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September 10, 2019

BY MAIL AND E-MAIL
CommAsst@fppc.ca.gov

Richard C. Miadich, Chair
Commissioners Allison Hayward, Frank Cardenas and Brian Hatch
Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, CA 95811

**Re: October 2019 Commission Hearing In Re: Susan Shelley and Shelly for
Assembly 2013 & 2014, FPPC No.15-003/OAH No. 2019030096**

Dear Chairman and Commissioners:

This amicus curiae letter¹ is submitted in opposition to the OAH Administrative Law Judge Deena Ghaly's recommendation in the above-captioned enforcement matter.

The decision concerns what the Enforcement Division in its April 18, 2017 Amended Probable Cause Report in the OAH case acknowledged was a first-time candidate, acting as her own treasurer, who attempted in good faith to comply with the law, who consulted the Commission's staff throughout her campaign. There was no prior history of enforcement action against her, no evidence of deliberate action or concealment on her part, and the audit findings for her 2013-2014 campaigns the FTB found substantial compliance with the requirements of the Political Reform Act. (Amended Probable Cause Report, and Exhibit A and Exhibit B (p. 12), April 18, 2017.)

Yet, Respondent faces an OAH recommended fine of \$12,500 for 5 counts of violations of the Act, a penalty in the mid-to-high range (as recommended by Enforcement Staff and found by the ALJ), for conduct the ALJ found to be negligent but in good faith, and without any intent to conceal, deceive or mislead. (ALJ's Proposed Decision, pp. 16-17.)

The penalty should be compared to other cases, including those handled in the Commission's Streamlined Enforcement Program. Ms. Shelley's 2013-2014 campaign spent approximately \$100,000, including transfers from her 2014 committee to her 2013 special election committee. The essence of the Accusation on which the OAH administrative hearing was prosecuted was that she late filed electronic pre-election and post-election reports. She was

¹ The comments are mine, and not those of my law firm or any client.

also charged for failure to file redundant paper reports for the same pre-election and post-election periods.

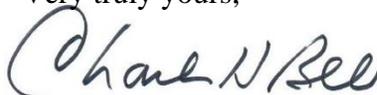
As an example of other cases, please find attached as Exhibit “A” a copy of a Streamlined Enforcement Decision involving a major donor filer, Global Investment and Development, LLC, FPPC No. 17/622, involving late filing or non-filing of 6 semi-annual Major Donor Reports from 2014-2017 in which the donor contributed about \$100,000 – an amount comparable to Ms. Shelley’s committees’ receipts and expenditures, and non-filing of 19 Late Contribution Reports. Under the Streamlined Program, Global was fined \$6,734, of which \$6,458 was for the late filings and \$276 for failure to disclose \$7600 in expenditures.

Attached as Exhibit “B” is a copy of a regular Enforcement Decision In the Matter of Contra Costa Supervisor John Gioia 2010 Officeholder Account, Contra Costa Supervisor John Gioia 2014 Officeholder Account, John Gioia, and Jennifer Peck; FPPC Nos. 17/84 and 17/86. a candidate’s recipient campaign committee from your August 17, 2017 Agenda. The case involved failure to timely file 7 semi-annual and 2 pre-election statements and 1 – 24 hour report. The fines in that case were around \$1,500 per count.

Amicus has no quibble with the Commission Staff’s or the ALJ’s handling of the matter, nor of the quality of the ALJ’s decision. ALJ Deena Ghaly was a former Enforcement Chief of the Los Angeles City Ethics Commission, a sister campaign and ethics enforcement agency, and the Ethics Officer at the Metropolitan Water District, and is experienced in the campaign law. Ms. Shelley put up a spirited defense in her *pro se* capacity.

However, Amicus believes the proposed fine of \$2,500/count for negligent conduct by a first-time candidate is too high, and recommends that you consider lowering the fine to a level commensurate with the facts related to this first-time candidate’s conduct.

Very truly yours,



Charles H. Bell, Jr.

