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

11 In the Matter of:

12 DR. WEBER FOR ASSEMBLY 2014,
13 DR. SHIRLEY WEBER AND XAVIER
MARTINEZ,

14 Respondents.

FPPC Case No. 16/038

STIPULATION, DECISION AND ORDER

15
16 INTRODUCTION

17 Dr. Shirley Nash Weber was re-elected for State Assembly, District 79, in the November 4, 2014
18 Election. Weber was initially elected in November 2012. Her controlled committee was Dr. Weber for
19 Assembly 2014 (“Committee”). At all relevant times, Xavier Martinez was the treasurer of the
20 Committee.

21 This case arose from an audit performed by the Political Reform Audit Program of the Franchise
22 Tax Board. The period covered by the audit were the 2013 and 2014 calendar years. During the audit
23 period, the Committee received approximately \$592,588 in contributions and made approximately
24 \$592,588 in expenditures. The audit found, and the Enforcement Division of the Fair Political Practices
25 Commission confirmed, that Weber, the Committee and Martinez failed to timely file a \$5,000 Report
26 and five 24 Hour reports in violation of the Political Reform Act (the “Act”).¹

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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

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2 **SUMMARY OF THE LAW**

3 The Act and its regulations are amended from time to time. The violations in this case occurred in
4 2013. For this reason, all legal references and discussions of law pertain to the Act's provisions as they
5 existed at that time.

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

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

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

16 **Mandatory Filing of Campaign Statements and Reports**

17 At the core of the Act's campaign reporting system is the requirement that committees must file
18 campaign statements and reports for certain reporting periods and by certain deadlines.⁷

19 For example, certain contributions must be reported within 24 hours. In this regard, the Act
20 defines a "late contribution" to include any contribution that totals \$1,000 or more, which is made to or
21 received by a candidate or a controlled committee within 90 days before the election. Also, a "late
22 contribution" includes any contribution that totals \$1,000 or more, which is made to or received by a
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24 are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references
25 are to this source.

26 ² Section 81001, subdivision (h).

27 ³ Section 81003.

28 ⁴ Section 81002, subdivision (a).

⁵ Sections 84200, et seq.

⁶ Section 81002, subdivision (f).

⁷ Sections 84200, et seq.

1 political party committee within 90 days before the date of a state election.⁸ Each candidate or committee
2 that makes or receives a “late contribution” must report the contribution by filing a Form 497 within 24
3 hours.⁹ In the case of a candidate for state office who is filing one of these reports, the report must be
4 filed with the elections official of the county of domicile—and with the Secretary of State.¹⁰ When such
5 reports are filed with the Secretary of State, they must be filed online or electronically.¹¹

6 Once a candidate for state office has received contributions totaling \$25,000 or more—or made
7 expenditures totaling \$25,000 or more—she becomes an electronic filer. This means that the candidate’s
8 filings must be filed online or electronically with the Secretary of State. Prior to this, some filings only
9 would have been required to be filed in paper format.¹²

10 Special rules apply to these electronic filers. Along these lines, the Act provides that an “election
11 cycle” is the period of time commencing 90 days before an election—and ending on the day of the
12 election. However, in the case of a special election, the cycle begins on the day the office becomes
13 vacant.¹³

14 In addition to any other report that must be filed, if a candidate for state office is an electronic
15 filer—and if that candidate receives a contribution of \$1,000 or more during an election cycle—she must
16 report receipt of the contribution by filing an election cycle report (Form 497) with the Secretary of State
17 within 24 hours. Also, if such a candidate receives a contribution of \$5,000 or more outside of an election
18 cycle, she must report receipt of the contribution by filing a Form 497 with the Secretary of State within
19 10 business days.¹⁴ Occasionally, this type of report is referred to as a \$5,000 report.

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

21 It is the duty of a committee treasurer to ensure that the committee complies with the Act.¹⁵ A
22 treasurer may be held jointly and severally liable, along with the candidate and the committee, for
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24 ⁸ Section 82036.

25 ⁹ Section 84203.

26 ¹⁰ Section 84215, subdivision (a).

27 ¹¹ Section 84203, subdivision (b).

28 ¹² Section 84605.

¹³ Sections 85204 and 85204.5.

¹⁴ Section 85309, subdivisions (a) and (c).

¹⁵ Sections 81004, 84100, 84104, and 84213; Regulation 18427.

1 violations committed by the committee.¹⁶

2 **SUMMARY OF THE FACTS**

3 Weber was re-elected for State Assembly, District 79, in the November 4, 2014 Election. The
4 Committee was her controlled committee. At all relevant times, Xavier Martinez was the treasurer of the
5 Committee.

6 This case involves the failure to file a \$5,000 Report and 24 Hour Reports on the part of Weber,
7 the Committee and Martinez in connection with various elections described below.

