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

10
11 In the Matter of:

12 HECTOR DE LA TORRE, DELATORRE
FOR INSURANCE COMMISSIONER
13 2010, and JANE LEIDERMAN,

14 Respondents.

FPPC No. 12/211

STIPULATION, DECISION AND ORDER

15
16 **STIPULATION**

17 Complainant, the Fair Political Practices Commission, and Respondents Hector De La Torre,
18 DeLaTorre for Insurance Commissioner 2010, and Jane Leiderman hereby agree that this Stipulation will
19 be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled
20 meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an additional administrative
23 hearing to determine the liability of Respondents, pursuant to section 83116 of the Government Code.

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 appear personally 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 As described in Exhibit 1, it is further stipulated and agreed that Respondents violated the
4 Political Reform Act by failing to report subvendor information on campaign statements filed for the
5 reporting periods ending May 22 and June 30, 2010, in violation of Government Code sections 84211,
6 subdivision (k), and 84303 (one count). Exhibit 1, which is attached hereto and incorporated by
7 reference as though fully set forth herein, 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 upon them an administrative penalty in the amount
10 of \$2,500. One or more cashier's checks or money orders totaling said amount—to be paid to the
11 General Fund of the State of California—is/are submitted with this Stipulation as full payment of the
12 administrative penalty described above, and same shall be held by the State of California until the
13 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the
14 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)
15 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered
16 by Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents
17 further stipulate and agree that in the event the Commission rejects the Stipulation and a full evidentiary

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1 hearing before the Commission becomes necessary, neither any member of the Commission, nor the
2 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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4 Dated: _____

5 Gary S. Winuk, Chief of Enforcement
6 Fair Political Practices Commission

7 Dated: _____

8 Hector De La Torre, Individually and on Behalf of
9 DeLaTorre for Insurance Commissioner 2010,
10 Respondents

11 Dated: _____

12 Jane Leiderman, Respondent

13 **DECISION AND ORDER**

14 The foregoing Stipulation of the parties “In the Matter of Hector De La Torre, DeLaTorre for
15 Insurance Commissioner 2010, and Jane Leiderman,” FPPC No. 12/211, including all attached exhibits,
16 is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective
17 upon execution below by the Chair.

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19 IT IS SO ORDERED.

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21 Dated: _____

22 Ann Ravel, Chair
23 Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

This case arose from a Franchise Tax Board audit.

Respondent Hector De La Torre was an unsuccessful candidate for Insurance Commissioner in the Democratic primary election held on June 8, 2010. Respondent DeLaTorre for Insurance Commissioner 2010 was his candidate controlled committee, and Respondent Jane Leiderman was the committee treasurer.

For purposes of this stipulation, Respondents' violation of the Political Reform Act (the "Act")¹ is stated as follows:

Count 1: Respondents Hector De La Torre, DeLaTorre for Insurance Commissioner 2010, and Jane Leiderman failed to report subvendor information for payments totaling approximately \$614,185 on campaign statements filed for the reporting periods ending May 22 and June 30, 2010, in violation of Sections 84211, subdivision (k), and 84303.

SUMMARY OF THE LAW

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

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited. (Section 81002, subd. (a).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced." (Section 81002, subd. (f).)

Definition of Controlled Committee

Section 82013, subdivision (a), defines a "committee" to include any person or combination of persons who receive contributions totaling \$1,000 or more in a calendar year.

¹ The 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.

This type of committee is commonly referred to as a “recipient committee.” Under Section 82016, a recipient committee which is controlled directly or indirectly by a candidate, or which acts jointly with a candidate in connection with the making of expenditures, is a “controlled committee.” A candidate controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee. (Section 82016, subd. (a).)

Required Filing of Semi-Annual and Pre-Election Campaign Statements

At the core of the Act’s campaign reporting system is the requirement that a recipient committee must file campaign statements and reports, including semi-annual campaign statements and pre-election campaign statements. (See Sections 84200, et seq.) For example, semi-annual campaign statements must be filed each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31. (Section 84200, subd. (a).) In addition, candidates are required to file two pre-election campaign statements before an election that they are being voted upon. (Section 84200.5.) Attached hereto as Exhibit 2 is a schedule of reporting periods and filing deadlines in connection with the primary election that was held on June 8, 2010.

