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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. 10/1048
13		STIPULATION, DECISION and
14	SUPPORTERS FOR A BETTER SAN CLEMENTE, and JEANNE O'GRADY, TREASURER,	ORDER
15	Respondents.	
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18	Complainant, the Fair Political Practices Commission, and respondents Supporters for a Better	
19	San Clemente and Jeanne O'Grady ("Respondents") agree that this Stipulation will be submitted for	
20	consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.	
21	The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this	
22	matter and to reach a final disposition without the necessity of holding an administrative hearing to	
23	determine the liability of Respondents, pursuant to Section 83116 of the Government Code.	
24	Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural	
25	rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.	
26	through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,	
27	the right to personally appear at any administrative hearing held in this matter, to be represented by an	
28	attorney at the respondent's own expense, to confront and cross-examine all witnesses testifying at the	
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# **DECISION AND ORDER** The foregoing Stipulation of the parties "In the Matter of Supporters for a Better San Clemente and Jeanne O'Grady, Treasurer" FPPC No. 10/1048, 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 Vice-Chair. IT IS SO ORDERED. Dated: Sean Eskovitz, Vice-Chair Fair Political Practices Commission



# **EXHIBIT 1**

### **INTRODUCTION**

Respondent Supporters for a Better San Clemente ("Respondent Committee") was, at all times relevant, a city general purpose committee in San Clemente, California. Jeanne O'Grady ("Respondent O'Grady") was, at all times relevant, Respondent Committee's treasurer and a campaign manager for Jim Evert for City Council 2010. Jim Evert for City Council 2010 was, at all times relevant, the candidate-controlled committee of Jim Evert, a successful candidate for San Clemente City Council in the November 2, 2010, general election. Between October 12 and October 20, 2010, Respondent Committee received \$1,499 in contributions and spent \$2,552.88 to produce and distribute two advertisements opposing San Clemente City Council candidates Brenda Miller and Tim Brown in the November 2, 2010, general election. Respondent Committee and Respondent O'Grady (collectively "Respondents") failed to timely report a late contribution, as required by Political Reform Act (the "Act"). <sup>1</sup>

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

COUNT 1: On October 21, 2010, Respondent Supporters for a Better San Clemente made a contribution totaling \$2,111 to the controlled committee of a candidate in the November 2, 2010, general election, and therefore had a duty to report the late contribution to the San Clemente City Clerk by October 22, 2010. Respondent Supporters for a Better San Clemente and its treasurer Respondent Jeanne O'Grady failed to report the late contribution to the San Clemente City Clerk by October 22, 2010, in violation of Government Code section 84203.

#### **SUMMARY OF THE LAW**

All statutory references and discussions of law pertain to the Act's provisions as they existed at the time of the violation.

# <u>Liberal Construction and Vigorous Enforcement of the Political Reform Act</u>

When the Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

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 18109 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.

One of the purposes of the Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited. (Section 81002, subd. (a).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced." (Section 81002, subd. (f).)

Section 82013, subdivision (a), of the Act includes within the definition of "committee" any person or combination of persons who receives contributions of \$1,000 or more during a calendar year. A committee that supports or opposes candidates or measures voted on in only one city is defined, at Section 82027.5, subdivision (d), as a "city general purpose committee."

# Payments Made at the Behest of a Committee

A payment made by an individual or entity at the behest of a committee is a contribution to that committee unless the committee provides full and adequate consideration to the person making the payment. (Section 82015, subd. (b).) A payment is presumed to be made at the behest of a committee if it is made by or through any agent of the committee. (Regulation18225.7, subd. (c).) Therefore, a payment made by or through an agent of a committee is a contribution to that committee unless the committee provides full and adequate consideration to the person making the payment.

# **Late Contribution Reports**

A contribution of \$1,000 or more made to a candidate-controlled committee before the date of the election at which the candidate is to be voted on but after the closing date of the last campaign statement required to be filed before the election is considered a "late contribution." (Sections 82036, subd. (a).) A city general purpose committee is required to report any late contributions it makes to the City Clerk within 24 hours of making the late contribution. (Section 84203, subds. (a) and (b).)

