee in 2016 (the “Major Donor Committee”). The Major Donor Committee made numerous nonmonetary contributions to Basile’s controlled committee and Committee to Recall City Council Members Voigts, Hamilton & Robinson, an unsuccessful recall effort that was active earlier in 2016. The Major Donor Committee also made a monetary contribution to Citizens for Good Government in Lake Forest Opposing Robinson. Nick timely filed a major donor campaign statement for 2016. However, he failed to timely report certain financial activity on the statement. In particular, he failed to timely report \$15,991 in nonmonetary contributions on his major donor statement for 2016. These contributions were added in amendments filed on March 1, 2017 and August 28, 2017.

**VIOLATIONS**

Count 1: Failure to Timely Report Financial Activity on Campaign Statements

The Candidate Committee, Nick, and Burch failed to timely report \$7,838 in nonmonetary contributions made on the preelection campaign statement for the reporting period of September 25, 2016 to October 22, 2016; and \$1,112 in nonmonetary contributions made and \$1,112 in nonmonetary

1 contributions received on the semiannual campaign statement for the reporting period of October 23,  
2 2016 to December 31, 2016, in violation of Government Code section 84211, subdivisions (a), (b), (c),  
3 (f), (i), and (k).

4 Count 2: One Bank Account Rule Violation

5 The Candidate Committee and Nick failed to utilize the designated campaign bank account for  
6 the preelection reporting period of July 1, 2016 to September 24, 2016 for contributions and expenditures  
7 amounting to \$12,466 each, in violation of Government Code section 85201.

8 Count 3: Failure to Timely Report Financial Activity on Campaign Statement

9 The Major Donor Committee failed to timely report \$15,991 in nonmonetary contributions on its  
10 major donor campaign statement for the year 2016, in violation of Government Code section 84211,  
11 subdivisions (b), (i), and (k).

12 **PROPOSED PENALTY**

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

15 This case does not qualify for the Commission's streamline settlement program because the  
16 amount of activity outside of the campaign bank account exceeds the 40 percent threshold necessary for  
17 inclusion in the program.

18 In determining the appropriate penalty for a particular violation of the Act, the Enforcement  
19 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an  
20 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division  
21 considers the facts and circumstances of the violation in the context of the following factors set forth in  
22 Regulation 18361.5, subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused  
23 by the specific violation; (2) The level of experience of the violator with the requirements of the Act;  
24 (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence or absence of  
25 any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate, negligent or  
26 inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission staff or any  
27 other governmental agency in a manner not constituting complete defense under Government Code  
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<sup>15</sup> Section 83116, subd. (c).

1 Section 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the violator has  
2 a prior record of violations of the Political Reform Act or similar laws; and (8) Whether the violator,  
3 upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.<sup>16</sup>

4 Failure to timely report required financial activity on campaign statements deprives the public of  
5 timely disclosure of a committee's activity, which is heightened when related to preelection activity, as  
6 occurred here. Failure to utilize a designated campaign bank account, as required, impedes the ability of  
7 the Enforcement Division to substantiate the campaign activity reported by a committee.

8 Respondents had prior experience with the Act, since Nick had successfully run for the same  
9 office four years earlier. However, there does not appear to be a pattern of non-compliant activity by  
10 Respondents, who do not have a prior record of violations of the Act. The Enforcement Division also did  
11 not find any evidence showing that Respondents intended to conceal, deceive, or mislead the public.  
12 Instead, the violations appear to have been negligent. Respondents contend that Nick, as a self-funder,  
13 did not understand the need to put his own personal funds in the committee bank account first and then  
14 make the related expenditures out of the same account. There is no evidence that Respondents consulted  
15 with Commission staff or any other governmental agency about the activity underlying the subject  
16 violations. Finally, Respondents have filed corrective amendments reporting the missing activity.

17 Additionally, the Commission considers penalties in prior cases involving similar violations.  
18 Recent similar cases involving a failure to timely report financial activity on campaign statements  
19 include the following:

20 • *In the Matter of Judge Mike Cummins, Judge Mike Cummins for District Attorney 2018, and*  
21 *Melissa Cummins*; FPPC No. 18/330. Respondent, Judge Mike Cummins was an unsuccessful candidate  
22 for San Luis Obispo County District Attorney in the June 5, 2018 Primary Election. Melissa Cummins  
23 was the Committee's treasurer. Respondents failed to timely report a total of \$97,478 in subvendor  
24 payments across two preelection and one semiannual reporting periods. In March 2021, the Commission  
25 approved a penalty of \$1,500 for each of two counts.

