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3 **FAIR POLITICAL PRACTICES COMMISSION**
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
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12 In the Matter of) FPPC No. 14/048
13 BEN KALASHO and BEN KALASHO)
14 COMMITTEE TO ELECT FOR EL CAJON) STIPULATION, DECISION and
CITY COUNCIL 2012) ORDER
15 Respondents.)
16)
17)

18 Complainant Gary S. Winuk, Enforcement Chief of the Fair Political Practices Commission, and
19 Respondents Ben Kalasho and Ben Kalasho Committee to Elect for El Cajon City Council 2012 agree
20 that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its
21 next regularly scheduled meeting.

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

25 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
26 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
27 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
28 the right to personally appear at any administrative hearing held in this matter, to be represented by an

1 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the
2 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
3 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondents Ben Kalasho and Ben Kalasho Committee to
5 Elect for El Cajon City Council 2012 violated the Political Reform Act by (1) failing to deposit
6 contributions into a single, designated campaign bank account prior to expenditure, in violation of
7 Section 85201, subdivisions (c) and (e) of the Government Code (1 count); (2) failing to report
8 expenditures, in violation of Section 84211, subdivisions (b), (i), and (k) of the Government Code (1
9 count); and receiving cash contributions of \$100 or more, in violation of Section 84300, subdivision (a), of
10 the Government Code (1 count). These counts are described in Exhibit 1, which is attached hereto and
11 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of
12 the facts in this matter.

13 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
14 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
15 of Six Thousand Five Hundred Dollars (\$6,500). A cashier's check from Respondents in said amount,
16 made payable to the "General Fund of the State of California," is submitted with this Stipulation as full
17 payment of the administrative penalty, to be held by the State of California until the Commission issues
18 its decision and order regarding this matter. The parties agree that in the event the Commission refuses
19 to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
20 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in
21 connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and
22 agree that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
23 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
24 shall be disqualified because of prior consideration of this Stipulation.

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27 Dated: _____

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

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Dated: _____

Respondent Ben Kalasho Individually and
on behalf of Ben Kalasho Committee to
Elect for El Cajon City Council 2012,
Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Ben Kalasho and Ben Kalasho
3 Committee to Elect for El Cajon City Council 2012,” FPPC No. 14/048, including all attached exhibits,
4 is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective
5 upon execution below by the Chair.

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7 **IT IS SO ORDERED.**

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9 Dated: _____

10 Joann Remke, Chair
11 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent Ben Kalasho was an unsuccessful candidate for election to the El Cajon City Council in the November 6, 2012 election, receiving 8,041 votes or 13.8% of total votes cast. Respondent “Ben Kalasho Committee to Elect for El Cajon City Council 2012” (“Committee”) was Respondent Kalasho’s candidate controlled committee. The Form 410 Statement of Organization was filed on or about August 14, 2012. Respondent also acted as treasurer for the committee. Respondents violated the Act by failing to comply with campaign reporting and expenditure provisions, and receiving cash contributions.

For the purposes of this Stipulation, Respondents’ violations are stated as follows:

- COUNT 1:** Respondents Ben Kalasho and Ben Kalasho Committee to Elect for El Cajon City Council 2012 failed to deposit contributions made by Respondent Kalasho from his sole proprietorship, into a single, designated campaign bank account prior to expenditure, in violation of Section 85201, subdivisions (c) and (e) of the Government Code.
- COUNT 2:** Respondents Ben Kalasho and Ben Kalasho Committee to Elect for El Cajon City Council 2012 failed to report expenditures totaling approximately \$10,380.76, in violation of Section 84211, subdivisions (b), (i), and (k) of the Government Code.
- COUNT 3:** Respondents Ben Kalasho and Ben Kalasho Committee to Elect for El Cajon City Council 2012 received cash contributions of \$100 or more, in violation of Section 84300, subdivision (a), of the Government Code.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act, therefore, establishes a campaign reporting system designed to accomplish this purpose of disclosure.

Section 82013, subdivision (a), defines a “committee” to include any person who receives contributions totaling \$1,000 or more in a calendar year. This type of committee is commonly known as a “recipient committee.” A committee controlled directly or indirectly by a candidate, or that acts jointly with a candidate, is known as a candidate-controlled committee. (Section 82016.)

