

1 set forth in Government Code Sections 83115.5, 11503 and 11523, and in California Code of Regulations,
2 title 2, Sections 18361.1 through 18361.9. This includes, but is not limited to the right to personally
3 appear at any administrative hearing held in this matter, to be represented by an attorney at Pon and For
4 the Children own expense, to confront and cross-examine all witnesses testifying at the hearing, to
5 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
6 the hearing as a hearing officer, and to have the matter judicially reviewed.

7 It is further stipulated and agreed that Pon and For the Children violated the Political Reform Act
8 as described in Exhibit 1, counts 1 through 7. Pon and For the Children violated the Act by failing to file
9 24-hour reports in 2011 and 2014, in violation of Government code section 84203. Pon and For the
10 Children violated the Act by failing to change its status to primarily formed in 2012 and 2014, in violation
11 of Government Code sections 84103 and 84107. Pon and For the Children failed to change its name to
12 reflect the economic interest of the contributor WLC Architects, in violation of Government Code section
13 84504. Pon and For the Children failed to report payments to sub-vendors in 2012, in violation of
14 Government Code sections 84303 and 84211, subdivision (k)(6). Exhibit 1 is attached hereto and
15 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of
16 the facts in this matter.

17 Pon and For the Children agree to the issuance of the Decision and Order, which is attached
18 hereto. Pon and For the Children also agree to the Commission imposing an administrative penalty in the
19 total amount of Twenty Five Thousand Dollars (\$25,000). A cashier's check from Pon and For the
20 Children in said amount, made payable to the "General Fund of the State of California," is submitted
21 with this Stipulation as full payment of the administrative penalty, and shall be held by the State of
22 California until the Commission issues its Decision and Order regarding this matter.

23 The parties agree that in the event the Commission refuses to accept this Stipulation, it shall
24 become null and void, and within fifteen (15) business days after the Commission meeting at which the
25 Stipulation is rejected, all payments tendered by Pon and For the Children in connection with this
26 Stipulation shall be reimbursed. Pon and For the Children further stipulate and agree that in the event the
27 Commission rejects the Stipulation, and a full evidentiary hearing before the Commission becomes
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1 necessary, neither any member of the Commission, nor the Executive Director, shall be disqualified
2 because of prior consideration of this Stipulation.

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4 Dated: _____

Galena West, Chief, on Behalf of the Enforcement Division
Fair Political Practices Commission

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6 Dated: _____

Kenneth Pon, Respondent, individually and o/b/o For the
Children of West County

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DECISION AND ORDER

The foregoing Stipulation of the parties "In the Matter of Kenneth Pon and For the Children of West County", FPPC Case No. 14/403, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent For the Children of West County ("For the Children") is a committee that has been primarily formed to support numerous ballot measures in Contra Costa County. At all times relevant to the matters at issue, Respondent Kenneth Pon ("Pon") was the treasurer of For the Children. Pon, a professional treasurer, had primary responsibility for preparing and filing the committee's campaign reports.

The Enforcement Division received an anonymous complaint alleging that For the Children should be filing as a primarily formed committee based on the fact it had never engaged in any campaign activity other than when supporting construction and tax measures. During the investigation that followed, the Enforcement Division identified that For the Children had failed to comply with the requirements of the Political Reform Act (the "Act")¹ by failing to: file late contribution reports, change its name to reflect its primarily formed status during three different election periods, change its name to reflect the economic interest of a major donor, and report sub-vendor payments.

On May 11, 2016, Pon signed an agreement to toll the statute of limitations for all violations set forth below.

SUMMARY OF THE LAW

Definition of a Late Contribution in 2011

The Act defines a late contribution as "Any contribution, including a loan, that totals in the aggregate one thousand dollars (\$1,000) or more and is made or received by a candidate, a controlled committee, or a committee formed or existing primarily to support or oppose a candidate or measure before the date of the election at which the candidate or measure is to be voted on but after the closing date of the last campaign statement required to be filed before the election."²

Definition of a Late Contribution from 2013 to 2015

The Act defines a late contribution as "A contribution including a loan, that totals in the aggregate one thousand dollars (\$1,000) or more and is made to or received by a candidate, a controlled committee, or a committee primarily formed or existing primarily to support or oppose a candidate or measure within 90 days before the date of the election at which the candidate or measure is to be voted on."³

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 Practices Commission are contained in §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² § 82036

³ § 82036

Definition of a Primarily Formed Committee

A committee is considered to be primarily formed if it is supporting or opposing a single candidate or measure, or specific group of measures or local candidates on the same ballot.⁴