### Treasurer Liability

Under Section 81004, subdivision (b), Section 84100 and Regulation 18427, subdivision (a), a committee's treasurer has the duty to ensure compliance with all requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. Pursuant to Sections 83116.5 and 91006, the treasurer of a committee may be held jointly and severally liable, along with the committee, for the committee's violations.

#### **SUMMARY OF THE FACTS**

On October 12, 2010, Respondent Committee paid \$441.88 to have an ad placed in the Sun Post News on October 16, 2010, that opposed San Clemente City Council candidates Brenda Miller and Tim Brown in the November 2, 2010, general election. On October 15, 2010, Respondent Committee received a \$250 contribution from J. Rino LaRosa and a \$100 contribution from Jancee Aellig. On October 18, 2010, Respondent Committee received a \$150 contribution from Jan J. Tatala. Also on October 18, 2010, Respondent Committee paid \$1,311

to have 20,000 advertisements printed that opposed San Clemente City Council candidates Brenda Miller and Tim Brown in the November 2, 2010, general election. On October 19, 2010, Respondent Committee received a \$999 contribution from Linda and Shaheen Sadeghi. On October 20, 2010, Respondent Committee paid \$800 to have the 20,000 advertisements distributed by the San Clemente Times on October 21, 2010.

On or about February 5, 2014, Respondent O'Grady, on behalf of Respondent Committee, filed a statement of organization and a semiannual statement for the October 19 through December 31, 2010, reporting period. The semiannual statement indicated that Respondent Committee terminated on December 31, 2010.

# **COUNT 1 Failure to Timely Report a Late Contribution**

On October 19, 2010, Respondent Committee qualified as a committee pursuant to Section 82013, subdivision (a), because the total amount of contributions it received in the 2010 calendar year reached \$1,000. Respondent Committee qualified as a city general purpose committee because all the expenditures it made were in opposition of candidates running for office in the City of San Clemente.

As a city general purpose committee and its treasurer, Respondents had a duty to file a late contribution report with the San Clemente City Clerk within 24 hours of making a contribution to a candidate for the San Clemente City Council in the November 2, 2010, general election, of \$1,000 or more, between October 17 and November 1, 2010.

On October 21, 2010, Respondent Committee made a contribution of \$2,111 to Jim Evert for City Council 2010 by paying for the production and distribution of 20,000 advertisements opposing San Clemente City Council candidates Brenda Miller and Tim Brown. Respondents failed to report the late contribution to Jim Evert for City Council 2010 to the San Clemente City Clerk by October 22, 2010, in violation of Section 84203.

## **CONCLUSION**

This matter consists of a single count of violating the Act, which carries a maximum administrative penalty of \$5,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division 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 Enforcement Division 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(s) demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the respondent voluntarily filed amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

Failing to timely report a late contribution is a serious violation of the Act as it deprives the public of important information about Respondent Committee's financial activities. Recent fines approved by the Commission for failing to timely report a late contribution include:

In the Matter of Republican Central Committee of San Luis Obispo County, Patricia Smith, Elizabeth Van Note, and Danielle Duboff, FPPC No. 11/441. In September 2012, the Commission approved a fine of \$2,000 for the respondents' failure to timely report a late contribution. In mitigation, the respondents had no history of enforcement actions, cooperated with the Enforcement Division's investigation, and agreed to an early settlement of the matter.

In the Matter of Arturo Chacon and Art Chacon for Water Board 2010, FPPC No. 08/652. In February 2011, the Commission approved a fine of \$3,000 for the respondent's failure to report late contributions. In mitigation, the respondents cooperated with the Enforcement Division's investigation and agreed to an early settlement of the matter.

In this matter, Respondents failed to timely report a late contribution totaling \$2,111. However, Respondents do not have a history of enforcement actions, cooperated with the Enforcement Division's investigation, and have agreed to settle the matter. Therefore a \$2,500 fine is recommended.

#### PROPOSED PENALTY

Accordingly, the imposition of a total administrative penalty of \$2,500 is recommended.

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