Duty to Deposit Campaign Funds into a Single, Designated Campaign Bank Account Prior to Expenditure

To ensure full disclosure of campaign activity and to guard against improper use of campaign funds, the Act requires campaign funds to be segregated from nonpolitical, personal accounts and kept in a single, designated campaign bank account. (Section 85201.) To achieve

this end, Section 85201, subdivision (c) requires candidates to establish a single campaign bank account into which all contributions made to a candidate must be deposited. Subject to certain exceptions that are not applicable to this matter, Section 85201, subdivision (e), requires that all campaign expenditures be made from the campaign bank account.

Required Reporting of 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.)

Section 84211, subdivisions (b) and (i), require candidates and their controlled committees to disclose on each campaign statement: (1) the total amount of expenditures made during the period covered by the campaign statement; and (2) the total amount of expenditures made during the period covered by the campaign statement to persons who have received \$100 or more.

Under the Act’s campaign reporting system, candidate-controlled committees are required to file specified campaign statements and reports disclosing contributions received and expenditures made. 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 the 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.

Prohibition Against Cash Contributions

Section 84300, subdivision (a) provides that no contribution of one hundred dollars (\$100) or more shall be made or received in cash. Section 84300, subdivision (c), also requires that all contributions of \$100 or more be made in the form of a written instrument containing the name of the contributor and drawn from the account of the contributor.

SUMMARY OF THE FACTS

Ben Kalasho was an unsuccessful candidate for election to the El Cajon City Council in the November 6, 2012 election. “Ben Kalasho Committee to Elect for El Cajon City Council 2012” was Respondent Kalasho’s candidate controlled committee. The Form 410 Statement of Organization was filed on or about August 14, 2012. Respondent also acted as treasurer for the committee.

The committee disclosed contributions totaling \$19,050 and expenditures totaling \$22,589.33. However, the investigation revealed that Respondents made Campaign expenses totaling \$7,979 from an account other than the single, designated campaign bank account, and that Respondents failed to report expenditures totaling approximately \$10,380.76.

COUNT 1

Failure to Deposit Campaign Funds into a Single, Designated Campaign Bank Account Prior to Expenditure

Campaign expenses totaling \$7,979 were paid directly by Respondent Kalasho from an account other than the single, designated campaign bank account. The contributions from Respondent Kalasho through Sonik Car Wash paid for approximately 35% of all expenditures of the Committee. As a matter of law, these contributions were to have been deposited in the Committee bank account prior to expenditure by the Committee.

Respondent Kalasho used a check from the account of Sonik Car Wash to pay Elmer Sweetwood & Sons for a campaign mailer, on or about October 18, 2012, in amount of \$4,189.05. Sonik Car Wash is owned by Ben Kalasho.

Other expenditures not made from the single designated campaign bank account include a payment of \$799.00, to Marketing Support Systems, for an invoice dated October 18, 2012, a payment of \$2,880.00 to GIP, for an invoice dated October 4, 2012, and a payment of \$111.07, to Elmer Sweetwood & Sons, for an invoice dated October 18, 2012.

By making expenditures from an account other than the single, designated campaign bank account, Respondents violated Section 85201, subdivisions (c) and (e) of the Government Code.

COUNT 2

Failure to Report Expenditures

Respondents Ben Kalasho and Ben Kalasho Committee to Elect for El Cajon City Council 2012 filed campaign statements for the reporting periods ending October 20, 2012 and December 31, 2012. However, they failed to report the following expenditures.

Date	Amount	Payee	Check #	Description on Check or Invoice
10/06/2012	\$3,000.00	-	Cash Withdrawal	
10/12/2012	\$831.53	-	Elec. Withdrawal	“Penny Saver” [per invoice]
10/18/2012	\$160.00	Maria E. Lopez	1366	
10/22/2012	\$190.00	East County Magazine	1979	
10/23/2012	\$169.05	Roadside Advertising	1977	
10/29/2012	\$442.58	-	Elec. Withdrawal	“Penny Saver” [per invoice]
11/06/2012	\$384.40	Roadside Advertising	1980	

In addition, the Committee reported paying “Marv Abdou” \$5,203.20 for “Walking, Phone Banking” on a semi-annual campaign statement covering October 21, 2012 through December 21, 2012. However, the campaign bank records indicate that the Committee only wrote one check for \$90.00 to “Marvin Abou MIKHA” on October 29, 2012. This was the only reported transaction for that period. During the course of the investigation, Mikha confirmed that he was not paid \$5,203.20. The campaign statements disclose a cash balance of \$5,203.20 for the beginning of the reporting period, with a remaining cash balance is \$0.00 after the alleged payment.

