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

10  
11 In the Matter of:

12 ZACK SCRIVNER, SCRIVNER FOR  
13 SUPERVISOR 2010, and SHAWN  
KELLY,

14 Respondents.

FPPC No. 10/1099

STIPULATION, DECISION AND ORDER

15  
16 **STIPULATION**

17 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
18 Respondents Zack Scrivner, Scrivner for Supervisor 2010, and Shawn Kelly 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 Zack Scrivner,  
4 Scrivner for Supervisor 2010, and Shawn Kelly violated the Political Reform Act by failing to timely  
5 report subvendor information on six campaign statements filed for the period July 1, 2009 through  
6 October 16, 2010, in violation of Government Code sections 84211, subdivision (k), and 84303 (one  
7 count) and by failing to accrue expenses on four campaign statements filed for the period January 1  
8 through September 30, 2010, in violation of Government Code section 84211, subdivisions (b), (i), and  
9 (k) and Regulation 18421.6 (one count). Exhibit 1, which is attached hereto and incorporated by  
10 reference as though fully set forth herein, is a true and accurate summary of the facts in this matter.

11 Respondents agree to the issuance of the Decision and Order, which is attached hereto.  
12 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount  
13 of Four Thousand Seven Hundred Fifty Dollars (\$4,750). One or more cashier's checks or money orders  
14 totaling said amount—to be paid to the General Fund of the State of California—is/are submitted with  
15 this Stipulation as full payment of the administrative penalty described above, and same shall be held by  
16 the State of California until the Commission issues its Decision and Order regarding this matter. The  
17 parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and  
18 void, and within fifteen (15) business days after the Commission meeting at which the Stipulation is  
19 rejected, all payments tendered by Respondents in connection with this Stipulation shall be reimbursed to  
20 Respondents. Respondents further stipulate and agree that in the event the Commission rejects the  
21 Stipulation and a full evidentiary hearing before the Commission becomes necessary, neither any

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1 member of the Commission, nor the Executive Director, shall be disqualified because of prior  
2 consideration of this Stipulation.

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4 Dated: \_\_\_\_\_

\_\_\_\_\_  
5 Gary S. Winuk, Chief of Enforcement, on behalf of the  
6 Fair Political Practices Commission

7 Dated: \_\_\_\_\_

\_\_\_\_\_  
8 Zack Scrivner, individually and on behalf of Scrivner  
9 for Supervisor 2010, Respondents

10 Dated: \_\_\_\_\_

\_\_\_\_\_  
11 Shawn Kelly, Respondent

12  
13 **DECISION AND ORDER**

14 The foregoing Stipulation of the parties “In the Matter of Zack Scrivner, Scrivner for Supervisor  
15 2010, and Shawn Kelly” FPPC No. 10/1099, including all attached exhibits, is hereby accepted as the  
16 final decision and order of the Fair Political Practices Commission, effective upon execution below by  
17 the Chair.

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19 IT IS SO ORDERED.

20  
21 Dated: \_\_\_\_\_

\_\_\_\_\_  
22 Ann Ravel, Chair  
23 Fair Political Practices Commission

## **EXHIBIT 1**

### **INTRODUCTION**

Respondent Zack Scrivner (“Respondent Scrivner”) was elected to the Kern County Board of Supervisors in the 2010 General Election. Respondent Scrivner for Supervisor 2010 (“Respondent Committee”) was Respondent Scrivner’s candidate controlled committee for this election. Respondent Shawn Kelly (“Respondent Kelly”) was the treasurer of Respondent Committee.

For purposes of this stipulation, Respondents’ violations of the Political Reform Act (the “Act”)<sup>1</sup> are as follows:

Count 1: Respondents Zack Scrivner, Scrivner for Supervisor 2010, and Shawn Kelly failed to report subvendor information for payments totaling approximately \$297,182 on the six original campaign statements filed for the period July 1, 2009 through October 16, 2010, in violation of Sections 84211, subdivision (k), and 84303.

Count 2: Respondents Zack Scrivner, Scrivner for Supervisor 2010, and Shawn Kelly failed to report accrued expenses totaling approximately \$99,685 on the four campaign statements filed for the period January 1, 2010 through September 30, 2010, in violation of Section 84211, subdivision (b), (i), and (k), and Regulation 18421.6.

