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

10
11 In the Matter of:

12 CHRISTOPHER KELLY, KELLY FOR
13 ATTORNEY GENERAL 2010, and JANE
LEIDERMAN

14 Respondents.

FPPC No. 12/105

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17 **STIPULATION**
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19 STIPULATION, DECISION, and ORDER

20 Complainant, the Fair Political Practices Commission, and Respondents Christopher Kelly, Kelly
21 for Attorney General 2010, and Jane Leiderman hereby agree that this Stipulation will be submitted for
22 consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

23 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this
24 matter and to reach a final disposition without the necessity of holding an additional administrative
25 hearing to determine the liability of Respondents.

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

1 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
2 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
3 the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondents violated the Political Reform Act by failing
5 to timely report required subvendor information on campaign statements in violation of Government
6 Code sections 84211, subdivision (k) and 84303 as described in Exhibit 1. Exhibit 1 is attached hereto
7 and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary
8 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 an administrative penalty in the total amount of
11 Two Thousand Five Hundred Dollars (\$2,500). A cashier's check from Respondents in said amount,
12 made payable to the "General Fund of the State of California," is submitted with this Stipulation as full
13 payment of the administrative penalty, and shall be held by the State of California until the Commission
14 issues its Decision and Order regarding this matter. The parties agree that in the event the Commission
15 refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days
16 after the Commission meeting at which the Stipulation is rejected, all payments tendered by
17 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
19 hearing before the Commission becomes necessary, neither any member of the Commission, nor the
20 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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22 Dated: _____ Gary S. Winuk, on Behalf of the Enforcement Division
23 Fair Political Practices Commission

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25 Dated: _____ Christopher Kelly, individually and on behalf of Kelly
26 for Attorney General 2010

27 Dated: _____
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Jane Leiderman, individually and on behalf of Kelly
for Attorney General 2010

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Christopher Kelly, Kelly for Attorney General 2010, and Jane Leiderman,” FPPC No. 12/105, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent Christopher Kelly (“Respondent Kelly”) ran for Attorney General in 2010. He did not win the Primary Election. Respondent Kelly for Attorney General 2010 (“Respondent Committee”) was his campaign committee and respondent Jane Leiderman (“Respondent Leiderman”) served as the treasurer for Respondent Committee. Respondents Kelly, Leiderman, and Committee are referred to collectively as “Respondents.” This case resulted from an audit by the Franchise Tax Board (“FTB”) of Respondent Committee for the period January 1, 2009 through June 30, 2010. Under the Political Reform Act (the “Act”)¹ Respondents have a duty to timely file campaign statements disclosing, amongst other items, information regarding payments made to subvendors during a campaign. Respondents violated the Act by failing to timely report information regarding payments made to subvendors.

For purposes of this Stipulation, the proposed violation of the Act is as follows:

COUNT 1: Respondents failed to timely report required subvendor information on a preelection campaign statement for the reporting period ending on May 22, 2010 and a semi-annual campaign statement for the reporting period ending on June 30, 2010 for expenditures totaling \$9,865,315 in violation of Sections 84211, subdivision (k) and 84303.

SUMMARY OF THE LAW

A stated purpose of the Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters may be fully informed and improper practices may be inhibited. (Section 81003, subd. (a).) The Act’s campaign reporting system is designed to accomplish this purpose.

Duty to Disclose Expenditures

Section 82025 defines an “expenditure” as a payment, forgiveness of a loan, a payment of a loan by a third party, or any enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. Section 84211, subdivision (b), requires committees to disclose the total amount of expenditures made during the period covered by the campaign statement. In addition, for each person to whom the committee makes an expenditure of \$100 or more during the campaign statement period, a committee must disclose the payee’s name and address, the amount of each expenditure, and a brief description of the consideration for which each expenditure is made. (Section 84211, subds. (i) and (k).) “Expenditure” includes any individual payment or accrued expense (i.e., an unpaid bill).

¹ The Political Reform 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.

(Sections 82025, 84211, subd. (k)(6).) Further, 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.)

Duty to Report Subvendor Payments

Section 84303 provides that no expenditure of five hundred dollars (\$500) or more shall be made, other than 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 candidate or committee, unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee. Regulation 18431, subdivision (a), provides specific types of expenditures made by subvendors that must be reported pursuant to Section 84303, including expenditures for advertising time. Regulation 18431, subdivision (c) requires disclosure of the expenditures made by an agent or independent contractor to be made at the same time and in the same manner and detail as required under Section 84211, subdivision (k), for the committee’s direct expenditures.² This information reported by the candidate or committee is referred to as “subvendor information.”

Treasurer Liability

Section 84100 provides that every committee shall have a treasurer. Under Section 84100 and Regulation §18427, subdivision (a), it is the duty of a committee’s treasurer 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 may be held jointly and severally liable, along with the committee, for any reporting violations by the committee. (Sections 83116.5 and 91006; Regulation §18316.6.)

