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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

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11 In the Matter of:

12 CITIZENS FOR KAIN – ASSEMBLY
’14, PALMER KAIN, JAY MOSLEY,
13 AND MARC BAYLEN,

14 Respondents.

FPPC Case No. 16/467

STIPULATION, DECISION AND ORDER

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16 INTRODUCTION

17 Respondent Palmer Kain (“Kain”) was a candidate for the California State Assembly in the June
18 3, 2014 Primary and November 4, 2014 General Elections. Citizens for Kain – Assembly ’14 (the
19 “Committee”) was the controlled committee of Kain. Jay Mosley (“Mosley”) was the treasurer of record
20 for the Committee during its lifetime, and Marc Baylen (“Baylen”) was the assistant treasurer of record
21 and acted as treasurer from July 2, 2014 until the Committee’s termination.

22 The Committee was the subject of a Franchise Tax Board audit, which revealed that
23 Respondents committed numerous violations of the Political Reform Act (the “Act”),¹ including a
24 failure to timely file two preelection campaign statements, a failure to timely report certain financial
25 activity on four preelection and two semiannual campaign statements, and a failure to meet the
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28 ¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practice Commission are contained in §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

1 recordkeeping requirements of the Act.

2 **SUMMARY OF THE LAW**

3 The Act and its regulations are amended from time to time. The violations in this case occurred in
4 2014. For this reason, all legal references and discussions of law pertain to the Act's provisions as they
5 existed at that time.

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

7 When enacting the Act, the people of California found and declared that previous laws
8 regulating political practices suffered from inadequate enforcement by state and local authorities.² For
9 this reason, the Act is to be construed liberally to accomplish its purposes.³

10 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in
11 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
12 practices are inhibited.⁴ Along these lines, the Act includes a comprehensive campaign reporting
13 system.⁵ Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will
14 be "vigorously enforced."⁶

15 Mandatory Filing of Campaign Statements

16 At the core of the Act's campaign reporting system is the requirement that committees file
17 campaign statements and reports for certain reporting periods, by certain deadlines, and including
18 certain information.⁷

19 The Act requires a candidate-controlled committee to file preelection campaign statements prior
20 to elections in which the candidate appears on the ballot.⁸ For the June 3, 2014 Primary Election, a
21 candidate-controlled committee was required to file preelection campaign statements for the period
22 ending March 17, 2014, no later than March 24, 2014, and the period ending May 17, 2014, no later
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25 ² Section 81001, subd. (h).

³ Section 81003.

26 ⁴ Section 81002, subd. (a).

⁵ Sections 84200, *et seq.*

27 ⁶ Section 81002, subd. (f).

⁷ Sections 84200, *et seq.*

28 ⁸ Section 84200.5.

1 than May 22, 2014.⁹

2 Contents of Campaign Statements

3 The Act requires that committees, on campaign statements, report the total amount of
4 contributions received during the period covered by the campaign statement from (i) persons who have
5 given a cumulative amount of \$100 or more; and (ii) persons who have given a cumulative amount of
6 less than \$100.¹⁰ Further, the Act requires that committees report the name, address, occupation, and
7 employer of each person that contributes \$100 or more on its campaign statements.¹¹

8 The Act also requires that committees report the total amount of expenditures made during the
9 period covered by the campaign statement to (i) persons who have received \$100 or more; and (ii)
10 persons who have received less than \$100.¹² For each person to whom an expenditure of \$100 or more
11 has been made, the committee must report the name and address of the recipient, the amount of the
12 expenditure, and a brief description of the consideration for which each expenditure was made.¹³

13 Recordkeeping Requirements

14 Candidates and treasurers have a duty to maintain detailed accounts, records, bills, and receipts
15 necessary to prepare campaign statements and establish campaign statements were properly filed.¹⁴ This
16 duty includes maintenance of detailed information and original source documentation for a period of
17 four years following the date the campaign statement to which they relate is filed.¹⁵ Examples of
18 original source documentation that must be maintained include copies of bills, receipts, and invoices for
19 expenditures of \$25 or more.¹⁶

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24 ⁹ Section 84200.7, subd. (a).

25 ¹⁰ Section 84211, subs. (a), (c), and (d).

26 ¹¹ Section 84211, subd. (f).

27 ¹² Section 84211, subs. (b), (i), and (j).

28 ¹³ Section 84211, subd. (k).

¹⁴ Section 84104.

¹⁵ Regulation 18401.

¹⁶ Regulation 18401, subd. (a)(4).