By failing to report expenditures totaling approximately \$10,380.76, Respondents Ben Kalasho and Ben Kalasho Committee to Elect for El Cajon City Council 2012 violated Section 84211, subdivisions (b), (i), and (k) of the Government Code.

COUNT 3

Prohibition Against Cash Contributions

On August 27, 2012, Respondent Kalasho made a cash deposit of \$250.00 into the campaign bank account. This was not reported on campaign statements.

On October 31, 2012, Respondent Kalasho made a cash deposit of \$752.25 into the campaign bank account. This was not reported on campaign statements.

As such, Respondents violated Section 84300 (a) of the Government Code by accepting a contribution of \$100 or more in cash.

CONCLUSION

This matter consists of three counts, which carries a maximum possible administrative penalty of Five Thousand Dollars (\$5,000) per count, for a total of Fifteen Thousand Dollars (\$15,000).

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. The Enforcement Division also considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6), which include: the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the Respondent voluntarily filed amendment to provide full disclosure. Additionally, liability under the Act is governed in significant part by the provisions of Section 91001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

The administrative penalty for cases with similar facts regarding the failure to deposit

campaign funds into a single, designated campaign bank account prior to expenditure has been in the mid-level penalty range.

In the Matter of Galen Duane Chamberlain, Duane Chamberlain for Supervisor and Shirley Stover, FPPC No. 06/795, had a similar fact pattern. Respondent Galen Duane Chamberlain was a successful candidate for the Yolo County Board of Supervisors in the November 2004 General Election, who failed to deposit contributions made by Respondent Chamberlain's sole proprietorship, into a single, designated campaign bank account prior to expenditure. The Commission approved settlement of this case in January 10, 2008, and the agreed upon penalty for this violation was \$3,500.

The typical stipulated administrative penalty for failing to report campaign expenditures has been in the middle level of the penalty range, depending on the circumstances.

In the Matter of Arturo Chacon and Art Chacon for Water Board 2010, FPPC No. 08/652, had a similar fact pattern involving the non-disclosure of expenditures of comparable amounts. Respondent Arturo Chacon was a successful candidate for the Central Basin Municipal Water District Board of Directors Respondents failed to report expenditures made during two different reporting periods, in amounts totaling \$25,333.69 and \$13,215.95 on each report. The commission approved settlement of this case in February 10, 2011, and the agreed upon penalty for each of these violations was \$2,500 per count.

The public harm inherent in these types of violations, where pertinent information is not disclosed by the committee, is that the public is deprived of a means to discover the identity of contributors, the amounts contributed, and the nature of the committee's campaign expenses. In this case, Respondents failed to deposit contributions into a single, designated campaign bank account prior to expenditure, and to disclose campaign expenditures.

The typical stipulated administrative penalties for accepting cash contributions have varied from the low to high range of available penalties, depending on the circumstances.

In the Matter of Hubert Walsh, Hub Walsh for Supervisor, and Marcia B. Hall, FPPC No. 10/711, had a fact pattern involving cash contributions in a similar aggregate amount. In this matter, Respondent Hubert Walsh, a candidate for Merced County Board of Supervisors, his candidate controlled committee Hub Walsh for Supervisor and campaign committee treasurer Marcia B. Hall in 2008 received cash contributions totaling \$850. The commission approved settlement of this case in January 28, 2011, and the agreed upon penalty for this violation was \$1,500.

Receiving a cash contribution, this can be a serious violation of the Act as it deprives the public of knowledge of campaign contributions and their sources. Respondents have no prior Enforcement history.

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PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the Respondent's patter of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Three Thousand Dollars (\$3,000) Count One and Two Thousand Dollars (\$2,000) for Count Two, and One Thousand Five Hundred Dollars for Count Three (\$1,500), for a total of Six Thousand Five Hundred Dollars (\$6,500) is recommended.