8 **VIOLATIONS**

9 **Count 1**

10 *Failure to Timely File a \$5,000 Report*

11 On or about April 20, 2013, the Committee received a contribution in the amount of \$8,200 from
12 the United Domestic Workers of America Action Fund. At the time, the Committee had qualified as an
13 electronic filer.¹⁷ As such, Weber, the Committee and Martinez were required to report receipt of this
14 contribution by filing with the Secretary of State within 10 business days, but they failed to do so within
15 the required 10-day period. This contribution was reported on a timely filed semi-annual campaign
16 statement for the reporting period January 1, 2013, through June 30, 2013.

17 In this way, Weber, the Committee and Martinez violated Section 85309, subdivision (c).

18 **Count 2**

19 *Failure to Timely File 24 Hour Reports*

20 On or about May 10, 2013, the Committee made a contribution in the amount of \$34,000 to the
21 California Democratic Party. Since this contribution was made to a political party committee during the
22 last 90 days before the May 21, 2013 Special Primary election, Weber, the Committee and Martinez were
23 required to report the making of this contribution by filing a 24 Hour Report with the Secretary of State,
24 but they failed to do so within the required 24 hour period. This contribution was reported on a timely
25 filed semi-annual campaign statement for the reporting period January 1, 2013, through June 30, 2013.

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28 ¹⁶ Sections 83116.5 and 91006.

¹⁷ Section 84605.

1 The California Democratic Party timely reported receipt of this contribution on a 24 Hour Report filed on
2 May 17, 2013.

3 On or about November 27, 2013, the Committee made a contribution in the amount of \$2,000 to
4 Sebastian Ridley-Thomas for Assembly 2014. Ridley-Thomas was seeking election to the California
5 State Assembly in the special election that was held on December 3, 2013. The 24 hour reporting period
6 for this election commenced on September 30, 2013. Therefore, Weber, the Committee, and Martinez
7 were required to report making this contribution by filing a 24 Hour Report with the Secretary of State
8 within 24 hours, but they failed to do so within the required 24 hour period. This contribution was
9 reported on a timely filed semi-annual campaign statement for the reporting period July 1, 2013, through
10 December 31, 2013. Sebastian Ridley-Thomas for Assembly 2014 timely reported receipt of this
11 contribution on a 24 Hour Report filed on December 3, 2013.

12 On or about February 28, 2014, the Committee made a contribution in the amount of \$1,500 to
13 San Diego County Democratic Party. At the time, a special primary election was being held on March
14 25, 2014 to fill a vacancy in the California State Senate. Since this contribution was made to the political
15 party committee during the last 90 days before the election, Weber, the Committee and Martinez were
16 required to report making this contribution by filing a 24 Hour Report with the Secretary of State within
17 24 hours, but they failed to do so within the required 24 hour period. This contribution was reported on a
18 timely filed pre-election campaign statement for the reporting period January 1, 2014, through March 17,
19 2014. San Diego County Democratic Party reported receiving this contribution on a 24 Hour Report filed
20 on March 1, 2014.

21 On or about April 17, 2014, the Committee made another contribution in the amount of \$1,500 to
22 San Diego County Democratic Party. Since this contribution was made to a political party committee
23 during the last 90 days before the June 3, 2014 election, Weber, the Committee and Martinez were
24 required to report the making of this contribution by filing a 24 Hour Report with the Secretary of State,
25 but they failed to do so within the required 24 hour period. This contribution was reported on a timely
26 filed pre-election campaign statement for the reporting period March 18, 2014, through May 17, 2014.
27 San Diego County Democratic Party reported receiving this contribution on a timely filed pre-election
28 campaign statement for the reporting period March 9, 2014, through May 17, 2014.

1 On or about November 3, 2014, the Committee received a contribution in the amount of \$4,100
2 from Laurene Powell Jobs. Since the contribution was received during the 90 days prior to the November
3 4, 2014 election, Weber, the Committee and Martinez were required to report receiving this contribution
4 by filing a 24 Hour Report with the Secretary of State, but they failed to do so within the required 24
5 hour period. This contribution was reported on a timely filed semi-annual campaign statement for the
6 reporting period October 19, 2014, through December 31, 2014. Laurene Powell Jobs reported making
7 this contribution on a 24 Hour Report filed on November 4, 2014.

8 In this way, Weber, the Committee and Martinez violated Sections 84203 and 85309, subdivision
9 (a).

10 PROPOSED PENALTY

11 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per
12 count. Thus, the maximum penalty that may be imposed is \$10,000.¹⁸

13 In determining the appropriate penalty for a particular violation of the Act, the Commission
14 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
15 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
16 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
17 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
18 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
19 record of violations.¹⁹ Additionally, the Commission considers penalties in prior cases with comparable
20 violations.

21 The Commission has found disclosure to be essential, especially before an election. In this case,
22 the Enforcement Division did not find evidence of intentional concealment or deception. Rather, it
23 appears the violations were the result of negligence. According to Martinez, he stated that the reports
24 were inadvertently overlooked.

25 Regarding Count 1, the Commission recently considered a settlement involving similar violations.
26 *In the Matter of Sebastian Ridley-Thomas and Sabastian Ridley-Thomas for Assembly 2014; FPPC No.*

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¹⁸ Section 83116, subdivision (c).

