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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

12 SHANNON GROVE, SHANNON
13 GROVE FOR ASSEMBLY 2010, and
KAREN CAIN,

14 Respondents.

FPPC No. 10/1098

STIPULATION, DECISION AND ORDER

15
16 **STIPULATION**

17 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
18 Respondents Shannon Grove, Shannon Grove for Assembly 2010, and Karen Cain hereby agree that this
19 Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next
20 regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an additional administrative
23 hearing to determine the liability of Respondents, pursuant to section 83116 of the Government Code.

24 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
25 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
26 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
27 appear personally at any administrative hearing held in this matter, to be represented by an attorney at
28 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to

1 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
2 the hearing as a hearing officer, and to have the matter judicially reviewed.

3 As described in Exhibit 1, it is further stipulated and agreed that Respondents Shannon Grove,
4 Shannon Grove for Assembly 2010, and Karen Cain violated the Political Reform Act by failing to
5 timely report subvendor information on campaign statements filed for the reporting periods ending May
6 22 and June 30, 2010, in violation of Government Code sections 84211, subdivision (k), and 84303 (one
7 count). Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein,
8 is a true and accurate summary of the facts in this matter.

9 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
10 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
11 of \$2,250. One or more cashier's checks or money orders totaling said amount—to be paid to the
12 General Fund of the State of California—is/are submitted with this Stipulation as full payment of the
13 administrative penalty described above, and same shall be held by the State of California until the
14 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the
15 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)
16 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered
17 by Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents
18 further stipulate and agree that in the event the Commission rejects the Stipulation and a full evidentiary

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1 hearing before the Commission becomes necessary, neither any member of the Commission, nor the
2 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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4 Dated: _____

Gary S. Winuk, Chief of Enforcement
Fair Political Practices Commission

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7 Dated: _____

Shannon Grove, Individually and on Behalf of Shannon
Grove for Assembly 2010, Respondents

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10 Dated: _____

Karen Cain, Respondent

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13 **DECISION AND ORDER**

14 The foregoing Stipulation of the parties “In the Matter of Shannon Grove, Shannon Grove for
15 Assembly 2010, and Karen Cain,” FPPC No. 10/1098, including all attached exhibits, is hereby accepted
16 as the final decision and order of the Fair Political Practices Commission, effective upon execution below
17 by the Chair.

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19 IT IS SO ORDERED.

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21 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Shannon Grove (“Respondent Grove”) was elected to the California State Assembly, 32nd District, in the 2010 General Election. Respondent Shannon Grove for Assembly 2010 (“Respondent Committee”) was Respondent Grove’s candidate controlled committee for this election. Respondent Karen Cain (“Respondent Cain”) was the treasurer of Respondent Committee.

For purposes of this stipulation, Respondents’ violation of the Political Reform Act (the “Act”)¹ is stated as follows:

Count 1: Respondents Shannon Grove, Shannon Grove for Assembly 2010, and Karen Cain failed to timely report subvendor information for payments totaling approximately \$229,374 on campaign statements filed in connection with the 2010 Primary Election, in violation of Sections 84211, subdivision (k), and 84303.

SUMMARY OF THE LAW

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

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited. (Section 81002, subd. (a).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.” (Section 81002, subd. (f).)

Definition of Controlled Committee

Section 82013, subdivision (a), defines a “committee” to include any person or combination of persons who receive contributions totaling \$1,000 or more in a calendar year. This type of committee is commonly referred to as a “recipient committee.” Under Section

¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. 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 Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

82016, a recipient committee which is controlled directly or indirectly by a candidate, or which acts jointly with a candidate in connection with the making of expenditures, is a “controlled committee.” A candidate controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee. (Section 82016, subd. (a).)

Required Filing of Semi-Annual and Pre-Election Campaign Statements

At the core of the Act’s campaign reporting system is the requirement that a recipient committee must file campaign statements and reports, including semi-annual campaign statements, pre-election campaign statements, and late contribution reports. (See Sections 84200, et seq.) For example, semi-annual campaign statements must be filed each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31. (Section 84200, subd. (a).) In addition, candidates are required to file two pre-election campaign statements before an election that they are being voted upon. (Section 84200.5.) Attached hereto as Exhibit 2 is a schedule of reporting periods and filing deadlines in connection with the primary election that was held on June 8, 2010.

Required Reporting of Expenditures, Including Subvendor Expenditures

Section 82025 defines “expenditure” as a payment, forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. “An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.” (Section 82025.)

Section 84211, subdivisions (b) and (i), require candidates and their controlled committees to disclose on each campaign statement: (1) the total amount of expenditures made during the period covered by the campaign statement; and (2) the total amount of expenditures made during the period covered by the campaign statement to persons who have received \$100 or more.

Pursuant to Section 84211, subdivision (k), for each person to whom an expenditure of \$100 or more has been made during the period covered by the campaign statement, the following information must be disclosed on the campaign statement: (1) the recipient’s full name; (2) the recipient’s street address; (3) the amount of each expenditure; and (4) the description of the consideration for which each expenditure was made.