### **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).)

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<sup>1</sup> 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.

### **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 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 Campaign Statements and Reports**

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, preelection 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).)

### **Required Reporting of Expenditures, Including Subvendor Expenditures and Accrued Expenses**

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, subd. (k)(1)-(4) and (6).)

Additionally, accrued expenses (excluding loans) owed by a recipient committee which remain outstanding shall be reported on each campaign statement until extinguished. (Regulation 18421.6, subd. (a).) Such accrued expenses must be reported as of the date on which the goods or services are received, except that any obligation incurred for a regularly recurring administrative overhead expense (e.g., rent, utilities, phones, campaign workers' salary) need not be reported as an accrued expense before the payment due date. (Regulation 18421.6, subd. (b).)

### **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 Scrivner's candidate-controlled committee and Respondent Kelly was the treasurer of Respondent Committee.

### Count 1: Failure to Report Subvendor Information

Respondents Scrivner, Committee, and Kelly failed to report subvendor information on the six original campaign statements filed for the period July 1, 2009 through October 16, 2010 for payments totaling approximately \$297,182. The \$297,182 is comprised of payments totaling \$184,314 made by Respondent Committee's campaign consultant Western Pacific Research, Inc. ("WPR") to its vendors, such as its media placement agent, and payments totaling \$112,868 made by some of WPR's vendors to other vendors who actually provided the goods or services such as television and radio stations.

The above mentioned six campaign statements were filed 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 the campaign statements were filed on January 19, 2011 to disclose the subvendor information for the payments made by WPR to its vendors. (The due date for the original filings were February 2, March 22, May 27, August 2, October 5, and October 21, 2010)

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

### Count 2: Failure to Report Accrued Expenses

Respondents Scrivner, Committee, and Kelly failed to report approximately \$99,685 owed to WPR as accrued expenses on the following campaign statements:

<u>Campaign Statement</u> <u>Reporting Period</u> <u>Ending</u>	<u>Unreported</u> <u>Accrued Expenses</u> <u>During Period</u>	<u>Reported Expenses</u> <u>During Period</u>
3/17/10	\$ 1,898	\$26,369
5/22/10	28,356	65,383
6/30/10	55,043	21,864
9/30/10	<u>14,388</u>	74,028
Total	\$99,685	

The unreported accrued expenses were subsequently reported as current expenditures when payments were made to WPR. However, such disclosure was normally made in the reporting period after the expenses were required to be reported as accrued.

By failing to report the above-described accrued expenses timely during the reporting periods when the expenses were incurred, Respondents committed one violation of Section 84211, subdivisions (b), (i), and (k), and Regulation 18421.6.

## CONCLUSION

This matter consists of two counts of violating the Act, which carry a maximum administrative penalty of \$5,000 per violation.

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 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 Sept. 22, 2011 [\$2,500 penalty for the one count of failure to report subvendor information].)

Regarding Count 2, a similar case approved by the Commission involving the failure to properly accrue expenses imposed penalties in the mid-range. (*In the Matter of Steve Westly, et. al.*, FPPC No. 06/892, approved Dec. 10, 2009 [penalties of \$2,500 and \$3,000 were imposed for the two counts of failure to accrue expenses].)

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 of the subvendor information in question was significant in relation to the \$275,986 in expenditures reported by the Respondents in connection with the election. Additionally, although Respondents voluntarily filed amendments disclosing the missing subvendor information, the information was not disclosed until after the relevant primary and general elections and only after notification that an investigation had been initiated. Further, though the expenses not accrued were eventually reported, they were reported late and approximately \$28,509 of the amount reportable prior to the primary election was reported after the primary election.

Under these circumstances, it is respectfully submitted that imposition of the agreed upon penalties in the amount of \$2,250 for Count 1 and \$2,500 for Count 2 are 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 the subvendor information was unintentional, having resulted from Respondents being unaware that payments to subvendors are required to be disclosed.

### **PROPOSED PENALTY**

Based on the facts of this case, including the factors discussed above, an agreed upon penalty of \$4,750 is recommended.