28 ¹⁹ Regulation 18361.5, subdivision (d).

1 16/458. Sebastian Ridley-Thomas was a successful candidate in the Special Primary Election on
2 December 3, 2013 to fill a vacancy in the California State Assembly, 54th District. Ridley-Thomas was
3 also a successful incumbent candidate in the November 4, 2014 General Election. Sebastian Ridley-
4 Thomas for Assembly 2014 was his candidate-controlled committee. The Committee and Ridley-Thomas
5 failed to timely file two \$5,000 Reports and failed to timely file four 24 Hour Reports. In December
6 2017, the Commission approved a \$1,000 penalty for the \$5,000 Reports and a \$2,500 penalty for the
7 failure to timely file four 24 Hour Reports. In Ridley-Thomas, two \$5,000 Reports should have been filed
8 in the amounts of \$7,000 and \$8,200. In mitigation, the contributions were disclosed prior to the relevant
9 election on the regularly filed campaign statements.

10 In the current case, the contribution at issue is similar in size at \$8,200, but with only one \$5,000
11 Report violation. In mitigation, receipt of the contribution in question was disclosed by the committee on
12 its regularly timely filed campaign statements for the January 1, 2013, through June 30, 2013 semi-
13 annual campaign statement timely filed July 30, 2013, which took place well before the November 2014
14 election. Further, the amount unreported was relatively small in comparison to the overall campaign
15 during the audit period. Under these circumstances, a penalty in the amount of \$1,000 is recommended
16 for Count 1.

17 Regarding Count 2, the public harm inherent in the failure to file 24 hour reports is that the public
18 is deprived of important, time-sensitive information regarding political contributions and expenditures. In
19 the case of 24 hour reports, the reportable activity is meant to be disclosed to the public before the
20 election.

21 In Ridley-Thomas, the Committee failed to file 24 Hour Reports for 4 contributions, totaling
22 approximately \$38,600. Most of the reportable activity resulted from a single contribution in the amount
23 of \$34,000, which is similar in this matter. In December, the Commission approved a penalty for this
24 violation in the amount of \$2,500. In the current case, the Committee failed to timely file four 24 Hour
25 Reports for contributions made and one 24 Hour Report for a contribution received, all totaling
26 approximately \$40,500. The majority of that amount is the result of one contribution made to the
27 California Democratic Party in the amount of \$34,000 on May 10, 2013. In mitigation, all of the late
28 contributions were timely disclosed on 24 Hour Reports by the recipient or contributor, except for the
contribution made on April 17, 2014 to San Diego County Democratic Party in the amount of \$1,500,

1 which was reported by both parties on timely filed pre-election campaign statements. However, in
2 aggravation, even though the contributions made were all listed on timely filed campaign statements,
3 three of the four contributions at issue were only disclosed on Schedule E (Payments Made), and not on
4 the Schedule D (Summary of Expenditures Supporting/Opposing Other Candidates, Measures and
5 Committees), which shows who the payments supported or opposed. Under these circumstances, a
6 penalty in the amount of \$3,000 is recommended for Count 2.

7 Higher penalties are not being sought in this case because regarding both Counts 1 and 2, the total
8 reportable activity in question in this case (\$48,700) was relatively small (12%) when compared to the
9 committee's reported receipts and expenditures during the audit period of \$592,588 and \$592,588,
10 respectively. Additionally, Weber, the Committee and Martinez cooperated with the Enforcement
11 Division by agreeing to an early settlement—and Weber and the Committee do not have a history of
12 prior violations of the Act.

13 Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty
14 in the amount of \$4,000 is justified, as reflected in the chart below:

Count	Violation	Penalty
1	Failure to timely file \$5,000 reports	\$1,000
2	Failure to timely file 24-hour reports	\$3,000
		Total: \$4,000

18 CONCLUSION

19 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
20 Respondents Weber, the Committee and Martinez hereby agree as follows:

- 21 1. Respondents violated the Act as described in the foregoing pages, which are a true and
22 accurate summary of the facts in this matter.
- 23 2. This stipulation will be submitted for consideration by the Fair Political Practices
24 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
- 25 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
26 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
27 liability of Respondents pursuant to Section 83116.
- 28 4. Respondents have had the opportunity to consult with an attorney. Respondents

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

8 5. Respondents agree to the issuance of the decision and order set forth below. Also,
9 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
10 \$4,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General
11 Fund of the State of California—is/are submitted with this stipulation as full payment of the
12 administrative penalty described above, and same shall be held by the State of California until the
13 Commission issues its decision and order regarding this matter.

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

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

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Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

Dated: _____

Dr. Shirley Weber, individually, and on behalf of Dr.
Weber for Assembly 2014, Respondents

Dated: _____

Xavier Martinez, Treasurer

The foregoing stipulation of the parties "In the Matter of Dr. Shirley Weber, Dr. Weber for Assembly 2014 and Xavier Martinez," FPPC Case No. 16/038, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____

Joann Remke, Chair
Fair Political Practices Commission