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

11 In the Matter of:

12 H. S. FANGARY FOR CITY COUNCIL
13 2017, HANY S. FANGARY, AND DINA
FANGARY;

14 Respondents.

FPPC Case Nos. 2018/00005 and 2022/00033

STIPULATION, DECISION AND ORDER

15
16 **INTRODUCTION**

17 Respondent Hany S. Fangary (“Fangary”) was a former member of the City Council of Hermosa
18 Beach. Fangary’s controlled committee was called, H. S. Fangary for City Council 2017 (“Committee”).
19 Dina Fangary served as the treasurer at all relevant times.

20 The Respondents violated the Political Reform Act¹ (“Act”) by failing to make all expenditures
21 from and deposit all contributions into the designated campaign bank account and failing to timely file
22 campaign statements.

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28 ¹ 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 **Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act**

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

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

11 **Committee**

12 A “committee” includes any person who directly or indirectly receives contributions totaling
13 \$2,000 or more in a calendar year.⁷

14 **Designated Campaign Bank Account**

15 A candidate is required to establish a designated campaign contribution bank account.⁸ Money in
16 the account shall be spent only on expenses associated with the candidate’s election to the specific elective
17 office designated in the statement of intention.⁹ All contributions or loans made to the candidate, to a
18 person on behalf of the candidate, or to the candidate’s-controlled committee shall be deposited in the
19 account.¹⁰ All personal funds which will be utilized to promote the election of the candidate shall be
20 deposited in the account prior to expenditure.¹¹ All campaign expenditures shall be made from the
21 account.¹²

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24 ² Section 81001, subdivision (h).

25 ³ Section 81003.

26 ⁴ Section 81002, subdivision (a).

27 ⁵ Sections 84200, *et seq.*

28 ⁶ Section 81002, subdivision (f).

⁷ Section 82013, subdivision (a).

⁸ Section 85201, subdivision (a).

⁹ Section 18524,

¹⁰ Section 85201, subdivision (c).

¹¹ Section 85201, subdivision (d).

¹² Section 85201, subdivision (e).

1 **Duty to File Reports**

2 A recipient committee formed to support a candidate must file two pre-election campaign
3 statements.¹³ A committee must file a first pre-election campaign statement no later than 40 days before
4 the election for the reporting period ending 45 days before the election.¹⁴ A committee must file a second
5 pre-election statement no later than 12 days before the election for the reporting period ending 17 days
6 before the election.¹⁵

7 A recipient committee must file two semi-annual campaign statements each year no later than July
8 31 for the period ending June 30 and no later than January 31 for the period ending December 31.¹⁶

9 Whenever the deadline falls on a Saturday, Sunday, or official state holiday, the filing deadline for
10 a statement shall be extended to the next regular business day.¹⁷

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

12 It is the duty of a committee treasurer and the candidate to ensure that the committee complies with
13 the Act’s campaign reporting.¹⁸ A treasurer and candidate may be held jointly and severally liable with the
14 committee for violations committed by the committee.¹⁹

15 **SUMMARY OF THE FACTS**

16 Fangary initially ran for the office of city council for Hermosa Beach in 2011 where he was
17 unsuccessful. He ran again in 2013 and was successful. He ran for re-election in 2017 and was successful.
18 He served in this office until January 4, 2021. The Enforcement Division received a sworn complaint
19 against Fangary’s 2017 campaign. An investigation determined that Fangary had failed to utilize a
20 designated campaign bank account for all expenditures and the deposit of all contributions. In addition,
21 Fangary filed campaign statements past their due dates. The Committee has since terminated.

22 **One Bank Account**

23 As required by the Act, the Committee established a designated bank account for the campaign.
24 Despite this, Fangary utilized his personal funds to make expenditures and accepted contributions into a
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26 ¹³ Section 84200.5

27 ¹⁴ Section 84200.8, subdivision (a).

28 ¹⁵ Section 84200.8, subdivision (b).

¹⁶ Section 84200.

¹⁷ Regulation 18116, subdivision (a).

¹⁸ Sections 81004, 84100, 84104, and Regulation 18427.

¹⁹ Sections 83116.5 and 91006.

1 PayPal account and these contributions were comingled with Fangary's personal funds and non-campaign
2 related withdrawals. The contributions made to Fagnary's PayPal account were never deposited into the
3 campaign bank account. The following figures were taken from campaign statements filed, including
4 amendments made to detail the activity of the committee and the sources of deposits and payments made.

5 For the reporting period of January 1, 2017 through September 23, 2017, \$4,199 expenditures were
6 made outside the designated bank account and \$4,949 in contributions were received but not deposited into
7 the designated bank account.

