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

10  
11 In the Matter of:

12 Constance Conley,

13 Respondent.

FPPC No. 12/290

14 **STIPULATION, DECISION, AND ORDER**

15  
16 **STIPULATION**

17 Complainant Enforcement Division of the Fair Political Practices Commission (“Commission”),  
18 and respondent Constance Conley, hereby agree that this Stipulation will be submitted for consideration  
19 by the Fair Political Practices Commission at its next regularly scheduled meeting.

20 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this  
21 matter and to reach a final disposition without the necessity of holding an additional administrative  
22 hearing to determine Conley’s liability.

23 Conley understands, and hereby knowingly and voluntarily waives, any and all procedural rights  
24 set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of  
25 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to  
26 personally appear at any administrative hearing held in this matter, to be represented by an attorney at  
27 her own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena  
28 witnesses to testify at the hearing, to have an impartial administrative law judge preside over the hearing

1 as a hearing officer, and to have the matter judicially reviewed.

2 It is further stipulated and agreed that Conley violated the Political Reform Act by authorizing  
3 committee expenditures that resulted in a substantial benefit to her and were not directly related to a  
4 political, legislative or governmental purpose of the committee, in violation of Government Code  
5 section 89512.5 as described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference as  
6 though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

7 Conley agrees to the issuance of the Decision and Order, which is attached hereto. Conley also  
8 agrees to the Commission imposing an administrative penalty in the total amount of Three Thousand  
9 Hundred Dollars (\$3,000). Submitted with this Stipulation, was a cashier's check from Conley in said  
10 amount, made payable to the "General Fund of the State of California," as full payment of the  
11 administrative penalty that shall be held by the State of California until the Commission issues its  
12 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to  
13 accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the  
14 Commission meeting at which the Stipulation is rejected, all payments tendered by Conley in connection  
15 with this Stipulation shall be reimbursed. Conley further stipulates and agrees that in the event the  
16 Commission rejects the Stipulation, and a full evidentiary hearing before the Commission becomes  
17 necessary, neither any member of the Commission, nor the Executive Director, shall be disqualified  
18 because of prior consideration of this Stipulation.

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21 Dated: \_\_\_\_\_  
22 Galena S. West, Acting Chief of Enforcement on behalf  
23 of the Enforcement Division Fair Political Practices  
24 Commission

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26 Dated: \_\_\_\_\_  
27 Constance Conley,  
28 Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Constance Conley,” FPPC No. 12/290,  
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political  
4 Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: \_\_\_\_\_  
9 Joann Remke, Chair  
10 Fair Political Practices Commission  
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## **EXHIBIT 1**

### **INTRODUCTION**

Elk Grove Community Connection PAC (the “Committee”) is a city general purpose committee organized by Respondent Constance Conley and Linda Ford. Conley is a political activist in the Elk Grove area and has served as the Committee’s treasurer since its inception in 2009. The Political Reform Act<sup>1</sup> prohibits treasurers from authorizing committee expenditures that are not directly related to the committee and result in a substantial personal benefit to the treasurer. Conley violated the Act by authorizing committee funds to pay for attorney’s fees arising from a civil claim filed against her personally.

### **SUMMARY OF THE LAW**

#### **Prohibition Against Personal Use of Committee Funds**

The Act prohibits treasurers from authorizing committee expenditures that result in a substantial personal benefit to the treasurer unless the expenditure is directly related to a political, legislative or governmental purpose of the committee.<sup>2</sup> A “substantial personal benefit” means an expenditure that results in a direct personal benefit with a value of more than \$200 to the treasurer or principal officer of the committee.<sup>3</sup>

#### **Attorney’s Fees as Prohibited Personal Use**

Costs associated with attorney’s fees relating to administrative, civil, or criminal litigation are not directly related to a political, legislative, or governmental purpose except where the litigation is directly related to activities of a committee that are consistent with its primary objectives or arises directly out of a committee’s activities.<sup>4</sup>

### **SUMMARY OF THE FACTS**

Conley and Ford organized the Committee as a city general purpose committee on June 2, 2009. The Committee’s stated purpose was “to affect positive change in Elk Grove elections as a nonpartisan committee.” Conley served as the Committee’s treasurer at all times relevant to this matter. Checks drawn on the Committee’s bank account could not be issued without Conley’s signature.