The Act considers a committee to be “formed or existing to support or oppose” a candidate or measure if: “The committee is created for the purpose or is involved in running the principal campaign for or against the candidate(s) or measure(s)...”⁵ or “The committee makes more than 70 percent of its total contributions and expenditures on all candidates and measures (not including administrative overhead) on those specific candidate(s) or measure(s)...”⁶

24-hour Report

A committee that makes or receives a late contribution is required to report it within 24 hours of making or receiving that contribution.⁷

Reporting Payments to Sub-Vendors

A sub-vendor is a person or company that is hired by a committee’s agent or independent contractor to provide a good or service for the committee. The Act requires committees to report payments made on its behalf by an agent or independent contractor the same way it would if it were making the payment on its own.⁸

SUMMARY OF THE FACTS

According to its original Statement of Organization, For the Children is a committee in Contra Costa County that was formed in 1996 to “pursue better educational opportunities for the children of West Contra Costa Unified School District.” It acted as the principal campaign to support numerous ballot measures in Contra Costa County, involving tax measures that would raise revenue to support schools.

June 7, 2011 Election

On June 7, 2011, voters in the City of Richmond went to the polls to decide whether to pass Measures C & D. Measure C, a successful advisory measure, posed the question to voters of whether half the funds from any tax increase should be spent to restore programs for the indigent with the other half to be spent on restoring educational programs.⁹ Measure D would have

⁴ Cal. Code of Regulations § 18247.5, subsection (a).

⁵ Cal. Code of Regulations § 18247.5, subsection (d) (1).

⁶ Cal. Code of Regulations § 18247.5, subsection (d) (3).

⁷ § 84203.

⁸ § 84303.

⁹ Smart Voter, <http://www.smartvoter.org/2011/06/07/ca/cc/meas/C/> (Last visited October 4, 2016).

increased the city's sales tax resulting in additional revenue of approximately six million dollars each year.¹⁰

Four days prior to this election, For the Children made a \$10,000 contribution to For the Community of Richmond, Yes on C & D – with Generous Support from For the Children of West County, A Committee for Better Schools (“For the Community”). Neither committee disclosed this contribution before the election. The contribution was not disclosed until after the election when For the Children filed its semi-annual campaign statement that was due on August 1, 2011.

June 5, 2012 Election

On June 5, 2012, the residents of Contra Costa County voted on whether to approve Measure K, which was a proposal to increase and renew the current parcel tax.¹¹ The additional funds obtained from the tax increase were to be used to “improve the quality of education in the district...”¹² Measure K did not receive 2/3 of the vote as necessary for the measure to pass.¹³

For the Children was running the principal campaign in support of Measure K. During the period of January 1 through June 1, 2012, it made \$324, 523 in expenditures, most of which was spent to produce mailers and signs, as well as to pay for campaign consultants. According to the Contra Costa County Clerk's Office (“County Clerk”), no other committees in the county supported of Measure K. Because For the Children was the principal campaign in support of Measure K, it should have amended its statement of organization to reflect that it was primarily formed in support of Measure K.

In addition to qualifying as a primarily formed committee, For the Children's committee name should have identified the economic interest of a source of major funding. The obligation to change the committee's name arose on or about February 2, 2012, when the committee received a \$50,000 contribution from WLC Architects Inc. Shortly thereafter, WLC Architects made an additional \$50,000 contribution on March 9, 2012.

As a result of failing to change its name, For the Children also failed to have the proper name on its campaign literature. For the Children purchased approximately 227,500 pieces of campaign literature, that included postcards, window signs, tri-fold mailers, personalized letters, and mailers. None of them correctly identified the committee as being primarily formed or the economic interest of WLC Architects.

Lastly, For the Children failed to report payments to sub-vendors on its campaign statements. For the Children's agent, Whitehurst/Mosher Campaign Strategy and Media (“Whitehurst”), paid sub-vendors a total of \$178,498.21 on behalf of For the Children for campaign literature. The sub-vendors included, but were not limited to, Brand Motive Agency, Carico Smith Design, and Cornerstone Printing. For the Children did not report paying any of these

¹⁰ BallotPedia, [https://ballotpedia.org/City_of_Richmond_Sales_Tax_Increase,_Measure_D_\(June_2011\)](https://ballotpedia.org/City_of_Richmond_Sales_Tax_Increase,_Measure_D_(June_2011)) (Last visited on October 4, 2016).

¹¹ Smart Voter, <http://www.smartvoter.org/2012/06/05/ca/cc/meas/K/> (Last visited on October 4, 2016).