8 For the reporting period of September 24, 2017 through October 21, 2017, \$200 in contributions
9 were received but not deposited into the designated bank account.

10 For the reporting period of October 22, 2017 through December 31, 2017, \$363 expenditures were
11 made outside the designated bank account and \$1,550 in contributions were received but not deposited into
12 the designated bank account.

13 **Failure to Timely File Reports**

14 Upon receipt of the complaint, the Enforcement Division contacted the Committee and Fangary
15 and determined that the first pre-election statement was filed late. Fangary responded and filed the first
16 pre-election statement for the reporting period of January 1, 2017 through September 23, 2017 on October
17 19, 2017, 21 days past the deadline of September 28, 2017. The Committee and Fangary filed the second
18 pre-election statement on time but failed to file any subsequent campaign statements that were due by their
19 respective deadlines. These statements were filed on March 16, 2022. The late statements include nine
20 semiannual campaign statements through the termination of the Committee.

21 According to the filed statements and amendments, the late pre-election for the reporting period
22 ending September 23, 2017 reported contributions totaling \$14,949 and expenditures totaling \$6,737. The
23 semiannual campaign statement for the reporting period ending December 31, 2017 reported contributions
24 totaling \$2,633 and expenditures totaling \$3,840. The semiannual campaign statement for the reporting
25 period ending June 30, 2018 reported contributions totaling \$13,000 and expenditures totaling \$15,679.
26 The remaining reporting periods disclosed only nominal activity related to bank fees and closing out the
27 final cash balance. As there was limited activity after June 30, 2018, only the two semiannual campaign
28 statements with significant late reported activity are being pursued as counts.

1 **VIOLATIONS**

2 **Count 1**

3 **Failure to Deposit All Contributions and Make All Expenditures**
4 **from a Designated Campaign Bank Account**

5 The Committee, Fangary, and Dina Fangary failed to utilize a designated campaign bank account
6 for the deposit of all contributions and for the making of all expenditures, in violation of Government Code
7 Section 85201.

8 **Count 2**

9 **Failure to Timely File Campaign Statements**

10 The Committee, Fangary, and Dina Fangary failed to timely file a pre-election campaign statement
11 for the reporting period ending September 23, 2017 and failed to timely file a semiannual campaign
12 statement for the reporting period ending December 31, 2017 and for the reporting period of June 30, 2018,
13 in violation of Government Code Sections 84200.5 and 84200.

14 **PROPOSED PENALTY**

15 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per
16 count.²⁰

17 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
18 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
19 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers
20 the facts and circumstances of the violation in the context of the following factors set forth in Regulation
21 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused by the specific
22 violation; (2) The level of experience of the violator with the requirements of the Political Reform Act;
23 (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence or absence of
24 any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate, negligent or
25 inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission staff or any
26 other governmental agency in a manner not constituting complete defense under Government Code Section
27 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the violator has a prior
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²⁰ See Section 83116, subdivision (c).

1 record of violations of the Political Reform Act or similar laws; and (8) Whether the violator, upon learning
2 of a reporting violation, voluntarily filed amendments to provide full disclosure.

3 In addition to the violations listed above, Fangary, in his capacity as a city councilmember, failed
4 to timely file two statements of economic interest (SEI). Specifically, Fangary failed to file an Annual SEI
5 for 2019 and failed to file a combined Annual SEI for 2020 and a leaving office statement. The statements
6 have since been filed. As part of this settlement agreement and to resolve all open matters with the
7 Enforcement Division, these violations are considered as aggravation but are not being charged separately.

8 This matter does not qualify for the streamline settlement program because of the amount of activity
9 that took place outside the designated campaign bank account. To qualify for the streamline program, the
10 total percentage of expenditures or contributions that took place outside the campaign bank account cannot
11 exceed 40% of the activity per reporting period. In this case, two reporting periods had activity outside the
12 campaign account that exceeded 60%. The remaining count would otherwise qualify for Tier 1 of the
13 streamline program.

14 With respect to the first factor, the public harm from the failure to utilize a single, designated
15 campaign bank account is that it erodes the trust placed in candidates to utilize campaign funds for proper
16 purposes and that all transactions are properly reported. In this matter, there was harm from failing to utilize
17 the designated bank account for all activity and from the late reporting of activity. The violations here
18 resulted in less disclosure to the public, including a lack of disclosure while Fangary was holding office.
19 The use of personal credit cards and a PayPal account to accept contributions can be permissible but in this
20 case, Fangary failed to adhere to the regulations regarding the use of these tools. However, the harm
21 appears to be minimal as the transactions were able to be verified and accounted for by both Enforcement
22 investigators and by a subsequent treasurer who filed amendments to fully disclose this activity (for
23 example, the amended statements indicate which transactions occurred outside the bank account.) In this
24 matter, the Enforcement Division has considered an additional violation, failure to include a mailing
25 address in the sender identification on a mass mailing but has dropped this count for the low public harm
26 associated. The mailer was otherwise compliant and subsequent mailers included the complete disclosure.

