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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10 In the Matter of:

11 CALIFORNIA APARTMENT
12 ASSOCIATION INDEPENDENT
13 EXPENDITURE COMMITTEE AND
DAVID BAUER

14 Respondents.

FPPC Case No. 17/00606

STIPULATION, DECISION AND ORDER

15
16 **INTRODUCTION**

17 Respondent California Apartment Association Independent Expenditure Committee
18 (“Committee”) is a general purpose committee. Respondent David Bauer (“Bauer”) serves as the
19 Committee’s treasurer. The Committee was the subject of an audit by the Franchise Tax Board (“FTB”).
20 FTB’s audit found, and the Enforcement Division of the Fair Political Practices Commission confirmed,
21 that the Committee and Bauer violated the Political Reform Act¹ (“Act”) by failing to timely file a pre-
22 election statement.

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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 All legal references and discussions of the law refer to the Act’s provisions as they existed in
3 2014.

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

5 When enacting the Political Reform Act, the people of California found and declared that previous
6 laws regulating political practices suffered from inadequate enforcement by state and local authorities.²
7 Thus, it was decreed that the Act “should be liberally construed to accomplish its purposes.”³ One purpose
8 of the Act is to promote transparency by ensuring that receipts and expenditures in election campaigns are
9 fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited.⁴
10 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be
11 “vigorously enforced.”⁵

12 **Duty to File Pre-Election Campaign Statements**

13 In 2014, a recipient committee was any person or combination of persons who directly or indirectly
14 received contributions totaling \$1,000 or more in a calendar year.⁶ A “state general purpose committee”
15 includes a committee to support or oppose candidates or measures voted on in a state election, or in more
16 than one county.⁷ In 2014, a state general purpose committee was required to file pre-election campaign
17 statements if the committee made contributions or independent expenditures totaling five hundred dollars
18 (\$500) or more, during the period covered.⁸ For the November election in 2014, the first pre-election
19 statement was due on October 6, 2014 for the reporting period July 1, 2014 to September 30, 2014.⁹

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24 ² Section 81001, subdivision (h).

25 ³ Section 81003.

26 ⁴ Section 81002, subdivision (a).

27 ⁵ Section 81002, subdivision (f).

28 ⁶ Former Section 82013, subdivision (a).

⁷ Section 82027.5, subdivision (b).

⁸ Former Section 84200.5, subdivision (e).

⁹ Former Section 84200.7, Regulation 18116, subdivision. (a).

1 **Joint and Several Liability of Committee and Treasurer**

2 It is the duty of a committee treasurer to ensure that the committee complies with the Act.¹⁰ A
3 treasurer may be held jointly and severally liable, along with the committee, for violations committed by
4 the committee.¹¹

5 **SUMMARY OF THE FACTS**

6 The Committee is a state general purpose recipient committee. The FTB audited the activity of
7 the Committee for the period of January 1, 2013 through December 31, 2014. During the audit period,
8 the Committee received \$1,560,130 in contributions and made \$1,451,332 in expenditures.

9 During the reporting period July 1, 2014 through September 30, 2014, the Committee made
10 contributions of more than \$500, including \$25,000 to the Keep California Strong PAC and \$250,000 to
11 the California Alliance for Progress and Education. These contributions triggered a duty to file a pre-
12 election statement for this period. The activity during this period was not reported until October 23, 2014
13 where it was reported with the activity for the second pre-election statement for the period ending
14 October 18, 2014. This activity was reported 17 days late. The Committee received contributions of
15 \$43,488 between July 1, 2014 and September 30, 2014 and made no other expenditures beyond the two
16 contributions listed above. This activity accounts for about 2.8% of the contributions received and about
17 18% of the expenditures made by the Committee during the audit period.

18 **VIOLATIONS**

19 **Count 1**

20 **Failure to Timely File a Pre-Election Campaign Statement**

21 The Committee and Bauer failed to timely file a pre-election campaign statement for the period
22 ending September 30 by the due date on October 6, 2014 in violation of Sections 84200.5 and 84200.7.

23 **PROPOSED PENALTY**

24 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per
25 count. Thus, the maximum penalty that may be imposed is \$5,000.¹²

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¹⁰ Sections 81004, 84100, and Regulation 18427.

¹¹ Sections 83116.5 and 91006.

¹² See Section 83116, subdivision (c).

1 In determining the appropriate penalty for a particular violation of the Act, the Commission
2 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission
3 considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention
4 to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d)
5 whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were
6 filed to provide full disclosure; and (f) whether the violator has a prior record of violations.¹³ Here, the
7 violation appears negligent. There is no prior enforcement history. The public harm inherent in campaign
8 reporting violations is that the public is deprived of important, time-sensitive information regarding
9 political contributions.

10 Additionally, the Commission considers penalties in prior cases with comparable violations. For
11 example: *In the Matter of San Joaquin County Democratic Central Committee and Dyane Burgos*, FPPC
12 No. 16/082. (The Commission approved a stipulated decision on June 29, 2017.) The committee failed to
13 timely file a pre-election statement, among other violations. For this count, the pre-election statement was
14 filed electronically 18 days late but was filed prior to the election. The committee reported receiving
15 \$107,510 in contributions and made \$3,898 in expenditures. For this count, the Commission imposed a
16 penalty of \$2,000.

17 Here, similar to the comparable case, the Committee was 17 days late in filing the first pre-election
18 statement and filed prior to the election. However, in aggravation, the amount of activity that was not
19 reported on the pre-election statement is almost double the amount in the comparable case. After
20 considering the factors listed in Regulation §18361.5 and penalties in prior similar cases, a penalty of
21 \$2,500 is recommended.

22 CONCLUSION

23 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
24 Respondents California Apartment Association Independent Expenditure Committee and David Bauer
25 hereby agree as follows:

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

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¹³ Regulation 18361.5, subdivision (d).

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

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

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

13 5. Respondents agree to the issuance of the decision and order set forth below. Also,
14 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
15 \$2,500. One or more cashier’s checks or money orders totaling said amount—to be paid to the General
16 Fund of the State of California—is/are submitted with this stipulation as full payment of the
17 administrative penalty described above, and same shall be held by the State of California until the
18 Commission issues its decision and order regarding this matter.

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

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

_____ Galena West, Chief of Enforcement
Fair Political Practices Commission

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8 Dated: _____

_____ David Bauer, individually and on behalf of California
Apartment Association Independent Expenditure
Committee, Respondents

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11 The foregoing stipulation of the parties "California Apartment Association Independent
12 Expenditure Committee and David Bauer," FPPC Case No. 17/00606, is hereby accepted as the final
13 decision and order of the Fair Political Practices Commission, effective upon execution below by the
14 Chair.
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16 IT IS SO ORDERED.
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18 Dated: _____

_____ Joann Remke, Chair
Fair Political Practices Commission