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6

7 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

8 STATE OF CALIFORNIA
9

10 In the Matter of

11 HALLINAN FOR BOARD OF
EQUALIZATION 2018, HALLINAN
12 FOR SUPERVISOR 2020, TOM
HALLINAN and HANNAH BURCAW,
13

14 Respondents.

FPPC Case No. 2020-00861

STIPULATION, DECISION AND ORDER

Date Submitted to Commission: August 2024

15 **INTRODUCTION**

16 Respondent Tom Hallinan was an unsuccessful candidate for Board of Equalization in the
17 November 6, 2018 General Election. Respondent Hallinan for Board of Equalization 2018 (“2018
18 Committee”) was Hallinan’s candidate-controlled committee for the 2018 election. Hallinan was an
19 unsuccessful candidate for Stanislaus County Board of Supervisors in the November 3, 2020 General
20 Election. Respondent Hallinan for Supervisor 2020 (“2020 Committee”) was Hallinan’s candidate-
21 controlled committee for the 2020 election. Hallinan opened an exploratory committee in connection
22 with the State Controller election in 2022. O’Hallinan for Controller 2022 (“2022 Committee”) was
23 Hallinan’s candidate-controlled committee for the 2022 election. At all relevant times, Respondent
24 Hannah Burcaw was the treasurer for each named committee.
25

26 This case arose from a Commission Audit of 2018 Committee, which led to a further
27 investigation. This case involves prohibited use of surplus funds, campaign filing and disclosure—in
28

1 violation of the Political Reform Act (the “Act”).¹

2 **SUMMARY OF THE LAW**

3 The Act and its regulations are amended from time to time. All legal references and discussions
4 of law are intended to be citations to statutes and regulations as they existed at the time of the violations
5 in this case.

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

8 When enacting the Political Reform Act, the people of California found and declared that:
9 “[p]revious laws regulating political practices have suffered from inadequate enforcement by state and
10 local authorities.”² Thus, it was decreed that the Act “should be liberally construed to accomplish its
11 purposes.”³ One purpose of the Act is to promote transparency by ensuring that receipts and expenditures
12 in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
13 practices are inhibited.⁴ The Act, therefore, establishes a campaign reporting system designed to
14 accomplish this purpose of disclosure. Another purpose of the Act is to provide adequate enforcement
15 mechanisms so that the Act will be “vigorously enforced.”⁵

16 **Definition of Controlled Committee**

17 A “committee” includes any person (or combination of persons) receiving contributions totaling
18 \$2,000 or more in a calendar year.⁶ This type of committee commonly is referred to as a “recipient
19 committee.” A recipient committee that is controlled directly or indirectly by a candidate, or which acts
20 jointly with a candidate in connection with the making of expenditures, is a “controlled committee.”⁷ A

21
22 ¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory
23 references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through
24 18998 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

25 ² Section 81001, subd. (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subd. (a).

28 ⁵ Section 81002, subd. (f).

⁶ Section 82013, subd. (a).

⁷ Section 82016.

1 candidate controls a committee if their agent—or any other committee they control—has a significant
2 influence on the actions or decisions of the committee.⁸

3 **Semi-Annual Campaign Statements**

4 Candidates and committees shall file semi-annual campaign statements each year no later than
5 July 31 for the period ending June 30, and no later than January 31 for the period ending December 31.⁹

6 **Campaign Reporting**

7 The Act provides that each campaign statement must contain certain information about the
8 campaign’s financial activity, including total contributions, total expenditures, and identifying
9 information about sources of contributions and recipients of expenditures.¹⁰ Campaign contributions
10 include payments, forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to
11 make a payment, including non-monetary or in-kind contributions.¹¹ For contributions of \$100 or more,
12 including loans, the statement must include the name, street address, occupation, employer, and amount
13 received from each source.¹²

14 **Surplus Funds**

15 The Act defines surplus funds as funds remaining in a campaign account 90 days after a
16 triggering event, including when the candidate leaves the elective office or following the postelection
17 reporting period after the defeat for elective office.¹³ Surplus campaign funds must be reported and may
18 be used only for the following purposes: the payment of outstanding campaign debts or elected officer’s
19 expenses, the repayment of contributions, donations to any bona fide charitable, educational, civic,
20 religious, or similar tax-exempt, nonprofit organization, contributions to a political party committee,
21 contributions to support or oppose any candidate for federal office, any candidate for elective office in a
22 state other than California, or any ballot measure, or the payment for professional services reasonably
23 required by the committee to assist in the performance of its administrative functions.¹⁴

24 ⁸ Section 82016, subd. (a).