¹² See Id. at note 11.

¹³ See Id. at note 11.

companies on the campaign statements it filed. Instead, the payments were reported as being made to Whitehurst.

Out of the \$178,498.21 in sub-vendor payments, For the Children was required to report a total of \$151,141.31 on its pre-election statement due May 24, 2012. The remaining \$27,356.90 should have been reported on its semi-annual campaign statement that was due on July 31, 2012.

November 6, 2012 Election

On November 6, 2012 the residents of Contra Costa County voted on whether to approve Measures E & G. Measure E was a proposal to issue and sell bonds¹⁴, and Measure G was a proposal to extend the current parcel tax for an additional five years.¹⁵ Both measures passed.

For the Children was running the principal campaign in support of Measures E & G. It made a total of \$458,859 in expenditures during the reporting period of July 1 through December 31, 2012, most of those in support of both Measures E & G. The committee's invoices show that it produced thousands of mailers in support of Measures E & G. According to the County Clerk's Office no other committees supported Measures E & G. Because For the Children was running the principal campaign in support of Measures E & G, it should have amended its statement of organization to reflect that it was primarily formed in support of Measures E & G.

As a result of failing to change its name, For the Children also failed to have the proper name on its campaign literature. For the Children purchased approximately 388,500 pieces of campaign literature that included postcards, window signs, tri-fold mailers, personalized letters, and mailers, which did not correctly identify the committee as being primarily formed.

Lastly, For the Children failed to report sub-vendor payments. In this election like the last, Whitehurst was acting as For the Children's agent, and it paid sub-vendors a total of \$281,291.89 on behalf of For the Children. The sub-vendors included, but were not limited to, Brand Motive Agency, Bel Aire Displays, Inc., and Cornerstone Printing. For the Children did not report paying any of these companies on the campaign statements it filed. Instead, the payments were reported as being made to Whitehurst.

Out of the \$281,291.89 in sub-vendor payments, For the Children was required to report \$111,947.79 on its pre-election statement that was due October 5, 2012, and it was required to report \$155,063.38 on its second pre-election statement that was due on October 25, 2012. The remaining \$14,280.72 should have been reported on its semi-annual campaign statement that was due on January 31, 2013.

¹⁴ Smart Voter, <http://www.smartvoter.org/2012/11/06/ca/cc/meas/E/> (Last visited October 4, 2016).

¹⁵ Smart Voter, <http://www.smartvoter.org/2012/11/06/ca/cc/meas/G/> (Last visited October 4, 2016).

June 3, 2014 Election

On June 3, 2014, the residents of Contra Costa County voted on whether to approve Measure H. Measure H would have permitted the West Contra Costa Unified School District to increase its debt.¹⁶ Measure H was defeated.

On May 22, 2014, before the election, For the Children amended its statement of organization to change its name to reflect that it was primarily formed to support Measure H after being informed of the new regulation in the Act defining when a committee becomes primarily formed. The statement should have been amended as early as January 14, 2014.

For the Children also failed to have the proper name on its campaign literature. For the Children purchased approximately 168,200 various pieces of campaign literature, which did not correctly identify the committee as being primarily formed. Additionally, some of these mailers were purchased after the committee changed its status to reflect it was primarily formed.

During the 90-day period leading up to 2014 election, For the Children received a total of \$118,000 in late contributions. For the Children failed to timely file two 24-hour reports that would have disclosed that it received \$69,000 in late contributions. Although these reports were all filed late, they were filed more than two months prior to the election in 2014. The following chart lists those late contributions that For the Children received in 2014 that were not timely reported on late contribution reports.

Contributor	Date Received	Amount Received	Statement Due Date	Date Statement Filed
Brelje & Race Consulting Engineers	March 6, 2014	\$2,500	March 7, 2014	March 31, 2014
Contra Costa County Electrical Industry	March 6, 2014	\$1,500	March 7, 2014	March 31, 2014
David L. Gates and Associates	March 6, 2014	\$2,500	March 7, 2014	March 31, 2014
Deems Lewis McKinley	March 6, 2014	\$25,000	March 7, 2014	March 31, 2014
Labors International Union of North America Local No. 324	March 6, 2014	\$3,000	March 7, 2014	March 31, 2014
Northern California Carpenters Regional Council PAC	March 6, 2014	\$10,000	March 7, 2014	March 31, 2014

¹⁶BallotPedia, <http://tinyurl.com/h28oc6m> (Last visited October 4, 2016).

