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

11 In the Matter of:

12 CRAIG KAY FOR ASSESSOR-
13 RECORDER 2018 and CRAIG KAY,

14 Respondents.

FPPC Case No. 2018-00540

STIPULATION, DECISION AND ORDER

15 **INTRODUCTION**

16 Respondent Craig Kay (“Kay”) was a successful candidate for Siskiyou County Assessor-Recorder
17 in the June 5, 2018 Primary Election. Respondent Craig Kay for Assessor-Recorder 2018 (“Committee”)
18 is his candidate-controlled committee. Kay served as the assistant treasurer for his Committee and he
19 signed all relevant campaign statements during the election.

20 This case arose from a sworn complaint.

21 Kay and the Committee violated the Political Reform Act (the “Act”)¹ by failing to utilize a
22 designated campaign bank account for all contributions, including loans from the candidate, and for all
23 expenditures.

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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 The Act and its regulations are amended from time to time. The violations in this case occurred in
3 2018. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they
4 existed at that time—unless otherwise noted.

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

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

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

14 **Committees**

15 A “committee” includes any person who directly or indirectly receives contributions totaling
16 \$2,000 or more in a calendar year.⁷

17 **One Designated Campaign Bank Account**

18 A candidate-controlled committee must deposit all contributions and make all expenditures from
19 the committee’s designated bank account.⁸ Any loans to the candidate or committee must be deposited in
20 the campaign bank account before being utilized.⁹ Any personal funds a candidate intends to spend on
21 campaign-related expenses must first be deposited in the campaign bank account before the expenditure is
22 made.¹⁰ A candidate may establish one or more credit card accounts for the campaign bank account.
23 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, the assistant treasurer, and
21 the candidate to ensure that the committee complies with all the requirements of the Act.¹⁸ The assistant
22 treasurer and the candidate may be held jointly and severally liable, along with the committee, for
23 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.

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SUMMARY OF THE FACTS

Kay was successful in the June 5, 2018 Primary Election and is presently serving as the Assessor-Recorder for Siskiyou County. The Enforcement Division’s investigation found that the Committee raised approximately \$10,741 and spent approximately \$9,343 between January 1, 2018 through June 30, 2018. The Committee’s statement of organization named a treasurer but also named the candidate, Kay, as the assistant treasurer.²⁰ Kay signed all the relevant campaign statements. The Enforcement Division’s investigation determined that the Committee and Kay failed to utilize a designated campaign bank account.

The evidence obtained during the Enforcement Division investigation shows that during the first pre-election reporting period, Kay used a personal credit card to make a payment of \$432.72 for yard signs. This activity was reported as a payment of the committee and as a loan to the committee by Kay. During the second pre-election reporting period, Kay’s spouse, Stephanie Kay, used a credit card to make a payment of \$4,800.96 for a mailing. In addition, on May 11, 2018, Kay made a cash payment from non-committee funds to make a payment of \$2,106.09 for a mailing. In order to provide documentation regarding the source of these funds, Kay provided evidence to substantiate that at least \$2,100 was from a personal investment account and a deposit slip showing a cash withdrawal from a personal checking account. The campaign statements also reported a \$100 expenditure that was not paid through the campaign bank account.

Though the use of a credit card is permissible, the campaign must use a designated card that has a zero balance and may only make payments on the card from the campaign bank account. The evidence provided shows that one of the cards had a prior balance and the payments for both cards were not exclusively made from the campaign bank account. In mitigation, Kay asserted and provided evidence to show that on May 9, 2018, the Committee’s bank account experienced fraud and the account was frozen. The fraudulent charges were eventually reversed by the bank, but in the interim, the account’s assets were

²⁰ The Enforcement Division has elected to not charge the treasurer of record. The violations described herein relate to the candidate’s use of personal financial bank accounts and credit accounts. In addition, Kay signed all the campaign statements. There is no indication in the evidentiary record that the treasurer of record served as the treasurer. The evidence suggests that Kay served as the treasurer in fact.

1 depleted and the remainder was frozen. The activity conducted outside the campaign bank account was
2 timely disclosed on campaign statements.

3 In total, Kay and the Committee expended a total of \$7,439 outside the campaign bank account or
4 nearly 80% of all campaign expenditures.

5 VIOLATIONS

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

7 The Committee and Kay failed to utilize a designated campaign bank account for the reporting
8 periods of January 1, 2018 through June 30, 2018 for all expenditures, in violation of Government Code
9 section 85201.