1 2014 Primary Election. Although due on March 24, 2014, the Committee did not file its preelection
 2 campaign statement for the reporting period of January 1, 2014 to March 17, 2014, until July 2, 2014,
 3 100 days late and approximately one month after the Primary Election. The statement reported \$5,450 in
 4 contributions and \$2,627 in expenditures. The Committee also failed to timely file its preelection
 5 campaign statement for the period of March 18, 2014 to May 17, 2014, which was due on May 22,
 6 2014. Also filed on July 2, 2014 (41 days late), the statement reported \$100 in contributions and \$1,585
 7 in expenditures.

8 The Committee also failed to timely report certain contributions and expenditures on six
 9 different campaign statements, as follows:

| Statement Type | Reporting Period | Amount of Contributions/ Expenditures Unreported |
|----------------|---------------------|---|
| Preelection | 1/1/14 – 3/17/14 | \$250/\$2,825.33 |
| Preelection | 3/18/14 – 5/17/14 | \$156.57/\$248.18 |
| Semiannual | 5/18/14 – 6/30/14 | \$90/\$28 |
| Preelection | 7/1/14 – 9/30/14 | \$1,479/\$4,730.63 |
| Preelection | 10/1/14 – 10/18/14 | \$0/\$1,127.63 |
| Semiannual | 10/19/14 – 12/31/14 | \$260/\$380.85 |

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 20 Finally, Respondents failed to maintain adequate records for the Committee. In particular,
 21 Respondents failed to maintain adequate source documentation for contributions amounting to
 22 \$9,856.19 and expenditures amounting to \$13,783.52. The lack of records for at least \$4,549 of
 23 contributions inhibited the determination of whether contributions of \$100 or more were made; and the
 24 lack of records for at least \$6,573.54 of expenditures, including payments to Costco, Amazon, and
 25 Lloyd’s Tire Service, precluded the determination of whether those expenditures were properly made for
 26 political, legislative, or governmental purposes.

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1 **VIOLATIONS**

2 Count 1: Failure to Timely File Preelection Campaign Statements

3 The Committee, Kain, and Mosley failed to timely file preelection campaign statements for the
4 reporting periods of January 1, 2014 to March 17, 2014 and March 18, 2014 to May 17, 2014, in
5 violation of Sections 84200.5, subdivision (a); and 84200.7, subdivision (a).

6 Count 2: Failure to Timely Report Financial Activity on Campaign Statements

7 The Committee, Kain, Mosley, and Baylen failed to timely report \$90 in contributions and \$28 in
8 expenditures on the Committee’s semiannual campaign statement for the reporting period of May 18,
9 2014 to June 30, 2014; \$1,479 in contributions and \$4,730.63 in expenditures on the Committee’s
10 preelection campaign statement for the reporting period of July 1, 2014 to September 30, 2014;
11 \$1,127.63 in expenditures on the Committee’s preelection campaign statement for the reporting period of
12 October 1, 2014 to October 18, 2014; and \$260 in contributions and \$380.85 in expenditures on the
13 Committee’s semiannual campaign statement for the reporting period of October 19, 2014 to December
14 31, 2014, in violation of Section 84211, subdivisions (a), (b), (c), (d), (f), (i), (j), and (k).

15 Count 3: Failure to Maintain Campaign Records

16 The Committee, Kain, Mosley, and Baylen failed to maintain adequate source documentation for
17 contributions amounting to \$9,856.19 and expenditures amounting to \$13,783.52, in violation of Section
18 84104 and Regulation 18401.

19 **PROPOSED PENALTY**

20 This matter consists of three counts. The maximum penalty that may be imposed is \$5,000 per
21 count. Thus, the maximum penalty that may be imposed is \$15,000.²¹

22 In determining the appropriate penalty for a particular violation of the Act, the Commission
23 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
24 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
25 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
26 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective

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²¹ Section 83116, subd. (c).

1 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
2 record of violations.²²

3 Here, the Enforcement Division did not find any evidence that Respondents intended to conceal,
4 deceive, or mislead the public. Instead, it appears that that Respondents were inexperienced with the Act.
5 Further, Respondents do not have a prior history of violating the Act; therefore, the violations contained
6 herein do not appear to be part of a pattern of disregard for the Act.

7 Additionally, the Commission considers penalties in prior cases involving similar violations.
8 Recent similar cases involving a failure to timely file preelection campaign statements include the
9 following:

10 • *In the Matter of Ken Seaton for National City Council 2014, Ken Seaton-Msemaji and Samantha*
11 *Ollinger*; FPPC No. 15/249. Respondents, a candidate, his controlled committee, and its treasurer, failed
12 to timely file one preelection campaign statement for the period of October 1, 2014 to October 18, 2014,
13 in violation of Sections 84200.5 and 84200.7. The statement was filed one day after the election and
14 reported \$15,846 in contributions and \$22,309 in expenditures. In December 2017, the Commission
15 approved a fine of \$2,000 on one count.