Trico Pipe	March 6, 2014	\$2,500	March 7, 2014	March 31, 2014
Interactive Resources	March 20, 2014	\$5,000	March 21, 2014	March 31, 2014
Labors International Union of North America Local No. 324	March 20, 2014	\$2,000	March 21, 2014	March 31, 2014
Orbach Huff & Suarez LLP	March 20, 2014	\$7,500	March 21, 2014	March 31, 2014
Sprinkler Fitters & Apprentices Local 483 PAC	March 20, 2014	\$7,500	March 21, 2014	March 31, 2014

VIOLATIONS

For the Children

Count 1: Failure to Report a Late Contribution

Pon and For the Children failed to timely file a 24-Hour Report for making a \$10,000 contribution on June 3, 2011, in violation of Government Code section 84203.

Count 2: Failure to Report a Late Contribution

Pon and For the Children failed to timely file 24-Hour Reports for seven contributions totaling \$47,000 that were received on March 6, 2014 and for four contributions totaling \$22,000 that were received on March 20, 2014, in violation of Government Code section 84203.

Count 3: Failure to Change Committee Name

Pon and For the Children failed timely to change the committee's name to reflect that it was primarily formed to support Measure K, and that they failed to change its name to reflect that it was receiving major funding from WLC Architects, Inc., in violation of Government Code sections 84103, 84107, and 84504.

Count 4: Failure to Change Committee Name

Pon and For the Children failed to timely change the committee's name to reflect that it was primarily formed in support Measures E & G; in violation of Government Code sections 84103 and 84107.

Count 5: Failure to Change Committee Name

Pon and For the Children failed to timely change the committee's name to reflect that it was primarily formed in support of Measure H, in violation of Government Code sections 84103 and 84107.

Count 6: Failure to Report Sub-Vendor Payments

Pon and For the Children failed to report payments to sub-vendors for the following periods: October 1 – October 20, 2012, and October 21 – December 31, 2012, in violation of Government Code sections 84303 and 84211, subdivision (k)(6).

Count 7: Failure to report Sub-Vendor payments

Pon and For the Children failed to report payments to sub-vendors for the following periods: March 18 – May 19, 2012 and May 20 – June 30, 2012, in violation of Government Code sections 84303 and 84211, subdivision (k)(6).

CONCLUSION

This matter consists of seven counts of violating the Act, which carries a maximum administrative penalty of \$5,000 per count, totaling \$35,000.

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) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether, upon learning of the violation, the violator voluntarily provided amendments to provide full disclosure.

Counts 1 and 2 involve a failure to file 24-Hour reports. A prior case with comparable violations include the following:

- ❖ *In the Matter of Greg Kelly Meagher*; FPPC Case No. 14/32 (approved May 19, 2016), the Commission imposed penalties in the range of \$1,500 to \$2,000 against a major donor that failed to file late contribution reports. The reporting periods involved reportable activity ranging from as low as \$6,000 to as high as \$10,000.

Regarding count 1, the reportable activity consisted of For the Children making a \$10,000 contribution to For the Community. This contribution was made four days before the election, and For the Children never filed a 24-Hour report to disclose that it made this contribution. Likewise, For the Community did not file a 24-hour report to disclose that it received this contribution from For the Children. For the Children reported making this contribution on its semi-annual campaign

statement covering the period of May 22 through June 30, 2011, well after the election. By depriving the public of this information at a crucial time in the election process, For the Children violated the of Act's intent, which is to provide the public with the information who is providing campaign committees with financial support. In this particular instance, the lack of disclosure is aggravated by the fact that For the Children failed to disclose this contribution prior to the election. In *Meagher*, a \$10,000 contribution was not reported prior to the election and the Commission imposed a \$2,000 penalty. Based on the similarity of the circumstances, a penalty of \$2,000 is recommended for count 1.

Regarding count 2, the reportable activity consisted of For the Children failing to timely file two 24-hour reports that accounted for a total of \$69,000 in late contributions received prior to elections in June 2014. Unlike count 1, these reports were all filed prior to the election so the public was not deprived of the information concerning its campaign activity. In *Meagher*, a 24-hour report disclosing a \$6,000 contribution was not filed. However, it was mitigated by the fact that the contribution reported prior to the election by the recipient. The Commission approved a penalty of \$1,500. While the contributions in the current case are substantially higher, one of the Act's primary purposes is disclosure of financial activity prior to the relevant election and that was achieved in this situation. S penalty of \$2,000 is recommended for count 2.