Attachments: Exhibits “A” and “B”

Proof of Service On:

Galena West, Chief (gwest@fppc.ca.gov)
Theresa Gilbertson, Counsel (tgilbertson@fppc.ca.gov)
Enforcement Division
Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, CA 95811

Susan G. Shelley ([REDACTED])
[REDACTED]
[REDACTED]

Exhibit A

Exhibit A

**FAIR POLITICAL PRACTICES COMMISSION
STIPULATION, DECISION AND ORDER
Campaign Statement/Report Non-Filer & Non-Reporter Violations
(Streamlined Program)**

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondent(s) hereby agree that this stipulation will be presented to the Fair Political Practices Commission at its next regularly scheduled meeting, or as soon thereafter as the matter can be heard, as a final disposition of the reporting violation(s) described herein.

FPPC CASE NO.: 17/622

RESPONDENT(S): Global Investment & Development, LLC

REPRESENTATION: N/A Brian T. Hildreth

GOV'T CODE SECTION VIOLATED: 84200 84200.5 84203 84211

Total Penalty: _____ \$6,734 _____

STATEMENT BY RESPONDENT(S):

I acknowledge that the violation(s) of the Political Reform Act described above have occurred and voluntarily request that the Fair Political Practices Commission resolve this matter by imposition of the monetary penalty specified above. I acknowledge receipt of the *Statement of Respondent's Rights* and voluntarily waive any and all procedural rights to contest this matter in an administrative hearing. All outstanding reports in connection with these violations have now been filed. All fees and penalties in connection with this violation have now been paid. I have attached a **cashier's check or money order** made payable to the General Fund of the State of California in the amount of the penalty described above.

Dated: _____

Print Name: _____

STATEMENT BY ENFORCEMENT CHIEF:

I have reviewed the above stipulation and recommend its approval.

Dated: _____

GALENA WEST, ENFORCEMENT CHIEF

ORDER OF THE COMMISSION:

The foregoing stipulation has been adopted by a majority vote of the Fair Political Practices Commission as its final decision and order and is effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____

JOANN REMKE, CHAIR

***FAIR POLITICAL PRACTICES COMMISSION
STATEMENT OF RESPONDENT'S RIGHTS***

The Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondent, both identified by name on the front of this document, hereby agree that this Stipulation, Decision and Order will be submitted for consideration by the Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondent.

Respondent understands and hereby knowingly and voluntarily waives any and all procedural rights under California Government Code sections 83115.5, 11500, *et seq.*, and 2 California Code of Regulations sections 18361.4 through 18361.11, including but not limited to the issuance and receipt of an accusation, and the right to appear personally and be represented by counsel at his or her own expense in any administrative hearing held in this matter, to confront and cross examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, and to have an impartial administrative law judge present at the hearing to act as a hearing officer.

It is further stipulated and agreed that Respondent has violated the Political Reform Act as described herein.

Respondent agrees to the issuance of the Decision and Order and imposition by the Commission of a penalty in the amount specified on the Stipulation, and a cashier's check or money order in said amount, payable to the "General Fund of the State of California," has been submitted by Respondent to be held by the State of California until the Commission issues its Decision and Order.

The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission meeting at which this Stipulation is rejected, payments tendered shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the Commission becomes necessary, neither a member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

DESCRIPTION OF VIOLATION:

| Campaign Statement/Report Non-Filer | | | | | | |
|--|-------------------------|-------------------------|-----------------|-------------------|-------------------------------------|-----------------|
| Ct. | Statement/Report | Reporting Period | Due Date | Date Filed | Describe Reportable Activity | Penalty* |
| 1 | Semiannual | 1/1/13 – 12/31/13 | 1/31/14 | 2/22/18 | \$15,800 expenditures | \$358 |
| 2 | Semiannual | 1/1/14 – 6/30/14 | 7/31/14 | 1/22/18 | \$24,750 expenditures | \$447 |
| 3 | Semiannual | 7/1/14 – 12/31/14 | 2/2/15 | 1/22/18 | \$18,300 expenditures | \$383 |
| 4 | Semiannual | 1/1/15 – 6/30/15 | 7/31/15 | 1/16/18 | \$15,700 expenditures | \$357 |
| 5 | Semiannual | 1/1/16 – 6/30/16 | 8/1/16 | 1/16/18 | \$19,850 expenditures | \$398 |
| 6 | Semiannual | 7/1/16 – 12/31/16 | 1/31/17 | 1/16/18 | \$17,150 expenditures | \$371 |
| 7 | 24-Hour Report | 4/23/14 | 4/24/14 | n/a | \$5,000 contribution made | \$250 |
| 8 | 24-Hour Report | 5/8/14 | 5/9/14 | n/a | \$1,000 contribution made | \$210 |
| 9 | 24-Hour Report | 5/12/14 | 5/13/14 | n/a | \$7,000 contributions made | \$270 |
| 10 | 24-Hour Report | 9/11/14 | 9/12/14 | n/a | \$1,000 contribution made | \$210 |
| 11 | 24-Hour Report | 10/1/14 | 10/2/14 | n/a | \$2,000 contribution made | \$220 |
| 12 | 24-Hour Report | 10/6/14 | 10/7/14 | n/a | \$1,000 contribution made | \$210 |
| 13 | 24-Hour Report | 10/13/14 | 10/14/14 | n/a | \$1,000 contribution made | \$210 |
| 14 | 24-Hour Report | 10/23/14 | 10/24/14 | n/a | \$1,000 contribution made | \$210 |
| 15 | 24-Hour Report | 10/30/14 | 10/31/14 | n/a | \$1,000 contribution made | \$210 |
| 16 | 24-Hour Report | 8/14/15 | 8/15/15 | n/a | \$2,250 contribution made | \$222 |
| 17 | 24-Hour Report | 10/9/15 | 10/10/15 | n/a | \$2,250 contribution made | \$222 |
| 18 | 24-Hour Report | 8/17/16 | 8/18/16 | n/a | \$1,000 contribution made | \$210 |
| 19 | 24-Hour Report | 8/23/16 | 8/24/16 | n/a | \$1,500 contribution made | \$215 |
| 20 | 24-Hour Report | 9/1/16 | 9/2/16 | n/a | \$1,000 contribution made | \$210 |
| 21 | 24-Hour Report | 9/14/16 | 9/15/16 | n/a | \$1,000 contribution made | \$210 |
| 22 | 24-Hour Report | 9/21/16 | 9/22/16 | n/a | \$1,500 contribution made | \$215 |
| 23 | 24-Hour Report | 9/22/16 | 9/23/16 | n/a | \$1,000 contribution made | \$210 |
| 24 | 24-Hour Report | 9/28/16 | 9/29/16 | n/a | \$2,000 contributions made | \$220 |
| 25 | 24-Hour Report | 10/19/16 | 10/20/16 | n/a | \$1,000 contribution made | \$210 |
| Total Proposed Penalty: | | | | | | \$6,458 |

* = Base + 1% of contributions received or expenditures made

- Filer has filed all pertinent statements.
- Filer has not received a penalty from the Commission for failing to timely file or report.
- The committee did not have more than \$25,000 in contributions received or expenditures made per campaign statement.
- Found no evidence of intent to conceal.

| Campaign Statement/Report Non-Reporter | | | | |
|--|------------------|-------------------|------------------------------|----------|
| Ct. | Statement/Report | Reporting Period | Describe Reportable Activity | Penalty* |
| 26 | Semiannual | 7/1/15 – 12/31/15 | \$7,600 expenditures | \$276 |

* = Base + 1% of contributions received or expenditures made

- Filer has amended all statements to disclose information.
- Filer has not received a penalty from the Commission for failing to timely disclose.
- Total amount unreported was *less than* \$25,000. In this case, the total amount unreported was
_____ \$7,600 _____.
- Found no evidence of intent to conceal.

Filer is a:

- State Candidate Committee.
- State General Purpose Committee.
- State Primarily Formed Committee.
- State Major Donor
- Local Candidate Committee.
- Local General Purpose Committee.
- Local Primarily Formed Committee
- Local Major Donor

Exhibit B

Exhibit B

1 GALENA WEST
Chief of Enforcement
2 CHRISTOPHER BURTON
Commission Counsel
3 Fair Political Practices Commission
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660

5 Attorneys for Complainant
6 Fair Political Practices Commission, Enforcement Division

7
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

12 CONTRA COSTA SUPERVISOR JOHN
GIOIA 2010 OFFICEHOLDER
13 ACCOUNT, CONTRA COSTA
SUPERVISOR JOHN GIOIA 2014
14 OFFICEHOLDER ACCOUNT, JOHN
GIOIA, AND JENNIFER PECK,