Also, Section 84303 provides that no expenditure of \$500 or more shall be made, other than for overhead and normal operating expenses, by an agent or independent contractor, including, but not limited to, an advertising agency, on behalf of, or for the benefit of, any committee, unless the expenditure is reported by the committee as if the expenditure were made directly by the committee. This type of information reported by a committee is commonly referred to as “subvendor information.” Regulation 18431, subdivision (a), provides that expenditures of the type that must be reported pursuant to Section 84303 include:

1. Expenditures for expert advice, expert analysis, or campaign management services, including but not limited to analysis, advice, or management services in connection with:
 - a. development of campaign strategy;
 - b. campaign management;
 - c. design or management of campaign literature or advertising;
 - d. campaign fund raising;

2. Expenditures for products or services which show how the campaign is conducted, including but not limited to expenditures for:
 - a. printed campaign literature;
 - b. advertising time or space;
 - c. campaign buttons and other campaign paraphernalia;
 - d. surveys, polls, signature gathering and door-to-door solicitation of voters;
 - e. facilities, invitations, or entertainment for fundraising events;
 - f. postage for campaign mailings; and

3. Expenditures to printers of mass mailings.

Section 84211, subdivision (k)(6), requires the disclosure of such subvendor information as part of the contents of any campaign statement required to be filed by the committee. Specifically, the following information must be provided: (1) the subvendor's full name; (2) his or her street address; (3) the amount of each expenditure; and (4) a brief description of the consideration for which each expenditure was made. (Section 84211, subs. (k)(1)-(4) and (6).)

Treasurer and Candidate Liability

Under Sections 81004, subdivision (b), 84100, and 84213, and Regulation 18427, subdivisions (a), (b) and (c), it is the duty of a candidate and the treasurer of his or her controlled committee to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. A committee's treasurer and candidate may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee under Sections 83116.5 and 91006.

SUMMARY OF THE FACTS

At all relevant times, Respondent Committee was Respondent Grove's candidate-controlled committee and Respondent Cain was the treasurer of Respondent Committee.

Count 1: Failure to Timely Report Subvendor Information

Respondents Grove, Committee, and Cain failed to timely report subvendor information for payments totaling approximately \$229,374 on campaign statements filed for the reporting periods ending May 22 and June 30, 2010. The subvendor information related to payments to

subvendors made by Respondent Committee's consultant, Western Pacific Research, Inc. ("WPR"). WPR paid Battin Group² to arrange television and radio advertisement time and Post Road Communications³ to produce and send mail. Battin Group then paid various television and radio stations to air commercials and Post Road Communications paid various vendors to print and send mail. Battin Group and Post Road Communications were disclosed on the campaign statements as subvendors of WPR. However, the subvendor information for the payments made by Battin Group and Post Road Communications was not disclosed timely on the campaign statements.

The original campaign statements filed for the reporting periods ending May 22 and June 30 were filed by Respondents by their due dates. After Respondents were notified by the Commission (on or about December 31, 2010) that an investigation had been initiated regarding the unreported subvendor information, amendments to these campaign statements were filed in January and March 2011 to disclose the missing subvendor information for the Battin Group and Post Road Communications payments. (The due dates for the original filings were May 27 and August 2, 2010.)

By failing to timely report payments to subvendors as described above, Respondents Grove, Committee, and Cain committed one violation of Sections 84303 and 84211, subdivision (k).

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of \$5,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in the context of the following factors set forth in Regulation 18361.5, subdivision (d)(1) through (6):

- (1) The seriousness of the violation;
- (2) The presence or absence of any intention to conceal, deceive or mislead;
- (3) Whether the violation was deliberate, negligent or inadvertent;
- (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency

² Battin Group is a media placement firm.

³ Post Road Communications is a consulting firm specializing in direct mail.

in a manner not constituting a complete defense under Government Code section 83114(b);

(5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and

(6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Regarding Count 1, three of the more recent stipulations involving failure to properly report subvendor information imposed penalties in the mid-range. (See *In the Matter of Bryan Batey, Committee to Elect Bryan Batey, and Lisa King*, FPPC No. 10/53, approved Jun. 10, 2010 [\$2,500 penalty per count imposed for two counts of failure to report subvendor information by school board candidate, committee and treasurer]; *In the Matter of Mary Ann Andreas, Andreas for Assembly, Marta Baca, and Phyllis Nelson*, FPPC No. 06/77, approved Jun. 10, 2010 [\$2,250 - \$2,750 penalty per count imposed for multiple counts of failure to report subvendor information]; *In the Matter of Stuart Waldman, Friends of Stuart Waldman, and Kinde Durkee*, FPPC No. 10/643, approved Sep. 22, 2011 [\$2,500 penalty for one count of failure to report subvendor information].)

The public harm inherent in campaign reporting violations is that the public is deprived of important information such as the amounts expended by the campaign, the identities of the recipients of such expenditures, and the reasons for such expenditures. In this case, the amount in question was significant, comprising approximately 44 percent of reported expenditures. Additionally, although Respondents voluntarily filed amendments disclosing the missing subvendor information, the information was not disclosed until after the relevant elections and only after notification that an investigation had been initiated.

Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$2,250 is justified. A higher penalty is not being sought because Respondents cooperated with the Enforcement Division of the Fair Political Practices Commission by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held. Also, the failure to report subvendor information for payments by Battin Group and Post Road Communications was unintentional resulting from Respondents' not being aware that subvendor information is required for payments made by subvendors to other subvendors.

PROPOSED PENALTY

Based on the facts of this case, including the factors discussed above, an agreed upon penalty of \$2,250 is recommended.