Counts 3 through 5 involve For the Children's failure to timely amend its committee name to reflect that it was primarily formed during multiple election cycles and that it received contributions from a major donor in 2012. Recent, comparable violations include the following:

- ❖ *In the Matter of No On Government Waste, No On Measure B, Major Funding By Manwin USA; Diane Duke; Froytal Services Limited, and Mindgeek USA Incorporated F.K.A. Manwin USA, Inc.*, FPPC Case No. 15/1133 (approved Dec. 17, 2015), the Commission imposed a penalty of \$5,000 because the committee failed to change its name to reflect the economic interest, which led to hundreds of thousands of dollars being spent on advertisements with the wrong disclosure. In this case, the penalty could have been as high as three times the costs of the advertisements (treble damages); however, this would have been excessive so the Commission in an effort to be equitable imposed a fine of \$5,000 per violation.

Regarding counts 3 through 5, For the Children failed to change its committee status for the majority of three election cycles. In periods leading up to the June 5, 2012 election, For the Children received major funding from WLC Architects and was involved in running the principal campaign in support of Measure K. Shortly thereafter, For the Children was involved in running the principal campaign in support of Measures E & G in the November 6, 2012 election. In the June 3, 2014 election, For the Children was involved in running the principal campaign in support of Measure H as described in the fact section of this exhibit. During all of these election cycles, For the Children spent over half of a million dollars on the production and placement of campaign mailers, fliers, and signs.

For the Children did not produce any campaign material with a committee name that identified it was primarily formed and/or disclose the economic interest of its contributor WLC Architects. This situation is comparable to the one in *No on Government Waste* where the

committee failed to change its name to reflect the economic interests of its Major Donors, and as a result spent thousands of dollars on advertisements with the wrong disclosure statement. Technically, each mailer that incorrectly identified the committee was a violation of the Act's naming requirements. Instead, for settlement purposes the violations were combined and the committee was penalized \$5,000 for both the naming and mailer violation.

The naming violation stemming from For the Children's failure to timely change its status on its statement of organization is combined with its failure to properly identify the committee on its campaign material for each of the election cycles where a violation occurred. Under the circumstances, a penalty of \$5,000 per violation is recommended for counts 3 through 5.

Counts 6 and 7 involve For the Children's failure to report sub-vendor payments. Recent, prior cases with comparable violations include the following:

- ❖ *In the Matter of Damon J. Dunn for Secretary of State 2010*, FPPC Case No. 12/0558 (approved Feb. 28, 2013), the Commission approved a penalty of \$2,250 for failing to report sub-vendor payments. In this case, the respondent failed to timely report sub-vendor payments on its semi-annual campaign statement for the reporting period ending on December 31, 2010, for expenditures totaling \$231,804. The amount of unreported sub-vendor payments accounted for 22.37% of all expenditures it made.

Regarding counts 6 and 7, For the Children failed to report 100% of its sub-vendor payments for the June 5 and November 6, 2012 elections. It reported making payments to Whitehurst, which was its agent. Under the Act, a committee is required to report payments made on its behalf by an agent or independent contractor the same way it would if it were making the payment on its own. For the Children did not report making any payments to sub-vendors, thus concealing what For the Children spent all its campaign funds.

A penalty higher penalty than the one issued by the Commission in the case cited above is warranted. For the Children's payments to sub-vendors accounted for 58% of the expenditures it made in 2012. These payments to sub-vendors also covered 5 periods as opposed to one period in *Dunn*. Under these circumstances, a penalty of \$3,000 per violation is recommended.

In mitigation, For the Children does not have a history of violating the Act, cooperated fully with the Enforcement Division's investigation upon learning of the violations, and agreed to this stipulated decision prior to a probable cause hearing. The Enforcement Division has found no evidence that the violations were intentional, instead, For the Children relied on Pon, a professional treasurer, to understand and comply with the reporting laws. Pon indicated that he believed For the Children was a general purpose committee because it had been involved in several elections, and was not aware of the Act's new regulation defining when a committee becomes primarily formed.

PROPOSED PENALTY

After considering the factors listed in Regulation 18361.5, prior similar cases, and other relevant factors, the following penalty is recommended:

Counts	Description	Penalty per count
1	24-Hour Report	\$2,000
2	24-Hour Report	\$2,000
3	Failure to Amend 410 – Naming Requirement	\$5,000
4	Failure to Amend 410 – Naming Requirement	\$5,000
5	Failure to Amend 410 – Naming Requirement	\$5,000
6	Non-reporting of Sub-vendors	\$3,000
7	Non-reporting of Sub-vendors	\$3,000
	Total Agreed Upon Penalty:	\$25,000

* * * * *