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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

12 YES ON MEASURE U – KIDS NEED U
13 AND KELLY BROWN,

14 Respondents.

FPPC No. 16/19824

STIPULATION, DECISION, AND ORDER

15
16 **STIPULATION**

17 Complainant, the Enforcement Division of the Fair Political Practices Commission and
18 respondents YES on Measure U – Kids Need U and Kelly Brown (Respondents) hereby agree that this
19 Stipulation will be submitted for consideration by the Fair Political Practices Commission (Commission)
20 at its next regularly scheduled meeting.

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

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 personally appear 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 It is further stipulated and agreed that Respondents violated the Political Reform Act by failing to
4 timely file a pre-election statement and six 24-Hour Contribution Reports in violation of Government
5 Code sections 84200.5, subdivision (a), 84200.8, subdivision (a), and 84203, all as described in Exhibit
6 1. Exhibit 1 is attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1
7 is a true and accurate summary of the facts in this matter.

8 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
9 Respondents also agree to the Commission imposing an administrative penalty in the total amount of
10 \$4,000. Respondents submitted with this Stipulation a cashier's check in said amount, made payable to
11 the "General Fund of the State of California," as full payment of the administrative penalty that shall be
12 held by the State of California until the Commission issues its Decision and Order regarding this matter.
13 The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null
14 and void, and within fifteen (15) business days after the Commission meeting at which the Stipulation is
15 rejected, all payments tendered by Respondents in connection with this Stipulation shall be reimbursed to
16 Respondents. Respondents further stipulate and agree that in the event the Commission rejects the
17 Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither any member
18 of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this
19 Stipulation.

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21 Dated: _____
22 Galena West, Chief, on behalf of the Enforcement
23 Division of the Fair Political Practices Commission

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25 Dated: _____
26 Kelly Brown, individually and on behalf of YES on
27 Measure U – Kids Need U
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1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of YES on Measure U – Kids Need U and
3 Kelly Brown,” FPPC No. 16/19824, including all attached exhibits, is hereby accepted as the final decision
4 and order of the 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: _____

_____ Joann Remke, Chair

9 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent YES on Measure U – Kids Need U (the “Committee”) is a committee primarily formed to support Measure U, a local school bond measure benefitting Lodi Unified School District in San Joaquin County. Respondent Kelly Brown (“Brown”) is the Committee’s treasurer.

Under the Political Reform Act (the “Act”),¹ a primarily formed ballot measure committee must timely file campaign statements and reports disclosing the contributions it receives and the expenditures it makes. The Committee violated the Act by failing to timely file one pre-election statement and six 24-Hour Contribution Reports. As the treasurer and principal officer, Brown is liable, along with the Committee, for the Committee’s campaign reporting violation.²

SUMMARY OF THE LAW

An express purpose of the Act is to ensure that campaign contributions and expenditures are fully and truthfully disclosed so that voters are fully informed and improper practices are discouraged.

In furtherance of this purpose, the Act requires primarily formed ballot measure committees to file pre-election statements during election years.³ Before a general election, a committee must file a pre-election statement no later than 12 days before the election for the statement period ending 17 days before the election.⁴ During the pre-election period, a Committee must also file a 24-Hour Contribution Report within 24 hours of receiving a contribution of \$1,000 or more.⁵

SUMMARY OF THE FACTS

The Committee first qualified as a committee on September 1, 2016. The Committee and Brown timely filed the first pre-election statement. On six dates during the second pre-election period, the Committee received contributions of \$1,000 or more, but failed to timely file 24-Hour Contribution Reports. The Committee and Brown filed one 24-Hour Contribution Report on October 25, 2016 that disclosed all 15 contributions of \$1,000 or more that it received during the pre-election period of September 25, 2016 to October 22, 2016. These contributions ranged from \$1,000 to \$10,000 each and totaled \$70,500.

¹ 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.

² Sections 83116.5 and 91004.

³ Section 84200.5, subd. (a).

⁴ Section 84200.8, subd. (b).

⁵ Sections 82036 and 84203.

The Committee and Brown also failed to file a pre-election statement for the period of September 25, 2016 to October 22, 2016 by the October 27, 2016 deadline. The Committee and Brown filed the pre-election statement five days late on November 1, 2016. The statement reported \$72,775.00 in contributions and \$66,366.56 in expenditures during the period of September 25, 2016 to October 22, 2016. The statement showed the Committee's ending cash balance as \$7,608.44.

VIOLATIONS

Count 1: Failure to Timely File a Pre-Election Statement

The Committee and Brown failed to timely file a pre-election statement for the period of September 25, 2016 to October 22, 2016, in violation of Sections 84200.5, subdivision (a), and 84200.8, subdivision (b).

Count 2: Failure to Timely File 24-Hour Contribution Reports

The Committee and Brown failed to timely file six 24-Hour Contribution Reports, in violation of Section 84203.

CONCLUSION

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

In determining the appropriate penalty for a particular violation of the Act, the 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 the violator, upon learning of the violations, voluntarily filed amendments.

The Commission also considers penalties in prior cases involving similar violations. Recent similar cases include the following:

Count 1

- *In the Matter of Save Our Forest and Ranchlands Opposed to Measure B Sponsored by California Local Energy Advancing Renewables, Jana Clark Sanders and Duncan McFetridge, Treasurer*; FPPC No. 16/19753. (Commission approved a stipulated decision on November 17, 2016.) The respondents failed to timely file a pre-election campaign statement, which disclosed \$110,000 in contributions and \$45,000 in expenditures. The Commission imposed a penalty of \$2,000.

- *In the Matter of Apartment Association of Los Angeles PAC and Trevor Grimm*, FPPC No. 14/1359. (Commission approved a stipulated decision on October 15, 2015.) The respondents failed to timely file two pre-election statements for periods in which it made contributions totaling \$52,316. The statements were not filed until after the election. The Commission imposed a penalty of \$2,000 per violation, for a total penalty of \$4,000.

Count 2

- *No on Government Waste, No on Measure B, Major Funding by Manwin USA; Diane Duke; Froyal Services Limited; and Mindgeek USA Incorporated F.K.A. Manwin USA, Inc.*, FPPC No. 15/1133. (Commission approved a stipulated decision on December 17, 2015.) The respondents failed to timely file four 24-Hour Contribution Reports for non-monetary contributions with a total value of \$16,293. The contributions were not reported until after the election on a year-end semi-annual statement. The Commission imposed a penalty of \$2,500.
- *In the Matter of Ruben Valencia, Valencia 4 City Council 2014, and Kathleen Christiansen*, FPPC No. 14/1234. (Commission approved a stipulated decision on September 17, 2015.) The respondents failed to timely file eight 24-Hour Contribution Reports disclosing nine contributions totaling \$17,000. Six of the contributions were timely reported on pre-election statements. The Commission imposed a penalty of \$1,500.

A central purpose of the Act is to ensure receipts and expenditures in election campaigns are fully and truthfully disclosed.⁶ The Committee and Brown failed to timely disclose significant contributions and expenditures of \$72,775.00 and \$66,366.56, respectively. However, in mitigation, the 24-Hour Contribution Reports were ultimately filed, and the pre-election statement was filed prior to the election. There is no evidence that the violations were deliberate or there was intent to conceal.

PROPOSED PENALTY

After considering the factors of Regulation 18361.5, the penalties imposed in prior cases, and other relevant information, a penalty of \$2,000 for Count 1 and a penalty of \$2,000 for Count 2 is recommended, for a total penalty of \$4,000.

⁶ Section 81002, subd. (a).