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VIA ELECTRONIC MAIL: CommAsst@fppc.ca.gov

Chair Miadich and Commissioners Baker, Wilson & Wood
California Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, CA 95811

Re: Comment Letter on Proposed Repeal, Adoption, and Amendment of Levine Act Regulations

Dear Chair Miadich and Commissioners:

The California Political Attorneys Association (CPAA) appreciates the opportunities thus far to participate in the discussion on the Regulations implementing SB 1439. To supplement our previously submitted comments, the CPAA Regulatory Committee provides the following feedback and comments ahead of the Commission's planned adoption at the June meeting.

Regulation 18438: There appears to be a small typo in the first line of subdivision (b), and we suggest it be corrected as follows in **red**:

> (b) Proceedings participated in, or contribution**s** made to or accepted, solicited, or directed by…

Regulation 18438.2: We prefer the Commission adopt Option 1 in this Regulation in defining when a proceeding involving a license, permit, or other entitlement for use has commenced and is "pending" under Section 84308. We believe Option 1 provides the appropriate extent as to when an officer knows about a pending matter, and what an officer needs to be aware of in their jurisdiction, while providing a uniform standard that applies to all. It also more closely tailors Section 84308's requirements and prohibitions to the likelihood of a proceeding coming before the officer.

Regulation 18438.3: We appreciate the change made to subdivision (a) of this Regulation that removes the "in connection with" language and instead states that a person is an "agent" when the person appears before or otherwise communicates with the governmental agency "*for the purpose of influencing the proceeding.*"

Regulation 18438.5: We appreciate and support the harmonization of this Regulation's language with Section 82015.5 on aggregation of contributions generally. We agree it is best to have a single standard for aggregation, which has been adopted by the Legislature and is used throughout the Political Reform Act and its implementing regulations.

Regulation 18438.7: We again want to voice our support of Option 1 in this Regulation as to when an officer has "reason to know" he or she has received a contribution from a party or participant in a proceeding. Option 1 states that an officer, without actual knowledge of a contribution from a party or participant, does not have reason to know of a contribution solely based on the fact that it has been reported on a campaign statement. We agree with the Commissioner comments made at the February Commission meeting that an officer should not be required to have full knowledge of, and be able to recall at a moment's notice, their often very extensive list of campaign donors, often administered by a third-party firm. In addition, the language "previously reported" encompasses a wide variety of filings, by either the officer or the donor, and while donors have specific requirements under Regulation 18428 as to what name they file under, an officer may not know this and the name may not match what is on the agenda or otherwise before the officer.

If the Commission decides to move forward with Option 2 as well, we have some suggested changes to the language of that subdivision, indicated here in **red**:

> (b)(2) [Option 2] An officer has reason to know of a contribution **by a party** previously reported ~~under the Act's reporting provisions~~ **under Chapter 4 or 5 of the Act** ~~by a party~~ in a proceeding noticed on an agenda for a public meeting before the body or board or, for officers not on a body or board, where the proceeding is otherwise before the officer in the officer's decisionmaking capacity.

The placement of the language "by a party," as currently drafted, reads as though the officer would only need to know of a contribution "by a party" if the *party* is the one reporting it. However, because Option 2 seeks to capture the scenario where a contribution is reported at all – not just by the party - moving these words as indicated above would clarify that it's the party's contribution than an officer has to determine.

In addition, in both Options 1 and 2, we suggest specifying that a contribution must have been reported *under Chapter 4 or 5 of the Act* before an officer has reason to know of the contribution – rather than the broader language "under the Act's reporting provisions." The staff memo makes reference to a contribution being properly reported on "campaign statements," and those are required under Chapters 4 and 5 of the Act. "Campaign statements" do not encompass, for example, lobbying reports required under Chapter 6 of the Act. This language is used in other regulations as well when referencing campaign reports, such as in Regulation 18421.10 on reporting contributions from limited liability companies.

Finally, if the Commission chooses not to adopt the entire regulatory package before it at Thursday's meeting, we ask that it at least move to adopt those Regulations that are in their final

form. Our clients have been seeking as much specificity and guidance as possible since SB 1439 went into effect, and delaying the entire package's adoption even further causes more confusion while awaiting further guidance, as different groups are unsure of their obligations and restrictions under SB 1439. Adoption of those Regulations defining, for example, agents and participants in 18438.3 and 18438.4, respectively, would help tremendously in defining the scope of SB 1439's universe.

Thank you again for consideration of our comments, and for the Commission and staff's extensive work on these Regulations thus far.

Respectfully submitted,

KC Jenkins
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Chair, Regulatory Committee, CPAA