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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

9 STATE OF CALIFORNIA  
10

11 In the Matter of:

12 JIM KELLY AND JIM KELLY FOR  
13 GROSSMONT UNION HIGH SCHOOL  
BOARD 2014,  
14

FPPC No. 15/274

STIPULATION, DECISION, AND ORDER

15  
16 Respondents.  
17

18 **STIPULATION**

19 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
20 respondents Jim Kelly (“Kelly”) and Jim Kelly for Grossmont Union High School Board for 2014  
21 (“Committee”) hereby agree that this Stipulation will be submitted for consideration by the Fair Political  
22 Practices Commission (“Commission”) at its next regularly-scheduled meeting.

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

26 Kelly and the Committee understand, and hereby knowingly and voluntarily waive, any and all  
27 procedural rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California  
28 Code of Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to, the

1 right to personally appear at any administrative hearing held in this matter, to be represented by an  
2 attorney at Kelly's own expense, to confront and cross-examine all witnesses testifying at the hearing, to  
3 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over  
4 the hearing as a hearing officer, and to have the matter judicially reviewed.

5 It is further stipulated and agreed that the Committee and Kelly violated the Political Reform Act  
6 by failing to timely file a semi-annual campaign statement covering the period of October 19, 2014  
7 through December 31, 2014, in violation of Government Code section 84200, as described in Exhibit 1.  
8 Exhibit 1 is attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a  
9 true and accurate summary of the facts in this matter.

10 The Committee and Kelly agree to the issuance of the Decision and Order, which is attached  
11 hereto. The Committee and Kelly also agree to the Commission imposing an administrative penalty in  
12 the amount of \$1,000. Kelly submitted with this Stipulation a cashier's check in said amount, made  
13 payable to the "General Fund of the State of California," as full payment of the administrative penalty  
14 that shall be held by the State of California until the Commission issues its Decision and Order  
15 regarding this matter. The parties agree that in the event the Commission refuses to accept this  
16 Stipulation, the check shall become null and void, and within fifteen (15) business days after the  
17 Commission meeting at which the Stipulation is rejected, all payments tendered by Committee and  
18 Kelly in connection with this Stipulation shall be reimbursed to Committee and Kelly. Committee and  
19 Kelly further stipulate and agree that in the event the Commission rejects the Stipulation, and a full  
20 evidentiary hearing before the Commission becomes necessary, neither any member of the Commission,  
21 nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

22  
23 Dated: \_\_\_\_\_  
24 Galena West, Chief of the Enforcement Division,  
25 Fair Political Practices Commission

26 Dated: \_\_\_\_\_  
27 Jim Kelly, individually, and on behalf of Jim Kelly for  
28 Grossmont Union H.S. Board for 2014

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties "In the Matter of Jim Kelly and Jim Kelly for Grossmont  
3 Union High School Board for 2014," FPPC No. 15/274, including all attached exhibits, is hereby  
4 accepted as the final decision and order of the Fair Political Practices Commission, effective upon  
5 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 Jim Kelly is currently a member of the Grossmont Union High School Board, and was re-elected to a four year term in November 2014. Respondent Jim Kelly for Grossmont Union High School Board for 2014 is his candidate-controlled committee (the "Committee"). Kelly was, at all times relevant to this case, the treasurer for the Committee.

Under the Political Reform Act (the "Act")<sup>1</sup> a candidate-controlled committee must timely file campaign statements disclosing the contributions it receives and the expenditures it makes. The Committee violated the Act by failing to timely file one semi-annual campaign statement. As the Committee's controlling candidate Kelly is liable, along with the Committee, for the Committee's campaign reporting violations.

### **SUMMARY OF THE LAW**

The Act requires candidate-controlled committees to file semi-annual campaign statements by July 31 for the period ending June 30, as well as by January 31 for the period ending December 31.<sup>2</sup>

### **SUMMARY OF THE FACTS**

The Committee first qualified as a candidate-controlled committee on August 6, 2014. Prior to the general election on Nov. 4, 2014, Kelly and the Committee filed a pre-election statement reflecting a contribution of \$1,212 it received on October 1, 2014 from Job Creators for a Strong Economy. The Committee did not file a late contribution report on this contribution until October 6, 2014, four days late.

The Committee was referred to the Enforcement Division after it failed to file its semi-annual statement by February 2, 2015, covering the reporting period of October 19, 2014 through December 31, 2014. The Committee filed its semi-annual statement three months late, reporting no contributions, \$2,795 in expenditures, and debts of \$750. In May 2015, Kelly terminated the Committee.

Kelly and the Committee have previously participated in a streamlined stipulation settlement approved by the Commission on February 28, 2013 for failing to timely file a semi-annual statement due by July 31, 2012. (FPPC No. 12/825.)

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<sup>1</sup> 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.

<sup>2</sup> Section 84200, subdivision (a).

## VIOLATION

### Count 1: Failure to Timely File a Semi-Annual Statement

Kelly and the Committee failed to timely file a semi-annual statement for the period from October 19, 2014 through December 31, 2014, in violation of Section 84200, subdivision (a).

## 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 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: Failure to Timely File a Semi-annual Campaign Statement

- *In the Matter of Terri Valladolid and Friends of Terri Valladolid for Southwestern College School Board 2010*, FPPC No. 13/191. (Commission approved a stipulated decision on August 21, 2014.) The respondent committee, a candidate-controlled committee, failed to timely file three semi-annual campaign statements. The statements showed no contributions and no expenditures, but reflected a cash balance of \$4,617.04. The committee and its treasurer had been prosecuted by the Enforcement Division on two prior occasions for failing to timely file semi-annual statements. The Commission imposed a penalty of \$1,000 for each violation, for a combined penalty of \$3,000.
- *In the Matter of Operative Plasterers and Cement Masons International Association Local 200 PAC and Tom Castleman*, FPPC No. 14/280. (Commission approved a stipulated decision on July 17, 2014.) The respondent committee, a general purpose committee, failed to timely file two semi-annual campaign statements. The committee and its treasurer had previously received a warning letter and been prosecuted by the Enforcement Division for past failures to file semiannual campaign statements. The Commission imposed a penalty of \$1,000 for each violation, for a combined penalty of \$2,000.

A central purpose of the Act is to ensure receipts and expenditures in election campaigns are fully and truthfully disclosed.<sup>3</sup> The Committee failed to timely disclose its contributions and expenditures in one semi-annual campaign statement.

The Committee and Kelly have previously been prosecuted for failure to timely file a semi-annual report. As with the committees in the *Valladolid* and *Plasterers* cases, the previous enforcement history of Kelly's committee precludes it from qualifying for a streamlined penalty. In aggravation, the Committee and Kelly also failed to file a late contribution report for one contribution. In mitigation, the Committee and Kelly did report the contribution on a pre-election report filed before the election.

### **PROPOSED PENALTY**

After considering the factors of Regulation 18361.5, the penalties imposed in prior cases, and other relevant information, we propose a penalty of \$1,000.

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<sup>3</sup> Section 81002, subdivision (a)