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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA  
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12 In the Matter of ) FPPC No. 11/275  
13 )  
14 ) STIPULATION, DECISION and  
ANNA CABALLERO, ANNA CABALLERO ) ORDER  
FOR SENATE 2010 COMMITTEE, AND )  
15 JAMES R. SANTOS, )  
16 )  
Respondents. )  
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19 Complainant the Fair Political Practices Commission and Respondents Anna Caballero, Anna  
20 Caballero for Senate 2010 committee, and James R. Santos agree that this Stipulation will be submitted  
21 for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

22 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this  
23 matter and to reach a final disposition without the necessity of holding an administrative hearing to  
24 determine the liability of Respondents, pursuant to Section 83116 of the Government Code.

25 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural  
26 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1  
27 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,  
28 the right to personally appear 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

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge  
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed Respondents Anna Caballero, Anna Caballero for Senate 2010  
4 committee, and James R. Santos violated the Political Reform Act by failing to timely report required  
5 subvendor information for expenditures, in violation of Sections 84211, subdivision (k), and 84303 of  
6 the Government Code (1 count). The count is described in Exhibit 1, which is attached hereto and  
7 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of  
8 the facts in this matter.

9 Respondents agree to the issuance of the Decision and Order, which is attached hereto.  
10 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount  
11 of One Thousand Dollars (\$1,000). A cashier's check from Respondents in said amount, made payable  
12 to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the  
13 administrative penalty, to be held by the State of California until the Commission issues its decision and  
14 order regarding this matter. The parties agree that in the event the Commission refuses to accept this  
15 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission  
16 meeting at which the Stipulation is rejected, all payments tendered by Respondents in connection with  
17 this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and agree that in the  
18 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission  
19 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be  
20 disqualified because of prior consideration of this Stipulation.

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Dated: \_\_\_\_\_  
Gary S. Winuk, Chief of Enforcement  
Fair Political Practices Commission

Dated: \_\_\_\_\_  
Anna Caballero, Respondent,  
Individually and on behalf of  
Anna Caballero for Senate 2010 Committee

Dated: \_\_\_\_\_  
James R. Santos, Respondent,  
Individually and on behalf of  
Anna Caballero for Senate 2010 Committee

**DECISION AND ORDER**

The foregoing Stipulation of the parties “In the Matter of Respondents Anna Caballero, Anna Caballero for Senate 2010 committee, and James R. Santos,” FPPC No. 11/275, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chairman.

IT IS SO ORDERED.

Dated: \_\_\_\_\_  
Ann Ravel, Chair  
Fair Political Practices Commission

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## **EXHIBIT 1**

### **INTRODUCTION**

Respondent Anna Caballero was an unsuccessful candidate for California State Senate in the November 2, 2010 Statewide General Election, and Anna Caballero for Senate 2010 (“Respondent Committee”) was her candidate-controlled recipient committee. At all time relevant, Respondent James R. Santos (“Respondent Santos”) served as treasurer of Respondent Committee. This case arose from a Fair Political Practices Commission (“Commission”) audit of Respondent Committee for the period January 1, 2009 – December 31, 2010.<sup>1</sup> During the period covered by the audit, Respondent Committee reported receiving contributions of \$3,082,625 and making expenditures of \$3,090,655.

As a candidate-controlled recipient committee under the Political Reform Act<sup>2</sup> (the “Act”), Respondents have a duty to timely file campaign statements and reports and disclose particular information on those reports and statements. However, Respondents failed to timely report required subvendor information.

For the purposes of this Stipulation, Respondents’ violation of the Act is stated as follows:

**COUNT 1:** Respondents Anna Caballero, Anna Caballero for Senate 2010 committee, and James R. Santos failed to timely report required subvendor information on two campaign statements for the reporting periods ending September 30, 2010, and October 16, 2010, for expenditures totaling approximately \$825,335, in violation of Sections 84211, subdivision (k), and 84303 of the Government Code.

### **SUMMARY OF THE LAW**

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act, therefore, establishes a campaign reporting system designed to accomplish this purpose of disclosure.

#### **Duty to Disclose Expenditures on Campaign Statements**

Section 82025 defines “expenditure” as a payment, forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the

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<sup>1</sup> The Commission performed this audit pursuant to Government Code Sections 90001, 90004, and 90006, since Respondent Caballero was appointed to the California State and Consumer Services Agency, which oversees the Franchise Tax Board, who would have normally conducted the audit.

<sup>2</sup> The Political Reform 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.

surrounding circumstances that it is not made for political purposes. Section 84211, subdivision (b), requires committees to disclose the total amount of expenditures made during the period covered by the campaign statement. In addition, for each person to whom the committee makes an expenditure of \$100 or more during the period covered by the campaign statement, a committee must disclose information that includes the payee's name and address, the amount of each expenditure, and a brief description of the consideration for which each expenditure is made. (Section 84211, subs. (i) and (k).) "Expenditure" includes any individual payment or accrued expense (i.e., an unpaid bill). (Sections 82025, 84211, subd. (k)(6).) Further, an expenditure is "made" on the date the payment is made or on the date consideration, if any, is received, whichever is earlier. (Section 82025.)