10 PROPOSED PENALTY

11 This matter consists of one count. The maximum penalty that may be imposed is \$5,000.²¹

12 This case does not qualify for the Streamline Program because this matter does not meet the
13 eligibility criteria for either the Tier One or Tier Two programs. For a campaign bank account violation to
14 qualify for a streamline penalty, the total amount of all contributions not deposited in a campaign bank
15 account during the statement period must not exceed 10% for Tier One and 40% for Tier Two. In this
16 matter, all expenditures in the 2nd pre-election reporting period took place outside the campaign bank
17 account, including one expenditure that accounted for 68% of the activity.²²

18 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
19 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
20 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers
21 the facts and circumstances of the violation in the context of the following factors set forth in Regulation
22 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused by the specific
23 violation; (2) The level of experience of the violator with the requirements of the Political Reform Act;
24 (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence or absence of
25 any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate, negligent or
26 inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission staff or any

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²¹ See Section 83116, subd. (c).

²² See Regulation 18360.1 (d)(5)(B)(ii)(a).

1 other governmental agency in a manner not constituting complete defense under Government Code Section
2 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the violator has a prior
3 record of violations of the Political Reform Act or similar laws; and (8) Whether the violator, upon learning
4 of a reporting violation, voluntarily filed amendments to provide full disclosure were filed to provide full
5 disclosure.²³

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

11 Kay was a first-time candidate, having served in a non-elected role in the Assessor-Recorder's
12 office until his decision to run for the elected position. He has no prior enforcement history. The evidence
13 shows that there was no intent to conceal or deceive, as all activity was reported. Kay was cooperative with
14 the investigation and provided supporting records to substantiate most of the reported activity. The
15 evidence suggests that the errors were negligent rather than a deliberate attempt to circumvent campaign
16 reporting rules. In addition, Kay provided evidence to demonstrate that the campaign bank account did
17 experience fraud at one point in the campaign. The campaign reporting suggests a good faith effort to
18 timely report activity. Most of the campaign funds were sourced from the candidate, however not all those
19 funds were first deposited in the campaign bank account before expenditure as required by the Act.

20 In addition, the Commission considers comparable cases when determining an appropriate penalty.
21 [In the Matter of Roger Gaylord for Folsom City Council 2016 and Roger Gaylord III, FPPC No. 17/490](#)
22 (The Commission approved the stipulation at the August 24, 2021 meeting.) The candidate and candidate-
23 controlled committee were charged with one count of violating the Act. The candidate violated the one
24 bank account rule by using personal credit cards to make campaign contributions. The total was estimated
25 to be \$4,359 or about 68% of the committee's expenditures. This amount was reported by the committee,
26 however, there were additional aggravating factors including a \$2,500 deposit of cash and failure to timely
27 report activity. The Commission imposed a penalty of \$3,000 for this count.

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²³ Regulation 18361.5, subd. (d).

1 As in the comparable case, the candidate utilized personal credit cards to make expenditures instead
2 of depositing those funds in the campaign bank account and making expenditures from the campaign bank
3 account. The activity was relatively low in terms of dollar amounts, totaling \$7,439 but was nearly 80% of
4 all expenditures. In mitigation, Kay was a first-time candidate and the campaign statements demonstrate
5 that Kay disclosed the activity and made a good faith effort to follow campaign reporting rules. In
6 aggravation, Kay failed to provide contributor checks for approximately \$1,900 worth of contributions
7 (only a deposit slip was provided) and he made a payment for an expenditure with cash. However, Kay
8 provided evidence to show the source of this cash and explained that this transaction was necessary because
9 of fraud activity. These violations are not being charged separately in interest of settlement.

10 After considering the factors listed in Regulation 18361.5, prior similar cases, and other relevant
11 facts, a total penalty of \$2,500 is recommended.

12 CONCLUSION

13 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
14 Respondents Craig Kay for Assessor-Recorder 2018 and Craig Kay, hereby agree as follows:

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

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

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

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

1 5. Respondents agree to the issuance of the decision and order set forth below. Also,
2 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
3 \$2,500. One or more payments totaling said amount—to be paid to the General Fund of the State of
4 California—is/are submitted with this stipulation as full payment of the administrative penalty described
5 above, and same shall be held by the State of California until the Commission issues its decision and order
6 regarding this matter.

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

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

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17 Dated: _____

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

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21 Dated: _____

Craig Kay, individually and on behalf of Craig Kay for
Assessor-Recorder 2018.

1 The foregoing stipulation of the parties “Craig Kay for Assessor-Recorder 2018 and Craig Kay,”
2 FPPC Case No. 2018-00540, is hereby accepted as the final decision and order of the Fair Political Practices
3 Commission, effective upon execution below by the Chair.

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IT IS SO ORDERED.

Dated: _____

Richard C. Miadich, Chair
Fair Political Practices Commission