16 As to Count 1, although Respondents failed to timely file multiple preelection campaign
17 statements (as opposed to the comparable case), those statements disclosed a lower amount of total
18 financial activity than the single campaign statement at issue in the comparable case. Therefore, a penalty
19 similar to that approved in the *Seaton* case is warranted.

20 Recent similar cases involving a failure to timely report financial activity on campaign statements
21 include the following:

22 • *In the Matter of Douglas Hanson, Committee to Re-Elect Mayor Doug Hanson to Indian Wells*
23 *City Council 2012, and M. Elena Hanson*; FPPC No. 14/549 and 14/775. Respondents, a candidate, his
24 controlled committee, and its treasurer, failed to timely report \$19,738 in financial activity across two
25 preelection and two semiannual campaign statements, in violation of Section 84211. In September 2017,
26 the Commission approved a fine of \$2,500 each on two counts.

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²² Regulation 18361.5, subd. (d).

1 As to Count 2, Respondents are deserving of a penalty lower than the per count penalty approved
2 in the *Hanson* case given that, on a per count basis, the amount of unreported financial activity was lower
3 in this case.

4 Recent similar cases involving a failure to comply with the Act’s recordkeeping requirements
5 include the following:

- 6 • *In the Matter of Fred Garcia, Fred Garcia for Sheriff 2014, and Jeff Davis*; FPPC No. 14/299.

7 Respondents, a candidate, his controlled committee, and its treasurer, failed to maintain adequate records
8 for all financial activity (\$51,157 in contributions and \$48,408 in expenditures), in violation of Section
9 84104. In July 2016, the Commission approved a fine of \$2,000 on one count.

10 As to Count 3, Respondents are deserving of penalty lower than in the *Garcia* case. The
11 violations in *Garcia* were more egregious, as the respondents were experienced with the Act and failed to
12 maintain sufficient records for the entirety of their financial activity.

13 Based on the foregoing, the following penalties are recommended:

| 14 Count | Violation | Proposed Penalty |
|-----------------|--|-------------------------|
| 15 1 | Failure to Timely File Preelection Campaign Statements | \$2,000 |
| 16 2 | Failure to Timely Report Financial Activity on Campaign Statements | \$2,000 |
| 17 3 | Failure to Maintain Campaign Records | \$1,500 |
| 18 | TOTAL: | \$5,500 |

20 CONCLUSION

21 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
22 Respondents, Citizens for Kain – Assembly ’14, Palmer Kain, Jay Mosley, and Marc Baylen, hereby
23 agree as follows:

24 1. Respondents violated the Act as described in the foregoing pages, which are a true and
25 accurate summary of the facts in this matter.

26 2. This stipulation will be submitted for consideration by the Fair Political Practices
27 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

28 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose

1 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
2 liability of Respondents pursuant to Section 83116.

3 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all
4 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
5 This includes, but is not limited to, the right to appear personally at any administrative hearing held in
6 this matter, to be represented by an attorney at Respondents' own expense, to confront and cross-examine
7 all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
8 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
9 reviewed.

10 5. Respondents agree to the issuance of the decision and order set forth below. Also,
11 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
12 \$5,500. One or more payments totaling this amount, to be paid to the General Fund of the State of
13 California, is/are submitted with this stipulation as full payment of the administrative penalty described
14 above, and they will be held by the State of California until the Commission issues its decision and order
15 regarding this matter.

16 6. If the Commission declines to approve this stipulation—then this stipulation shall become
17 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
18 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to
19 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing
20 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
21 Director, shall be disqualified because of prior consideration of this Stipulation.

22 7. The parties to this agreement may execute their respective signature pages separately. A
23 copy of any party's executed signature page including a hardcopy of a signature page transmitted via fax
24 or as a PDF email attachment is as effective and binding as the original.

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26 Dated: _____
27 Galena West, Chief of Enforcement
28 Fair Political Practices Commission

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Dated: _____
Palmer Kain, individually and on behalf of Kain –
Assembly '14

Dated: _____
Jay Mosley, individually and on behalf of Kain –
Assembly '14

Dated: _____
Marc Baylen, individually and on behalf of Kain –
Assembly '14

1 The foregoing stipulation of the parties “In the Matter of Citizens for Kain – Assembly ’14, Palmer Kain,
2 Jay Mosley, and Marc Baylen,” FPPC Case No. 16/467 is hereby accepted as the final decision and order
3 of the Fair Political Practices Commission, effective upon execution below by the Chair.
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5 IT IS SO ORDERED.
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7 Dated: _____
8 Richard C. Miadich, Chair
9 Fair Political Practices Commission
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