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

11 In the Matter of:

12 ROGER GAYLORD FOR FOLSOM
13 CITY COUNCIL 2016 and ROGER
14 GAYLORD III,

Respondents.

FPPC Case No. 2017/00490

STIPULATION, DECISION AND ORDER

15
16 **INTRODUCTION**

17 Roger Gaylord III (“Gaylord”) was a successful candidate for the Folsom City Council in the
18 November 8, 2016 General Election. His candidate-controlled committee was Roger Gaylord for Folsom
19 City Council 2016 (“Committee”). Gaylord served as his own treasurer. Gaylord and the Committee
20 violated the Political Reform Act (the “Act”)¹ by failing to utilize a designated campaign bank account for
21 all contributions, including loans from the candidate, and all expenditures.

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25 **SUMMARY OF THE LAW**

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27 _____
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 The Act and its regulations are amended from time to time. The violations in this case occurred in
2 2016. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they
3 existed at that time—unless otherwise noted.

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

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

13 **Committees**

14 A “committee” includes any person who directly or indirectly receives contributions totaling
15 \$2,000 or more in a calendar year.⁷

16 **One Designated Campaign Bank Account**

17 A candidate-controlled committee must deposit all contributions and make all expenditures from
18 the committee’s designated bank account.⁸ Any loans to the candidate or committee must be deposited in
19 the campaign bank account before being utilized.⁹ Any personal funds a candidate intends to spend on
20 campaign-related expenses must first be deposited in the campaign bank account before the expenditure is
21 made.¹⁰ A candidate may establish one or more credit card accounts for the campaign bank account.
22 Expenditures for payment of charges incurred on each credit card shall be made only from the campaign
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25 ² Section 81001, subdivision (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subdivision (a).

28 ⁵ Sections 84200, et seq.

⁶ Section 81002, subdivision (f).

⁷ Section 82013, subdivision (a).

⁸ Section 85201, subdivision (e).

⁹ Section 85201, subdivision (c).

¹⁰ Section 85201, subdivision (d), and Regulation 18524, subdivision (a).

1 bank account. The credit card shall only be used for expenses associated with the candidate's election to
2 the specific elective office designated in the statement of intention.¹¹

3 **Contribution**

4 A contribution means a payment, a forgiveness of a loan, a payment of a loan by a third party, or
5 an enforceable promise to make a payment except to the extent that full and adequate consideration is
6 received, unless it is clear from the surrounding circumstances that it is not made for political purposes.¹²

7 A payment is made for political purposes if it is for the purpose of influencing or attempting to influence
8 the action of the voters for or against the nomination or election of a candidate or candidates.¹³ A
9 contribution includes a candidate's own money used on behalf of his or her candidacy.¹⁴

10 **Expenditure**

11 An expenditure means a payment, a forgiveness of a loan, a payment of a loan by a third party, or
12 an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is
13 not made for political purposes. An expenditure is made on the date the payment is made or on the date
14 consideration, if any, is received, whichever is earlier.¹⁵ An expenditure is made for political purpose if it
15 is for the purpose of influencing or attempting to influence the action of the voters for or against the
16 nomination or election of a candidate or candidates, or the qualification or passage of any measure; or
17 made by a candidate, unless it is clear from surrounding circumstances that the payment was made for
18 personal purposes unrelated to his or her candidacy or status as an office holder.¹⁶

19 **Liability**

20 Every committee must have a treasurer.¹⁷ It is the duty of the treasurer and the candidate to ensure
21 that the committee complies with all the requirements of the Act.¹⁸ The treasurer and the candidate may be
22 held jointly and severally liable, along with the committee, for violations committed by the committee.¹⁹

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25 ¹¹ Regulation 18524, subdivision (c).

26 ¹² Section 82015.

27 ¹³ Regulation 18215, subdivision (a)(1).

28 ¹⁴ Regulation 18215, subdivision (b)(2).

¹⁵ Section 82025.

¹⁶ Regulation 18225.

¹⁷ Section 84100.

¹⁸ Sections 81004, 84100, 84104, and 84213, and Regulation 18427.

¹⁹ Sections 83116.5 and 91006.

1 **SUMMARY OF THE FACTS**

2 Gaylord was successful in the November 8, 2016 General Election. He served in office until June
3 10, 2020. The Committee reported a total of \$6,345 in contributions and \$6,228 in expenditures in
4 conjunction with the November 8, 2016 election. The Enforcement Division’s investigation determined
5 that the Committee and Gaylord failed to utilize a designated campaign bank account.

6 The Enforcement Division obtained committee bank records and the statements for two personal
7 credit cards held by Gaylord. The statements show that Gaylord utilized his personal credit cards for
8 campaign expenses, rather than utilizing the campaign bank account to deposit all contributions and make
9 all expenditures. The records show that Gaylord used a designated campaign bank account to deposit
10 contributions from others and to make some expenditures. However, Gaylord utilized his own personal
11 credit cards to make several purchases, including for Facebook advertisements and for banners and yard
12 signs. According to Gaylord, he utilized Facebook advertisements on his personal page for both personal
13 and political purposes. At that time, Facebook only permitted one payment method, and this was the reason
14 he used his personal credit card.

15 In total, Gaylord reported \$4,359 in loans made to the Committee, but these funds were not
16 deposited in the campaign bank account. This constitutes approximately 68% of the reported contributions.

17 **VIOLATIONS**

18 **Count 1: Failure to Utilize a Designated Campaign Bank Account**

19 The Committee and Gaylord failed to utilize a designated campaign bank account for the reporting
20 periods of January 1, 2016 through December 31, 2016 for contributions, including personal loans, and for
21 expenditures, in violation of Government Code section 85201.