SUMMARY OF THE FACTS

Respondent Kelly ran for Attorney General but did not win his party’s nomination at the June 8, 2010 Primary Election. In total, his campaign received \$12,802,080 in contributions and made expenditures of \$12,827,686. The majority of those expenditures were on media advertisements.

During the campaign, Respondents hired Media Strategies and Research, Inc. to purchase airtime for media advertisements. Between March 18, 2010 and May 22, 2010, Media Strategies and Research, Inc. purchased \$7,729,352 worth of airtime for media advertisements from subvendors for Respondents for which Respondents did not provide subvendor information on their preelection statement filed on May 28, 2010 for the reporting period ending on May 22, 2010. On June 7, 2010, the day before the election, Respondents filed an amended preelection statement for the reporting period ending on May 22, 2010 that provided the required subvendor information that Respondents did not include originally.

²Specifically, 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).)

Between May 23, 2010 and June 30, 2010, Media Strategies and Research, Inc. purchased \$2,039,856 worth of airtime for media advertisements from subvendors for Respondents for which Respondents did not provide subvendor information on their semi-annual campaign statement filed on August 3, 2010 for the reporting period ending on June 30, 2010. On May 17, 2011, Respondents filed an amended semi-annual campaign statement for the reporting period ending on June 30, 2010. The amended statement included subvendor information for the advertisements purchased by Media Strategies and Research, Inc.

Respondents also hired Dixon/Davis Media Group, LLC to procure airtime for advertisements. On the semi-annual campaign statement filed on August 3, 2010 for the reporting period ending on June 30, 2010, Respondents failed to provide subvendor information for \$152,312 worth of advertising time purchased by Dixon/Davis Media Group, LLC for Respondents. Respondents provided that subvendor information on the amended statement filed on May 17, 2011.

Count 1
Failure to Timely Report Subvendor Information

Respondents failed to timely report required subvendor information on a preelection campaign statement for the reporting period ending on May 22, 2010 and a semi-annual campaign statement for the reporting period ending on June 30, 2010 for expenditures totaling \$9,865,315 in violation of Sections 84211, subdivision (k) and 84303.

CONCLUSION

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

In determining the appropriate penalty for a particular violation of the Act, the Fair Political Practices Commission (“Commission”) 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 Commission considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to conceal, deceive or mislead; whether the violation was deliberate, negligent, or inadvertent; whether the Respondents demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

The Act’s subvendor reporting requirements are intended to provide the public with information regarding the identity of subvendors, amounts of subvendor expenditures, and a description of the products and services that subvendors provide to a campaign. A committee’s failure to timely report subvendor expenditures denies the public this information.

Recent similar cases considered by the Commission involving subvendor expenditures are relevant in determining the appropriate penalty in this case. In the case of *In the Matter of Damon Dunn, et. al.*, FPPC No. 12/558 (settlement approved by the Commission on February

28, 2013) the respondents paid a penalty of \$2,250 for failing to timely report subvendor expenditures totaling over \$231,000, which represented approximately 22% of the committee's total expenditures during the period considered by the FTB audit in that case. Similarly, the respondents in *In the Matter of Zach Scrivner, et. al.*, FPPC No. 10/1099 (settlement approved by the Commission on December 13, 2012) paid a penalty of \$2,250 as well. They failed to timely report subvendor information for \$297,182 worth of expenditures over six reporting periods. They reported the subvendor information on amended statements filed after the election and only after the Commission's Enforcement Division contacted them regarding their failure to report the information. Lastly, in *In the Matter of Monterey County Republican Party Central Committee, et.al.*, FPPC No. 08/761 (settlement approved by the Commission on October 13, 2011) the respondents paid a penalty of \$2,500 for failing to provide subvendor information. In that case, the expenditures for which the subvendor information was not timely reported totaled \$358,270 over one reporting period, which equated to approximately 40% of respondents' total expenditures for the reporting period.

In this case, Respondents failed to timely provide subvendor information for expenditures totaling \$9,921,520, which was approximately 77% of the total expenditures by Respondent Committee during the audit period. This percentage, and the total amount of late-reported subvendor expenditures, are substantially higher than the comparable cases thereby justifying a penalty on the higher end of the typical range for similar violations. Respondents did report the majority of the subvendor information before the election but only one day before the election so the public had very little time to review the information before the election. To Respondents' credit, FTB's audit showed that Respondents substantially complied with the Act's campaign reporting requirements other than this violation. Also, Respondents cooperated with the Commission in reaching this settlement agreement.

PROPOSED PENALTY

After considering the factors of Regulation 18361.5, and the penalties imposed in prior cases, the imposition of a penalty of \$2,500 is recommended.