### **Duty to Report Subvendor Payments**

Section 84303 provides that no expenditure of five hundred dollars (\$500) or more shall be made, other than overhead and normal operating expenses, by an agent or independent contractor, including but not limited to an advertising agency, on behalf of, or for the benefit of any candidate or committee, unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee. Regulation 18431, subdivision (a), provides specific types of expenditures that must be reported pursuant to Section 84303, including expenditures for design of campaign literature or advertising and printed campaign literature, as well as expenditures to printers of mass mailings and providers of advertising time or space. Regulation 18431, subdivision (c), requires disclosure of the expenditures made by an agent or independent contractor to be made at the same time and in the same manner and detail as required under Section 84211, subdivision (k), for the committee's direct expenditures.<sup>3</sup> This information reported by the candidate or committee is commonly referred to as "subvendor information."

### **Liability of Committee Treasurers**

As provided in Section 84100, every committee shall have a treasurer. Under Section 84100 and Regulation 18427, subdivision (a), it is the duty of a committee's treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds and the reporting of such funds. A committee's treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee. (Sections 83116.5 and 91006; Regulation 18316.6.)

## **SUMMARY OF THE FACTS**

Respondent Anna Caballero was an unsuccessful candidate for California State Senate in the November 2, 2010 Statewide General Election. Respondent Committee was his candidate-controlled recipient committee. For all times relevant, Respondent Santos served as treasurer of Respondent Committee.

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<sup>3</sup> Specifically, the following information must be provided: (1) the subvendor's full name; (2) his or her street address; (3) the amount of each expenditure; and (4) a brief description of the consideration for which each expenditure was made. (Section 84211, subd. (k)(1)-(4) and (6).)

**COUNT 1**  
**Failure to Report Subvendor Information for Payments Made**

In addition to requiring committees to report direct expenditures they make, the Act also requires committees to report expenditures made by an agent or independent contractor (such as a campaign worker, advertising agency, or campaign management firm) on behalf of the committee. (Sections 84211(k)(6) and 84303 and Regulation 18431.) Respondents had a duty to report on their campaign statements subvendor information for payments of \$500 or more made by an agent to a subvendor on Respondent Committee's behalf for campaign products or services, as if the expenditures were made directly by the committee.

Respondents failed to timely report required subvendor information on two campaign statements for the reporting periods ending September 30, 2010, and October 16, 2010, for expenditures totaling approximately \$825,335. According to Respondent's campaign statements and records, subvendor information for expenditures made that should have been reported during the pre-election reporting periods included expenditures made for media advertisements.

By failing to report required subvendor information for expenditures of \$500 or more, Respondents violated Sections 84211, subdivision (k) and 84303.

**CONCLUSION**

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of five thousand dollars (\$5,000).

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

The public harm involved when subvendor information is not disclosed is that the public is deprived of important information such as name of subvendors, amount of subvendor expenditures, and description of products and services they provided to the campaign.

Similar cases regarding missing subvendor expenditure information recently approved by the Commission include penalties of \$2,250 each. The Commission approved a \$2,250 penalty amount for failing to report subvendor information for \$297,182 of expenditures for six reporting periods, which amounted to approximately 73% of the total expenditures. (*In the Matter of Zack Scrivner, Scrivner for Supervisor 2010, and Shawn Kelly*, FPPC No. 10/1099 – approved December 13, 2012). In addition, *In the Matter of Shannon Grove, Shannon Grove for Assembly*

2010, and Karen Cain, FPPC No. 10/1098, which the Commission approved December 13, 2012, Respondents failed to timely report subvendor information for payments totaling approximately \$229,374 for two pre-election reporting periods, which comprised approximately 44% of reported expenditures for the committee and the Commission issued a fine of \$2,250. In both cases, the parties amended to disclose the information when contacted by the Commission and cooperated with the investigation.

The amount of subvendor expenditures that were not timely reported was significant, over \$825,000, comprising approximately 27% of the expenditures reported by Respondent Committee during the audit period. Respondent Santos contends that the failure to report the subvendor information was inadvertent and stated that he was experiencing severe health issues during the preelection periods when a large percentage of the subvendor information was not timely disclosed. Once Respondent Santos realized his error, he amended the statements before being contacted by the Enforcement Division. After the audit performed by Enforcement Division staff, Respondent Santos voluntarily filed a second amendment to disclose additional subvendor information, as determined by the audit.

Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$1,000 is justified. A higher penalty is not being sought because Respondents cooperated with the Enforcement Division of the Fair Political Practices Commission by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held. Neither Respondent Santos nor Respondent Caballero has any history of violating the campaign provisions of the Act even though each has been in the political realm for over 30 years and 20 years, respectively, so no pattern of violating the Act is present in this case.

#### **PROPOSED PENALTY**

Accordingly, the facts of this case justify imposition of a total administrative penalty of \$1,000.