In 2010, Conley twice authorized expenditures made by the Committee to pay her attorney’s fees arising from a civil suit unrelated to the Committee. The civil suit was a *Request*

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<sup>1</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

<sup>2</sup> Section 89512.5, subd.(b).

<sup>3</sup> Section 89511, subd. (b)(3).

<sup>4</sup> Section 89514.

*for Extension of Restraining Order* filed on June 18, 2010 by Elk Grove City Councilman Patrick Hume. The Request sought to extend a prior restraining order against Conley that was granted on July 12, 2007 – nearly two years before the organization of the Committee. The Request named only Conley as a defendant.

In response to the filing, Conley retained attorney Paige Hibbert as her counsel in connection with the Request. Hibbert required a \$3,000 retainer payment to represent Conley. The \$3,000 retainer payment was paid to Hibbert on approximately July 7, 2010 via a check drawn on the Committee’s bank account. The check was signed by Conley.

On or about September 7, 2010, Conley provided Hibbert with a \$900 check drawn on the Committee’s bank account. The memorandum on the check specified that the payment was for “legal fees.” This check was also signed by Conley.

The Committee reported the two payments to Hibbert on its pre-election statement for the period covering July 1, 2010 through September 20, 2010. The Committee described the expenses as related to “legal defense.”

### **Count 1**

#### **Personal Use of Committee Funds**

The Committee is a city general purpose committee whose stated purpose is “to affect positive change in Elk Grove elections as a nonpartisan committee.” Conley has served as its treasurer since its organization in 2009. On July 7, 2010 and September 4, 2010, Conley authorized expenditures by the Committee totaling \$3,900. The expenditures were used to pay attorney’s fees arising from a civil claim filed against Conley personally. Therefore, Conley violated Section 89512.5 of the Government Code by authorizing committee expenditures that resulted in a substantial benefit to her and were not directly related to a political, legislative or governmental purpose of the Committee.

### **CONCLUSION**

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

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; whether there was a pattern of violations; and whether voluntary full disclosure was completed once notified of the violation.

Recent cases decided by the Commission involving violations of Section 89512.5 include:

- *In the Matter of Californians for Privacy, Luke Breit and Michael Gunter, FPPC No. 10/1119*: From approximately June 2008 to April 2009, Michael Gunter served as the treasurer for the state general purpose committee Californians for Privacy. During that period, Gunter withdrew \$10,000 from the bank account of Californians for Privacy and spent the funds on starting a new business. On December 13, 2012, the Commission approved a \$5,000 penalty against Gunter for the one violation of Government Code Section 89512.5, subdivision (b). The Commission also approved fines totaling \$12,000 for four other violations of the Act committed by Gunter, Californians for Privacy, and its previous treasurer, Luke Breit.
- *In the Matter of Lynwood Teacher’s Association PAC and Michael Jochum, FPPC No. 11/337*. On August 12, 2012, Respondent Lynwood Teacher’s Association PAC made an expenditure in the form of a \$5,000 payment to the Lynwood Teachers’ Association. The Association used the funds to pay bills and payroll, but not to benefit any specific individual. On August 12, 2012, the Commission approved a penalty of \$3,000 for the one violation of Government Code Section 89512.5, subdivision (a). The Commission also approved fines totaling \$4,500 for two other reporting and recordkeeping violations made in connection with this matter.

Authorizing an expenditure of committee funds that results in a substantial benefit to the authorizing officer for purposes that are not directly related to a political, legislative or governmental purpose is a misuse of committee funds. Here, Conley authorized two expenditures to pay attorney’s fees arising from a civil claim filed against Conley personally, in violation of Section 89512.5, subdivision (b). In contrast to *Lynwood*, the expenditures here personally benefitted the authorizing individual. Conley submits that since she is a “public figure” in Elk Grove politics, she understood the law to allow the expenditure.

It is respectfully submitted that imposition of an agreed upon penalty in the amount of \$3,000 for the one count is justified. A higher penalty is not being sought because, while Conley takes full responsibility for her actions, she asserts that she believed in good faith that her actions were not in violation of the Act. She contends that her mistaken belief was based in part on incorrect legal advice she received from her attorney prior to authorizing the illegal expenditures. In further mitigation, Respondent paid the fine from her personal funds and has no prior history of violating the Act.

### **PROPOSED PENALTY**

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the seriousness of the violation, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Three Thousand Hundred (\$3,000) is recommended.