22 **PROPOSED PENALTY**

23 This matter consists of one count. The maximum penalty that may be imposed is \$5,000.²⁰

24 This case does not qualify for the Streamline Program because this matter does not meet the
25 eligibility criteria for either the Tier One or Tier Two programs. For a campaign bank account violation to
26 qualify for a streamline penalty, the total amount of all contributions not deposited in a campaign bank
27 account during the statement period must not exceed 10% for Tier One and 40% for Tier Two. In this
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²⁰ See Section 83116, subd. (c).

1 matter, the total amount of all contributions not deposited in the campaign bank account was 75% for one
2 statement period and 85% for a second statement period.²¹

3 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
4 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
5 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers
6 the facts and circumstances of the violation in the context of the following factors set forth in Regulation
7 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused by the specific
8 violation; (2) The level of experience of the violator with the requirements of the Political Reform Act;
9 (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence or absence of
10 any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate, negligent or
11 inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission staff or any
12 other governmental agency in a manner not constituting complete defense under Government Code Section
13 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the violator has a prior
14 record of violations of the Political Reform Act or similar laws; and (8) Whether the violator, upon learning
15 of a reporting violation, voluntarily filed amendments to provide full disclosure were filed to provide full
16 disclosure.²²

17 The public harm in failing to utilize a designated campaign bank account is that it impedes the
18 ability of the Act to be enforced. The use of a designated campaign bank account ensures that campaign
19 statements can be more easily substantiated with records and source documents. In addition, the use of a
20 designated campaign bank account ensures that all contributions and all expenditures are properly
21 accounted for and timely reported.

22 Gaylord had experience with the Act, having run for office in 2014. He has prior history of violating
23 the Act; however, the penalty was imposed in February 2017, after the violations in this matter took place.
24 Therefore, this factor is not being considered as aggravating in this matter. There does not appear to be an
25 intent to conceal or deceive, but the violations appear to be the result of negligence. For example, Gaylord
26 reported the activity outside of the campaign bank account, either on an original statement or on an
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28 ²¹ See Regulation 18360.1 (d)(5)(B)(ii)(a).

²² Regulation 18361.5, subd. (d).

1 amended statement, implying that there was no intent to conceal. Gaylord cooperated with the
2 investigation, providing his personal credit card statements to substantiate his reporting. There is no
3 evidence that Gaylord sought or received advice regarding his 2016 campaign, therefore there is no
4 mitigation or aggravation considered under this factor.

5 In addition, the Commission considers comparable cases when determining an appropriate penalty.
6 [In the Matter of Re-Elect Liz Kniss for City Council 2016 and Liz Kniss, FPPC No. 17/114](#) (The
7 Commission approved the stipulation at the February 18, 2021 meeting.) The candidate and candidate-
8 controlled committee were charged with two counts of violating the Act. The candidate made campaign
9 expenditures utilizing her own personal funds without first depositing the funds in the campaign bank
10 account. The total was estimated to be \$9,117 or about 13% of the committee's expenditures. This amount
11 was timely reported by the committee and the candidate was reimbursed with committee funds. The
12 Commission imposed a penalty of \$2,500 for this count.

13 Regarding Count 1, this case is similar to *Kniss* in that Gaylord also appears to have only used
14 personal funds to make payments outside of the campaign bank account. Similarly, both candidates have
15 run before and knew or should have known the Act's requirement to use a designated bank account. The
16 bank records showed that contributions other than Gaylord's were deposited in the campaign bank account.
17 The percentage of activity taking place outside the bank account was higher here compared to *Kniss*, as
18 the activity outside of the campaign bank account was approximately 68%, based on the total loans reported
19 from Gaylord that were not deposited in the campaign bank account. However, the relative amount of
20 activity outside the account was less than in *Kniss*, at approximately \$4,359. In aggravation, a \$2,500
21 deposit in cash was made during the post-election January 1, 2017 through June 30, 2017 reporting period.
22 This amount exceeds the Act's prohibition on cash contributions of \$100 or more. According to the
23 campaign statement, this contribution was a loan from the candidate and was used to pay attorney fees.
24 This violation is not being pursued separately for purposes of settlement. Additionally, Gaylord failed to
25 timely report loans for some expenditures that he made with personal funds. This violation is not being
26 pursued as a separate count as Gaylord amended a campaign statement to report this activity prior to the
27 election, indicating there was minimal public harm. In consideration of the aggravating factors, a higher
28 penalty of \$3,000 is warranted.

1 After considering the factors listed in Regulation 18361.5, prior similar cases, and other relevant
2 facts, a total penalty of \$3,000 is recommended.

3 CONCLUSION

4 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
5 Respondents Roger Gaylord for Folsom City Council 2016 and Roger Gaylord III, hereby agree as follows:

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

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

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

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

20 5. Respondents agree to the issuance of the decision and order set forth below. Also,
21 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
22 \$3,000. One or more payments totaling said amount—to be paid to the General Fund of the State of
23 California—is/are submitted with this stipulation as full payment of the administrative penalty described
24 above, and same shall be held by the State of California until the Commission issues its decision and order
25 regarding this matter.

26 6. If the Commission refuses to approve this stipulation—then this stipulation shall become null and
27 void, and within fifteen business days after the Commission meeting at which the stipulation is rejected,
28 all payments tendered by Respondents in connection with this stipulation shall be reimbursed to

1 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing before
2 the Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
3 shall be disqualified because of prior consideration of this Stipulation.

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

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8 Dated: _____

Angela J. Brereton, Chief of Enforcement
Fair Political Practices Commission

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11 Dated: _____

Roger Gaylord III, individually and on behalf of Roger
Gaylord for Folsom City Council 2016.