1 With respect to the second factor, Fangary knew or should have known the requirements of the Act.
2 Fangary ran for office in 2011, 2013, and 2017. Dina Fangary served as treasurer for both the 2013 and
3 2017 committees.

4 With respect to the third factor, the following cases were considered as comparable cases:

5 *Nick for Lake Forest City Council 2016, Adam Nick; and Bryan Burch*, FPPC No. 16/20096 (The
6 Commission approved a stipulation in this matter on April 20, 2022.) The candidate used \$12,466 to make
7 expenditures using personal funds, out of approximately \$164,078 (or about 8%), and reported the activity
8 late. The Commission imposed a penalty of \$3,000 for this violation, in addition to making findings
9 regarding the failure to timely report nonmonetary contributions.

10 In contrast to the comparable case, the total activity outside the campaign bank account accounts
11 for a higher percentage because of the overall size of the campaign. Similar to this comparable case, the
12 activity was reported late. A similar penalty is recommended.

13 *In the Matter of Robert Jordan Funk*, FPPC No. 2018-00376. (The Commission approved a
14 stipulation in this matter on August 19, 2021.) The respondent failed to timely file pre-election campaign
15 statements and a semiannual campaign statement. One late pre-election was filed timely before the election.
16 The Commission imposed a penalty of \$2,000 for this count. In the present matter, both pre-elections were
17 filed prior to the election. However, the activity in the present matter exceeds the activity in the comparable
18 case. In addition, the committee failed to file several additional semiannual statements timely. Those
19 additional statements reporting nominal activity and are not being charged separately but are considered
20 as aggravation. Therefore, a higher penalty of \$3,000 is recommend.

21 With respect to the fourth factor, the Enforcement Division did not find evidence to support a
22 finding that there was intent to conceal, deceive, or mislead.

23 With respect to the fifth factor, the Enforcement Division did not find evidence to support a finding
24 that the violations were deliberate. The Enforcement Division contends that the violations were negligent.
25 Though activity took place outside the campaign bank account, the investigation and amended campaign
26 statements did not show that additional violations took place related to misuse of campaign funds. The
27 failure to file a pre-election statement was quickly corrected and filed before the election. The duty to file
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1 post-election semi-annual statements was significantly delayed but were eventually filed, and most of these
2 campaign statements reported very little activity.

3 With respect to the sixth factor, there is no relevant information available for this factor.

4 With respect to the seventh factor, Fangary has no has prior enforcement history within the last five
5 years. The violations in this matter show a pattern of failing to uphold the duty of candidate and treasurer
6 while a committee is open and when the candidate is in office.

7 With respect to the eighth factor, the Committee has filed corrective amendments.

8 After considering the factors listed in Regulation 18361.5 and penalties in prior similar cases, a
9 penalty of \$6,000 is recommended.

10 CONCLUSION

11 Complainant, the Enforcement Division of the Fair Political Practices Commission, and Hany S.
12 Fangary, H. S. Fangary for City Council 2017, and Dina Fangary hereby agree as follows:

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

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

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

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

27 5. Respondents agree to the issuance of the decision and order set forth below. Also,
28 Respondents agree to the Commission imposing against them an administrative penalty in the amount of

1 \$6,000. One or more payments totaling said amount—to be paid to the General Fund of the State of
2 California—is/are submitted with this stipulation as full payment of the administrative penalty described
3 above, and same shall be held by the State of California until the Commission issues its decision and order
4 regarding this matter.

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

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

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15 Dated: _____

Angela J. Brereton, Chief of Enforcement
Fair Political Practices Commission

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18 Dated: _____

Hany S. Fangary,
Individually and on behalf of H. S. Fangary for City Council
2017.

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21 Dated: _____

Dina Fangary,
Individually and on behalf of H. S. Fangary for City Council
2017.

1 The foregoing stipulation of the parties “Hany S. Fangary, H. S. Fangary for City Council 2017,
2 and Dina Fangary,” FPPC Case Nos. 2018-00005 and 2022-00033 is hereby accepted as the final
3 decision and order of the Fair Political Practices Commission, effective upon execution below by the
4 Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

Richard C. Miadich, Chair
Fair Political Practices Commission