25 ⁹ Section 84200.

26 ¹⁰ Section 84211.

27 ¹¹ Section 82015.

28 ¹² Section 84211, subd. (f).

¹³ Section 89519, subd. (a).

¹⁴ Section 89519, subd. (b).

1 **Joint and Several Liability**

2 A candidate and committee, along with the treasurer, may be held jointly and severally liable for
3 violations of the Act.¹⁵

4 **SUMMARY OF THE FACTS**

5 2018 Committee

6 Hallinan was a successful candidate for the Board of Equalization in the June 5, 2018 Primary
7 Election but unsuccessful in the 2018 General Election. During the audit period from January 1, 2017,
8 through September 4, 2019 (which incorporates the surplus fund activity), the 2018 Committee received
9 a total of \$43,820 in contributions and made \$43,895 in expenditures.¹⁶ The remaining 2018 Committee
10 funds became surplus on March 31, 2019, 90 days after the end of the December 31, 2018 postelection
11 reporting period following Hallinan’s defeat. On March 31, 2019, the 2018 Committee had a remaining
12 balance of \$3,000. On September 4, 2019, this remaining balance of \$3,000 was withdrawn from 2018
13 Committee and deposited into the 2020 Committee at a time the funds had become surplus.

14 The 2018 Committee misreported a payment on January 2, 2019, prior to becoming surplus funds,
15 to 2022 Committee in the amount of \$3,000. However, this amount was never transferred to the 2022
16 Committee and remained in the 2018 Committee campaign bank account until it was deposited into the
17 2020 Committee campaign bank account on September 4, 2019.

18 The 2018 Committee filed a termination campaign statement on January 31, 2019, disclosing an
19 effective termination date of December 28, 2018. However, the 2018 Committee maintained a balance of
20 \$3,000 until September 4, 2019. As such, the 2018 Committee was not eligible for termination until
21 September 4, 2019, once the 2018 Committee campaign bank account balance was zero.

22 The 2018 Committee was required to file semi-annual campaign statements to disclose campaign
23 activity for the periods January 1, 2019, through June 30, 2019, and July 1, 2019, through December 31,
24 2019, disclosing the payment of \$3,000 on September 4, 2019. The 2018 Committee failed to file these
25 campaign statements.

26 _____
27 ¹⁵ Sections 81004, 83116.5, 91006; and Regulation 18427.

28 ¹⁶ The outstanding debt was based on a loan from the candidate that was forgiven but not updated on the campaign statement.

1 2020 Committee

2 The 2020 Committee filed a Statement of Organization on August 29, 2019, disclosing it was not
3 yet qualified. The 2020 Committee filed a campaign statement for the period January 1, 2019, through
4 December 31, 2019, misreporting the receipt of a contribution of \$3,000 on September 4, 2019, from the
5 2022 Committee. However, this contribution was from the 2018 Committee. The 2020 Committee was
6 required to disclose the September 4, 2019 contribution of \$3,000 was from the 2018 Committee.

7 **VIOLATIONS**

8 **Respondents 2018 Committee, Hallinan and Burcaw**

9 **Count 1: Failure to Timely File Semi-Annual Campaign Statements**

10 The 2018 Committee, Hallinan and Burcaw were required to file semi-annual campaign
11 statements for the reporting periods covering January 1, 2019, through June 30, 2019, and July 1, 2019,
12 through December 31, 2019. The 2018 Committee, Hallinan and Burcaw failed to file these semi-annual
13 campaign statements. In this way, the 2018 Committee, Hallinan and Burcaw violated Section 84200.

14 **Count 2: Prohibited Use of Surplus Funds**

15 The 2018 Committee, Hallinan and Burcaw contributed \$3,000 to the 2020 Committee after the
16 funds had become surplus, in violation of Section 89519.