15 Respondents.
16

FPPC Case Nos. 17/84 and 17/86

STIPULATION, DECISION AND ORDER

17 INTRODUCTION

18 John Gioia (“Gioia”) has been a member of the Contra Costa County Board of Supervisors (the
19 “Board”) since 1998. In 2010 and 2014, Gioia ran for re-election. In conjunction with his 2010
20 campaign, Gioia created the controlled committee Neighbors for Contra Costa County Supervisor John
21 Gioia 2010 (the “2010 Committee”), and in conjunction with his 2014 campaign, Gioia created the
22 controlled committee Neighbors for Contra Costa County Supervisor John Gioia 2010 (the “2014
23 Committee”) (collectively, with the 2010 Committee, the “Committees”). Following each successful
24 campaign, Gioia maintained the Committees as officeholder accounts, renaming the Committees
25 accordingly. Jennifer Peck (“Peck”) was the treasurer of the Committees until November 18, 2013, when
26 Gioia became the treasurer.

27 ///

28 ///

1 The Committees have violated the Political Reform Act (the “Act”)¹ by (i) failing to timely file
2 numerous semiannual and pre-election campaign statements over the course of several years, in violation
3 of Sections 84200, subdivision (a); 84200.5, subdivision (a); and 84200.8, subdivisions (a) and (b) of the
4 Act, and (ii) failing to timely file 24-hour contribution reports for two different contributions received
5 amounting to \$2,250, and three different contributions made amounting to \$4,350, in violation of Section
6 84203 of the Act.

7 SUMMARY OF THE LAW

8 The Act and its regulations are amended from time to time. The violations in this case occurred
9 between 2013 and 2016. For this reason, all legal references and discussions of law pertain to the Act’s
10 provisions as they existed at that time.

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

12 When enacting the Act, the people of California found and declared that previous laws regulating
13 political practices suffered from inadequate enforcement by state and local authorities.² For this reason,
14 the Act is to be construed liberally to accomplish its purposes.³

15 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in
16 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
17 practices are inhibited.⁴ Along these lines, the Act includes a comprehensive campaign reporting
18 system—and the true sources of campaign contributions may not be concealed.⁵ Another purpose of the
19 Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁶

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24 ¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the
25 Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in
26 Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2,
27 Division 6 of the California Code of Regulations, unless otherwise indicated.

26 ² Section 81001, subd. (h).

27 ³ Section 81003.

28 ⁴ Section 81002, subd. (a).

⁵ Sections 84200, et seq., and 84301.

⁶ Section 81002, subd. (f).

1 Mandatory Filing of Campaign Statements

2 At the core of the Act’s campaign reporting system is the requirement that committees file
3 campaign statements and reports for certain reporting periods and by certain deadlines.⁷

4 The Act requires a recipient committee to file semiannual campaign statements twice per year
5 disclosing its campaign contributions and expenditures. A recipient committee must file a semiannual
6 statement by January 31 for the period ending December 31 and by July 31 for the period ending June
7 30, or the next business day if the deadline falls on a weekend or holiday.⁸

8 In addition to semiannual campaign statements, the Act requires all candidates being voted upon
9 on the first Tuesday after the first Monday in June or November of an even-numbered year, and their
10 controlled committees, to file pre-election campaign statements.⁹

11 The Act provides that pre-election campaign statements for the June election period shall be filed
12 as follows: (1) For the period ending March 17, a statement to be filed no later than March 22; and (2) for
13 the period ending 17 days before the election, a statement to be filed no later than 12 days before the
14 election.¹⁰

15 Duty to File 24-Hour Contribution Reports

16 Each candidate or committee that makes or receives a late contribution must file a report within
17 24 hours of making or receiving the contribution.¹¹ A “late contribution” includes a contribution
18 aggregating \$1,000 or more that is made or received by a candidate or his or her controlled committee
19 during the 90-day period preceding an election or on the date of the election.¹²

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.¹³ A
22 treasurer may be held jointly and severally liable, along with the candidate and the committee, for
23

24 ⁷ Sections 84200, et seq.

25 ⁸ Section 84200, subd. (a); Regulation 18116, subd. (a).

26 ⁹ Section 84200.5, subd. (b).

27 ¹⁰ Section 84200.7, subd. (a).

28 ¹¹ Section 84203.

¹² Section 82036 (2016). The 2013, 2014, and 2015 versions of Section 82036 described the reporting period as
“within 90 days before the date of the election.”

¹³ Sections 81004, 84100, 84104, and 84213; Regulation 18427.