Required Reporting of Expenditures, Including Subvendor Expenditures

Section 82025 defines “expenditure” as a payment, forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. “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.)

Pursuant to Section 84211, subdivision (k), for each person to whom an expenditure of \$100 or more has been made during the period covered by a campaign statement, the following information must be disclosed on the campaign statement: (1) the recipient’s full name; (2) the recipient’s street address; (3) the amount of each expenditure; and (4) the description of the consideration for which each expenditure was made.

Also, Section 84303 provides that no expenditure of \$500 or more shall be made, other than for 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 committee, unless the expenditure is reported by the committee as if the expenditure were made directly by the committee. This type of information reported by a committee is commonly referred to as “subvendor information.”

Section 84211, subdivision (k)(6), requires the disclosure of such subvendor information as part of the contents of any campaign statement required to be filed by the committee. Specifically, 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, subds. (k)(1)-(4) and (6).)

Treasurer and Candidate Liability

Under Sections 81004, subdivision (b), 84100, 84213, and Regulation 18427, subdivisions (a), (b) and (c), it is the duty of a candidate and the treasurer of his or her controlled committee 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 and candidate may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee under Sections 83116.5 and 91006.

SUMMARY OF THE FACTS

As stated above, Respondent Hector De La Torre was an unsuccessful candidate for Insurance Commissioner in the Democratic primary election held on June 8, 2010. Respondent DeLaTorre for Insurance Commissioner 2010 was his candidate controlled committee, and Respondent Jane Leiderman was the committee treasurer.

Count 1: Failure to Report Subvendor Information

Respondents Hector De La Torre, DeLaTorre for Insurance Commissioner 2010, and Jane Leiderman failed to report subvendor information for payments totaling approximately \$614,185 on campaign statements filed for the reporting periods ending May 22 and June 30, 2010. The subvendor information related to payments to subvendors made by SKD Knickerbocker on behalf of the committee. The subvendors were television stations, and the payments were for advertisements.

By failing to report payments to subvendors as described above, Respondents Hector De La Torre, DeLaTorre for Insurance Commissioner 2010, and Jane Leiderman committed one violation of Sections 84303 and 84211, subdivision (k).

CONCLUSION

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

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division 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 Enforcement Division considers the facts and circumstances of the violation in the context of the following factors set forth in Regulation 18361.5, subdivision (d)(1) through (6):

- (1) The seriousness of the violation;
- (2) The presence or absence of any intention to conceal, deceive or mislead;

(3) Whether the violation was deliberate, negligent or inadvertent;

(4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);

(5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and

(6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Regarding Count 1, the public harm inherent in subvendor reporting violations is that the public is deprived of important information such as the identities of the ultimate recipients of such expenditures and the reasons for such expenditures. Recently, a stipulation involving failure to report subvendor information resulted in a penalty of \$2,250. (See *In the Matter of Damon J. Dunn, Damon J. Dunn for Secretary of State 2010 committee, and Kelly Lawler*, FPPC No. 12/558, approved Feb. 28, 2013.)

In this case, a somewhat higher penalty is warranted. The unreported subvendor payments were significant, comprising approximately 44 percent of reported expenditures for the year. Also, Respondent Hector De La Torre previously served in the California State Assembly and was familiar with the Act. In 2008, he received a warning letter about filing issues.²

Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$2,500 is justified. A higher penalty is not being sought because Respondents cooperated with the Enforcement Division of the Fair Political Practices Commission by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held. Also, Respondents maintain that their violation was an oversight, and there is no evidence indicating that Respondents acted willfully.

PROPOSED PENALTY

Based on the facts of this case, including the factors discussed above, an agreed upon penalty of \$2,500 is recommended.

² Additionally, in 2010, he stipulated to a fine in the amount of \$200 in connection with a gift reporting violation, but this pertained to his Statement of Economic Interests and was unrelated to campaign reporting.