17 **Respondents 2020 Committee, Hallinan and Burcaw**

18 **Count 3: Campaign Disclosure**

19 The 2020 Committee, Hallinan and Burcaw failed to properly disclose receipt of the contribution
20 of \$3,000 on September 4, 2019, from 2018 Committee. In this way, the 2020 Committee, Hallinan and
21 Burcaw violated Section 84211, subdivision (f).

22 **STREAMLINE EXCLUSION**

23 Certain types of cases are eligible for streamline settlement, but cases involving the impermissible
24 use of surplus funds, such as the current case, are excluded from the streamline program.¹⁷

25 **PROPOSED PENALTY**

26 The maximum penalty that may be imposed per count is \$5,000. In this case, three counts are

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28 ¹⁷ See Regulations 18360.1 - 18360.3.

1 recommended, with a maximum penalty for the counts charged of \$15,000.¹⁸

2 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
3 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
4 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division
5 considers the facts and circumstances of the violation in the context of the following factors (which are
6 from Regulation 18361.5subd. (e)(1)-(8)):

- 7 1. the extent and gravity of the public harm caused by the specific violation;
- 8 2. the level of experience of the violator with the requirements of the Act;
- 9 3. penalties previously imposed by the Commission in comparable cases;
- 10 4. the presence or absence of any intention to conceal, deceive or mislead;
- 11 5. whether the violation was deliberate, negligent or inadvertent;
- 12 6. whether the violator demonstrated good faith by consulting Commission staff or any other
13 governmental agency in a manner not constituting a complete defense under Section 83114,
14 subdivision (b);
- 15 7. whether the violation was isolated or part of a pattern—and whether the violator has a prior
16 record of violations of the Act or similar laws; and
- 17 8. whether the violator, upon learning of a reporting violation, voluntarily filed amendments to
18 provide full disclosure.

19 This case includes violations involving campaign filing, misuse of surplus funds and misreporting
20 of the receipt of the surplus funds. Historically, surplus funds violations have been treated as varying in
21 severity depending on the circumstances. The combined violations in the current case served to mask the
22 date the funds were transferred, thereby disguising the fact that the funds had become surplus.

23 Hallinan is an attorney. While Hallinan has acted as City Attorney, sits on multiple boards in the
24 Stanislaus area and is an elected member of the Yosemite Community College District Board of
25 Trustees, Hallinan has limited experience with the campaign finance provisions of the Act. Further,
26 Burcaw had limited experience as a campaign treasurer.

27 The Commission also considers penalties in prior cases with comparable violations. Regarding

28 ¹⁸ See Section 83116, subd. (c).

1 Count 1, *In the Matter of Doug Husen, Committee to Elect Doug Husen for Corona City Council 2018*
2 *and Maureen Husen*; FPPC Case No. 18/1340, was approved by the Commission in March 2021. Husen
3 was an unsuccessful candidate for Corona City Council in the November 6, 2018 General Election. In
4 relevant part, the Commission approved a penalty of \$2,500 for one combined count of failing to timely
5 file a pre-election and semi-annual campaign statement. In aggravation, the Committee had prior
6 experience with filing violations, failed to file a statement of intention prior to receiving about \$300 and
7 failed to accurately report the date of qualification.

8 These cases are similar in that both were unsuccessful candidates. However, in the *Husen* case, the
9 committee failed to disclose campaign activity in connection with an election and had prior filing
10 violations. While Respondents in the current case have no prior Enforcement history, the 2018 Committee
11 campaign activity was required to disclose campaign activity after the election. The 2018 Committee was
12 required to file campaign statements until the 2018 Committee was able to properly terminate. Without
13 this disclosure, it appeared there were no funds remaining in the 2018 Committee campaign bank account.
14 Further, no amendments were filed to disclose this activity, even after the audit findings were provided to
15 the Respondents. In this way, the 2018 Committee's failure to timely file the semi-annual campaign
16 statements made it more difficult to identify that these funds had become surplus. However, the
17 Respondents contend they did not realize the funds remained in the 2018 Committee, which would restrict
18 termination of the committee. Once the committee was terminated, Respondents contend they did not
19 realize there were any additional filing requirements. Further, the only activity that was required to be
20 reported on these campaign statements was disclosure of the remaining \$3,000. As such, a similar penalty
21 is recommended in the amount of \$2,500.