26 As to Count 1, Respondents are deserving of a penalty lower than that approved in the *Cummins*  
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<sup>16</sup> Regulation 18361.5, subd. (e).

1 case given the lower level of financial activity and number of campaign statements at issue here.

2 As to Count 3, Respondent is deserving of a penalty lower than that approved in the *Cummins*  
3 case, given the lower amount of financial activity that went unreported. Further, unlike the comparable  
4 case, the missing activity was not required to be reported prior to the election.

5 Recent similar cases involving a failure to comply with the one bank account rule include the  
6 following:

- 7 • *In the Matter of Re-Elect Liz Kniss for City Council 2016 and Liz Kniss*; FPPC No. 17/114.

8 Respondent Liz Kniss was a successful candidate for re-election to the Palo Alto City Council in the  
9 November 8, 2016 General Election. Kniss and her controlled committee made \$9,117 in expenditures  
10 outside of the designated campaign bank account, in violation of Government Code section 85201. In  
11 February 2021, the Commission approved a penalty of \$2,500 on one count.

12 As to Count 2, Respondents are deserving of a penalty higher than that imposed in the *Kniss*  
13 matter, given the higher amount of activity outside the designated campaign bank account.

14 Respondents committed additional violations of the Act that are not being charged herein, in the  
15 interest of settlement. In particular, the Candidate Committee failed to timely report \$500 in accrued  
16 expenses and \$490 in subvendor payments on the preelection campaign statement for the reporting  
17 period of July 1, 2016 to September 24, 2016; and \$50 in expenditures on its semiannual campaign  
18 statement for the reporting period of January 1, 2017 to June 30, 2017. However, this missing activity  
19 was eventually reported on amendments, with the preelection activity reported prior to the election.  
20 Further, the \$12,466 in contributions/expenditures that were made outside of the campaign bank account  
21 were also not timely reported on the corresponding campaign statement, but were later added in  
22 amendments. Lastly, the Major Donor Committee failed to timely file a 24-hour contribution report for a  
23 \$15,000 contribution made to Citizens for Good Government in Lake Forest Opposing Robinson on  
24 October 19, 2016. However, the 24-hour contribution report was ultimately filed prior to the election, and  
25 the recipient timely reported the contribution.

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Based on the foregoing, the below penalties are recommended:

Count	Violation	Penalty
1	Failure to Timely Report Financial Activity on Campaign Statements	\$1,000
2	One Bank Account Rule Violation	\$3,000
3	Failure to Timely Report Financial Activity on Campaign Statement	\$1,000
<b>TOTAL:</b>		<b>\$5,000</b>

### CONCLUSION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondents, Nick for Lake Forest City Council 2016, Adam Nick (individually), Bryan Burch, and Adam Nick (as major donor committee), hereby agree as follows:

1. Respondents violated the Act as described in the foregoing pages, which are a true and accurate summary of the facts in this matter.
2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose of reaching a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondents pursuant to Section 83116.
4. Respondents have consulted with their attorney, Bill Baber, and understand, and hereby knowingly and voluntarily waive, all procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not limited to, the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially reviewed.
5. Respondents agree to the issuance of the decision and order set forth below. Also, Respondents agree to the Commission imposing against them an administrative penalty in the amount of \$5,000. One or more payments totaling this amount, to be paid to the General Fund of the State of

1 California, is/are submitted with this stipulation as full payment of the administrative penalty described  
2 above, and they will be held by the State of California until the Commission issues its decision and order  
3 regarding this matter.

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

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

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14 Dated: \_\_\_\_\_  
15 Angela J. Brereton, Chief of Enforcement  
16 Fair Political Practices Commission

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18 Dated: \_\_\_\_\_  
19 Adam Nick, individually and on behalf of Nick for  
20 Lake Forest City Council 2016 and Adam Nick, as  
21 major donor committee

22 Dated: \_\_\_\_\_  
23 Bryan Burch, individually and on behalf of Nick for  
24 Lake Forest City Council 2016

1 The foregoing stipulation of the parties “In the Matter of Nick for Lake Forest City Council 2016, Adam  
2 Nick (individually), Bryan Burch, and Adam Nick (as major donor committee),” FPPC Case No.  
3 16/20096 is hereby accepted as the final decision and order of the Fair Political Practices Commission,  
4 effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: \_\_\_\_\_  
9 Richard C. Miadich, Chair  
10 Fair Political Practices Commission  
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