1 violations committed by the committee.¹⁴

2 SUMMARY OF THE FACTS

3 According to its campaign filings, the 2010 Committee first qualified on May 15, 2009 as Gioia's
4 candidate-controlled committee in support of his 2010 campaign for re-election to the Board, and the
5 2014 Committee first qualified on March 20, 2011 as Gioia's candidate-controlled committee in support
6 of his 2014 campaign for re-election to the Board. The 2014 Committee reported receiving \$33,420 in
7 contributions and making \$15,922 in expenditures during 2013 and 2014. Gioia was successful in both
8 the 2010 and 2014 elections and remains a member of the Board today.

9 These cases were initiated by Franchise Tax Board ("FTB") audits, which found that the
10 Committees failed to timely file various semiannual and pre-election campaign statements, 24-hour
11 contribution reports, and amendments to their statements of organization. Further investigation revealed
12 that the Committees failed to timely file additional semiannual statements and several 24-hour
13 contribution reports for contributions made to local candidates in 2016.

14 Campaign Statements

15 The Committees have a lengthy history of shirking their duty to timely file semiannual and pre-
16 election campaign statements. In particular, the 2010 Committee failed to timely file the following
17 semiannual campaign statements dating back to 2013:

| 18 Statement Type | 19 Reporting Period | 20 Due Date | 21 Date Filed | 22 Days Late | 23 Amount of Contributions/ Expenditures |
|--------------------------|----------------------------|--------------------|----------------------|---------------------|---|
| 24 Semiannual | 25 1/1/13 – 26 6/30/13 | 27 7/31/13 | 28 11/18/13 | 110 | \$2,500/\$950 |
| Semiannual | 7/1/13 – 12/31/13 | 1/31/14 | 2/4/14 | 4 | \$0/\$461 |
| Semiannual | 1/1/14 – 6/30/14 | 7/31/14 | 5/11/15 | 284 | \$3,350/\$2,310 |
| Semiannual | 7/1/14 – 12/31/14 | 2/2/15 | 5/11/15 | 98 | \$0/\$1,001 |
| Semiannual | 1/1/15 – 6/30/15 | 7/31/15 | 9/2/15 | 33 | \$0/\$1,147 |

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¹⁴ Sections 83116.5 and 91006.

| | | | | | |
|------------|-------------------|--------|----------|----|----------|
| Semiannual | 7/1/15 – 12/31/15 | 2/1/16 | 2/2/16 | 1 | \$0/\$72 |
| Semiannual | 1/1/16 – 6/30/16 | 8/1/16 | 10/24/16 | 84 | \$0/\$75 |

The 2014 Committee failed to timely file the following semiannual and pre-election campaign statements, also dating back to 2013:

| Statement Type | Reporting Period | Due Date | Date Filed | Days Late | Amount of Contributions/ Expenditures |
|----------------|-------------------|----------|------------|-----------|---------------------------------------|
| Semiannual | 1/1/13 – 6/30/13 | 7/31/13 | 11/18/13 | 110 | \$0/\$35 |
| Semiannual | 7/1/13 – 12/31/13 | 1/31/14 | 2/4/14 | 4 | \$0/\$42 |
| Pre-election | 1/1/14 – 3/17/14 | 3/24/14 | 1/19/16 | 666 | \$25,945/\$14,706 |
| Pre-election | 3/18/14 – 5/17/14 | 5/22/14 | 1/19/16 | 607 | \$2,450/\$583 |
| Semiannual | 5/18/14 – 6/30/14 | 7/31/14 | 1/19/16 | 537 | \$0/\$14 |
| Semiannual | 7/1/14 – 12/31/14 | 2/2/15 | 5/11/15 | 98 | \$5,025/\$542 |
| Semiannual | 1/1/15 – 6/30/15 | 7/31/15 | 9/2/15 | 33 | \$0/\$42 |
| Semiannual | 7/1/15 – 12/31/15 | 2/1/16 | 2/2/16 | 1 | \$0/\$1,659 |
| Semiannual | 1/1/16 – 6/30/16 | 8/1/16 | 10/24/16 | 84 | \$750/\$7,806 |

Campaign Contribution Reporting

The 2014 Committee also failed to timely file 24-hour contribution reports for certain late contributions received and made in 2014 and 2016. In particular, the 2014 Committee received the following contributions during the 90-day period preceding the June 3, 2014 Primary Election:

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| Date | Contributor | Amount |
|----------------|--|---------------|
| April 10, 2014 | Holland & Knight LLP California Committee for Effective Government | \$1,000 |
| April 20, 2014 | HealthPlus Shared Services | \$1,250 |
| | TOTAL: | \$2,250 |

Further, the 2014 Committee made the following contributions during the 90-day period preceding both the June 3, 2014 and November 8, 2016 elections:

| Date | Contributor | Amount |
|--------------------|---|---------------|
| March 16, 2014 | Tony Thurmond for Assembly | \$1,000 |
| September 8, 2016 | Diane Burgis for County Supervisor 2016 | \$1,675 |
| September 30, 2016 | Federal Glover for Supervisor 2016 | \$1,675 |
| | TOTAL: | \$4,350 |

Despite the fact that the 2014 Committee was required to file 24-hour contribution reports within 24 hours of receiving and making each of the contributions above, it did not do so.

The subject late contributions were reported on the 2014 Committee's campaign statements. The contributions received by the 2014 Committee and the contribution made to Tony Thurmond for Assembly were reported on its pre-election campaign statement covering the period of March 18, 2014 to May 17, 2014; however, this statement was filed 607 days late on January 19, 2016. The contributions made to candidates in September 2016 were reported on the 2014 Committee's campaign statement covering the period of July 1, 2016 to December 31, 2016, which was timely filed on January 31, 2017.

VIOLATIONS

2010 Committee

Count 1: Failure to Timely File Semi-Annual Campaign Statements

As a recipient committee under the Act, the 2010 Committee, Gioia, and Peck were required to file a semiannual campaign statement for the period of January 1, 2013 to June 30, 2013, by July 31, 2013, and a semiannual campaign statement for the period of July 1, 2013 to December 31, 2013, by January 31, 2014; however, the 2010 Committee, Gioia, and Peck failed to do so, in violation of Section 84200, subdivision (a).

Count 2: Failure to Timely File Semi-Annual Campaign Statements

As a recipient committee under the Act, the 2010 Committee, Gioia, and Peck were required to file a semiannual campaign statement for the period of January 1, 2014 to June 30, 2014, by July 31,

1 2014, and a semiannual campaign statement for the period of July 1, 2014 to December 31, 2014, by
2 February 2, 2015; however, the 2010 Committee, Gioia, and Peck failed to do so, in violation of Section
3 84200, subdivision (a).

4 Count 3: Failure to Timely File Semi-Annual Campaign Statements

5 As a recipient committee under the Act, the 2010 Committee, Gioia, and Peck were required to
6 file a semiannual campaign statement for the period of January 1, 2015 to June 30, 2015, by July 31,
7 2015, a semiannual campaign statement for the period of July 1, 2015 to December 31, 2015, by
8 February 1, 2016, and a semiannual campaign statement for the period of January 1, 2016 to June 30,
9 2016, by August 1, 2016; however, the 2010 Committee, Gioia, and Peck failed to do so, in violation of
10 Section 84200, subdivision (a).

11 2014 Committee

12 Count 4: Failure to Timely File Semi-Annual Campaign Statements

13 As a recipient committee under the Act, the 2014 Committee, Gioia, and Peck were required to
14 file a semiannual campaign statement for the period of January 1, 2013 to June 30, 2013, by July 31,
15 2013, and a semiannual campaign statement for the period of July 1, 2013 to December 31, 2013, by
16 January 31, 2014; however, the 2014 Committee, Gioia, and Peck failed to do so, in violation of Section
17 84200, subdivision (a).

18 Count 5: Failure to Timely File Semi-Annual Campaign Statements

19 As a recipient committee under the Act, the 2014 Committee, Gioia, and Peck were required to
20 file a semiannual campaign statement for the period of May 18, 2014 to June 30, 2014, by July 31, 2014,
21 a semiannual campaign statement for the period of July 1, 2014 to December 31, 2014, by February 2,
22 2015, and a semiannual campaign statement for the period of January 1, 2015 to June 30, 2015, by July
23 31, 2015; however, the 2014 Committee, Gioia, and Peck failed to do so, in violation of Section 84200,
24 subdivision (a).