22 Regarding Counts 2 and 3, *In the Matter of Dolores Marquez for School Board 2016, Dolores*
23 *Marquez for Santa Clara County Board of Education 2014, Dolores Marquez and Anjelica Frausto*,
24 FPPC Case No. 2017/00106, was approved by the Commission in August 2019. Regarding the misuse of
25 surplus funds, the Dolores Marquez for Santa Clara County Board of Education 2014 committee
26 impermissibly transferred \$5,022 in surplus funds to the Dolores Marquez for School Board 2016
27 committee. The non-disclosure of making this contribution was not charged but used as aggravation. The
28 Commission approved a penalty of \$2,500 for this count. Regarding the failure to report campaign

1 activity, Dolores Marquez for School Board 2016 was charged with failing to report \$1,750 in
2 contributions received and \$2,330 in expenditures made on campaign statements for an approved penalty
3 of \$2,000. In mitigation, the *Marquez* case identified that the actions of the Committee appeared to be the
4 result of negligence with no evidence of deliberate omission or attempts to conceal and the respondents
5 had no prior Enforcement history.

6 Similar to the *Marquez* case, the misused surplus funds were relatively small. However, the Act
7 prohibits the use of a committee's surplus campaign funds for a candidate's future election, which was
8 how the surplus funds were used in both cases. In the current case, the surplus funds were less than in the
9 *Marquez* case. In the current case, the failure to disclose that the \$3,000 remained in the 2018 Committee
10 campaign bank account and the misreporting of a transfer to the 2022 Committee prior to the funds
11 becoming surplus resulted in the need for additional investigation to determine if the funds had in fact
12 become surplus after the audit. Given this, and considering Hallinan's previous experience, it is
13 recommended to charge both the misused surplus funds and the failure to properly disclose the receipt of
14 the funds from the 2018 Committee to the 2020 Committee separately. The Respondents contend the
15 misreporting was accidental and reporting obligations for multiple committees created some confusion.
16 The investigation did not reveal any evidence of deliberate omission or attempt to conceal. Further,
17 Respondents have no prior Enforcement history. Given the foregoing, a higher penalty is recommended
18 for Count 2 at \$3,000, with a similar penalty for Count 3 at \$2,000.

19 Count	Respondents	Penalty Amount
20 1: Failure to Timely File Semi- 21 Annual Campaign Statements	2018 Committee, Hallinan and Burcaw	\$2,500
22 2: Prohibited Use of Surplus Funds	2018 Committee, Hallinan and Burcaw	\$3,000
23 3: Campaign Disclosure	2020 Committee, Hallinan and Burcaw	\$2,000
24		Total: \$7,500

25 Under these circumstances, a total penalty of \$7,500 is recommended.
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1 **CONCLUSION**

2 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
3 Respondents Hallinan for Board of Equalization 2018, Hallinan for Supervisor 2020, Tom Hallinan and
4 Hannah Burcaw hereby agree as follows:

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

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

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

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

19 5. Respondents agree to the issuance of the decision and order set forth below. Also,
20 respondents agree to the Commission imposing against them an administrative penalty in the amount of
21 \$7,500. One or more payments totaling this amount—to be paid to the General Fund of the State of
22 California—is/are submitted with this stipulation as full payment of the administrative penalty described
23 above, and they will be held by the State of California until the Commission issues its decision and order
24 regarding this matter.

25 6. If the Commission refuses to approve this stipulation—then this stipulation shall become
26 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
27 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to
28 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing

1 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
2 Director, shall be disqualified because of prior consideration of this Stipulation.

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

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8 Dated: _____

James M. Lindsay, Chief of Enforcement
Fair Political Practices Commission

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11 Dated: _____

Tom Hallinan, individually and o/b/o Hallinan for
Board of Equalization 2018, Hallinan for Supervisor
2020, Respondents

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14 Dated: _____

Hannah Burcaw, individually and o/b/o Hallinan for
Board of Equalization 2018, Hallinan for Supervisor
2020, Respondents

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18 The foregoing stipulation of the parties "In the Matter of Hallinan for Board of Equalization
19 2018, Hallinan for Supervisor 2020, Tom Hallinan and Hannah Burcaw," FPPC Case No. 2020-00861, is
20 hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon
21 execution below by the Chair.

22
23 IT IS SO ORDERED.

24
25 Dated: _____

Adam E. Silver, Chair
Fair Political Practices Commission