25 Count 6: Failure to Timely File Semi-Annual Campaign Statements

26 As a recipient committee under the Act, the 2014 Committee, Gioia, and Peck were required to
27 file a semiannual campaign statement for the period of July 1, 2015 to December 31, 2015, by February
28 1, 2016, and a semiannual campaign statement for the period of January 1, 2016 to June 30, 2016, by

1 August 1, 2016; however, the 2014 Committee, Gioia, and Peck failed to do so, in violation of Section
2 84200, subdivision (a).

3 Count 7: Failure to Timely File Pre-Election Campaign Statements

4 As a recipient committee under the Act, the 2014 Committee, Gioia, and Peck were required to
5 file a pre-election campaign statement for the period of January 1, 2014 to March 17, 2014, by March 24,
6 2016, and a pre-election campaign statement for the period of March 18, 2014 to May 17, 2014, by May
7 22, 2014; however, the 2014 Committee, Gioia, and Peck failed to do so, in violation of Sections
8 84200.5, subdivision (a); and 84200.8, subdivisions (a) and (b).

9 Count 8: Failure to Timely File 24-Hour Contribution Reports

10 The 2014 Committee, Gioia, and Peck failed to timely file a 24-hour late contribution report for
11 two different contributions received amounting to \$2,250, and three different contributions made
12 amounting to \$4,350, in violation of Section 84203.

13 **PROPOSED PENALTY**

14 This matter consists of eight counts. The maximum penalty that may be imposed is \$5,000 per
15 count. Thus, the maximum penalty that may be imposed is \$40,000.¹⁵

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

24 The public harm inherent in campaign reporting violations is that the public is deprived of
25 important, time-sensitive information regarding political contributions. Generally, these types of
26

27 _____
¹⁵ Section 83116, subd. (c).

28 ¹⁶ Regulation 18361.5, subd. (d).

1 violations are considered to be more serious where the public is deprived of information that was
2 required to be disclosed before an election because this has the potential to affect how votes are cast—so
3 greater public harm is involved, and a higher penalty is warranted. Another factor that influences the
4 amount of the penalty is whether the public harm was mitigated because some of the reportable activity
5 was disclosed to the public on another campaign filing.

6 Comparable cases in which a penalty was charged for failure to timely file semiannual campaign
7 statements include the following:

- 8 • *In the Matter of Voto Latino Action Fund PAC and Maria Teresa Kumar*; FPPC No. 16/338.

9 Respondents, a recipient committee and its treasurer, failed to timely file a semiannual campaign
10 statement. Respondents eventually filed the statement, which reported \$65,771.14 in contributions and
11 the same amount in expenditures. In March 2017, the Commission imposed a penalty of \$2,500 on one
12 count.

- 13 • *In the Matter of Jim Kelly and Jim Kelly for Grossmont Union High School Board 2014*; FPPC
14 No. 15/274. Respondents, a candidate and his controlled committee, failed to timely file a semiannual
15 campaign statement. Respondents eventually filed the statement, which reported no contributions and
16 \$2,795 in expenditures. Respondents had previously been prosecuted for failure to timely file a
17 semiannual statement. In July 2016, the Commission imposed a penalty of \$1,000 on one count.

18 As to Counts 1 through 6, Respondents here are deserving of a penalty somewhere in between
19 those imposed in *Voto Latino* and *Kelly*. The violations at issue here are more egregious than those in
20 *Kelly* given that Respondents have exhibited a pattern over several years of failing to file their
21 semiannual statements. Further, the averaged amount of financial activity per statement here is higher
22 than the amounts at issue in *Kelly*. Therefore, a penalty higher than *Kelly* is justified. However, on the
23 other end of the spectrum, the amount of financial activity at play in *Voto Latino* is much higher;
24 therefore, a penalty that severe is not warranted here.

25 Comparable cases in which a penalty was charged for failure to timely file pre-election campaign
26 statements include the following:

- 27 • *In the Matter of Luis Castro, Committee to Elect Luis Castro for Calexico City Council Member*
28 *2012, and Ana Castro*; FPPC No. 13/1200. Respondents, a candidate, his controlled committee, and its

1 treasurer, failed to timely file two pre-election campaign statements. Further, the respondents failed to
2 file the pertinent pre-election statements prior to the relevant election. Known receipts and expenditures
3 for the pertinent reporting periods were \$6,200 and \$6,000 respectively. In October 2016, the
4 Commission imposed a penalty of \$3,000 on one count.

5 As to Count 7, this case closely parallels *Castro*, including the consistent fact that the 2014
6 Committee failed to disclose its financial activity during the pertinent pre-election reporting periods until
7 well after the election. As a result, a similar penalty is warranted here.

8 Comparable cases in which a penalty was charged for violating Section 84203 include the
9 following:

10 • *In the Matter of San Diego County Democratic Party and Xavier Martinez*; FPPC No. 15/1374.
11 Respondents, a political party committee and its treasurer, failed to timely report certain late
12 contributions on 24-hour reports. More particularly, the respondents failed to report eight late
13 contributions made totaling \$40,650 and five contributions received totaling \$12,178. None of the
14 contributions were reported prior to the pertinent election, whether on late-filed 24-hour reports or other
15 campaign filings. In May 2017, the Commission imposed a penalty of \$2,000 on each of three counts.

16 As to Count 8, this case is similar to *San Diego* in that Respondents here failed to report the late
17 contributions prior to the pertinent elections, thereby depriving the public of this information before they
18 voted. Therefore, a penalty similar to that assessed in *San Diego* is justified.

19 In aggravation, the Committees have a prior enforcement history with the Commission. In FPPC
20 No. 10/921, the Enforcement Division issued a warning letter to the 2010 Committee for its failure to
21 timely file a semiannual campaign statement. Further in aggravation, but not being charged here, the
22 Committees also (i) failed to timely file their semiannual campaign statements for 2012, but had limited
23 activity during those reporting periods; and (ii) failed to timely file an amendment to their statement of
24 organization disclosing the change in treasurer.

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Based on the foregoing, the following penalties are recommended:

| Count | Violation | Proposed Penalty |
|-------|---|------------------|
| 1 | Failure to Timely File Semiannual Campaign Statements | \$1,500 |
| 2 | Failure to Timely File Semiannual Campaign Statements | \$1,500 |
| 3 | Failure to Timely File Semiannual Campaign Statements | \$1,500 |
| 4 | Failure to Timely File Semiannual Campaign Statements | \$1,500 |
| 5 | Failure to Timely File Semiannual Campaign Statements | \$1,500 |
| 6 | Failure to Timely File Semiannual Campaign Statements | \$1,500 |
| 7 | Failure to Timely File Pre-election Campaign Statements | \$3,000 |
| 8 | Failure to Timely File 24-Hour Contribution Reports | \$2,000 |
| | TOTAL: | \$14,000 |

CONCLUSION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondents, Contra Costa Supervisor John Gioia 2010 Officeholder Account, Contra Costa Supervisor John Gioia 2014 Officeholder Account, John Gioia, and Jennifer Peck, hereby agree as follows:

1. The Respondents violated the Act as described in the foregoing pages, which are a true and accurate summary of the facts in this matter.
2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose of reaching a final disposition without the necessity of holding an administrative hearing to determine the liability of the Respondents pursuant to Section 83116.
4. The Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not limited to, the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at the Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially reviewed.
5. The Respondents agree to the issuance of the decision and order set forth below. Also, the Respondents agree to the Commission imposing against them an administrative penalty in the amount of

1 \$14,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General
2 Fund of the State of California—is/are submitted with this stipulation as full payment of the
3 administrative penalty described above, and same shall be held by the State of California until the
4 Commission issues its decision and order regarding this matter.

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

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

14
15 Dated: _____
16 Galena West, Chief of Enforcement
17 Fair Political Practices Commission

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19 Dated: _____
20 John Gioia, individually and on behalf of
21 Contra Costa Supervisor John Gioia 2010 Officeholder
22 Account and Contra Costa Supervisor John Gioia 2014
23 Officeholder Account

24
25 Dated: _____
26 Jennifer Peck, individually and on behalf of
27 Contra Costa Supervisor John Gioia 2010 Officeholder
28 Account and Contra Costa Supervisor John Gioia 2014
Officeholder Account

1 The foregoing stipulation of the parties “In the Matter of Contra Costa Supervisor John Gioia 2010
2 Officeholder Account, Contra Costa Supervisor John Gioia 2014 Officeholder Account, John Gioia, and
3 Jennifer Peck,” FPPC Case Nos. 17/84 and 17/86 is hereby accepted as the final decision and order of the
4 Fair Political Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

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10 Joann Remke, Chair
11 Fair Political Practices Commission
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