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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

12 CONSUMER ADVOCATES FOR SAFE
FOOD AND WATER, SPONSORED BY
13 FOOD & WATER WATCH AND JESSE
MAINARDI,

14 Respondents.

FPPC Case No. 16/037

15 STIPULATION, DECISION AND ORDER

16 INTRODUCTION

17 Respondent Consumer Advocates for Safe Food and Water, Sponsored by Food & Water Watch
18 (“Committee”) was a state general purpose committee. At all relevant times, Respondent Jesse Mainardi
19 was the Committee’s treasurer.

20 This case arose from the Franchise Tax Board’s (“FTB”) audit of the Committee for the period
21 October 1, 2012 through December 31, 2012. During this period, the total contributions received were
22 \$356,658 and the total expenditures made were \$493,562.

23 The Committee made expenditures for television advertisements in the weeks preceding the
24 November 6, 2012 Election supporting Proposition 37. Respondents had a duty to timely file campaign
25 statements and properly report all information regarding expenditures on their campaign statements. The
26 Committee and Mainardi violated the Political Reform Act (the “Act”)¹ requirements by failing to timely

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28 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

1 report subvendor information for payments made, including the names of television stations where the
2 television advertisement aired.

3 **SUMMARY OF THE LAW**

4 An express purpose of the Act, as set forth in, is to ensure that receipts and expenditures in
5 election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper
6 practices may be inhibited.² The Act, therefore, establishes a campaign reporting system designed to
7 accomplish this purpose of disclosure.

8 Under the Act's campaign reporting system, recipient committees are required to file certain
9 specified campaign statements and reports disclosing contributions received and expenditures made.³
10 Under the Act, there are different types of recipient committees, defined by the type of election activity
11 in which they engage. A recipient committee that is formed or exists primarily to support or oppose
12 candidates or measures voted on in a state election, or in more than one county is a "state general purpose
13 committee."⁴

14 **Duty to Report Subvendor Payments**

15 A subvendor is a person or company that is hired by a committee's agent or independent
16 contractor to provide a good or service for the committee. The Act requires committees to report
17 payments of \$500 or more made on its behalf by an agent or independent contractor the same way it
18 would if it were making the payment on its own.⁵ Disclosure of the expenditures made by an agent or
19 independent contractor are required to be made at the same time and in the same manner and detail as
20 required for the committee's direct expenditures.⁶ Specifically, the following information must be
21 provided: (1) the subvendor's full name; (2) his or her street address; (3) the amount of each expenditure;
22 and (4) a brief description of the consideration for which each expenditure was made.⁷ This information
23 reported by the candidate or committee is commonly referred to as "subvendor information."

24 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of
25 the California Code of Regulations, unless otherwise indicated.

26 ² Section 81002, subdivision (a).

27 ³ Section 82013, subdivision (a).

28 ⁴ Section 82027.5, subdivision (c).

⁵ Section 84303.

⁶ Regulation 18431, subdivision (c) and Section 84211, subdivision (k).

⁷ Section 84211, subdivision (k)(1)-(4) and (6).

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2 **Liability of Committee Treasurers**

3 It is the duty of a committee's treasurer to ensure that the committee complies with all of the
4 requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such
5 funds.⁸ A committee's treasurer and candidate may be held jointly and severally liable, along with the
6 committee, for any reporting violations committed by the committee.⁹

7 **SUMMARY OF THE FACTS**

8 The Committee was a state general purpose committee whose treasurer was, at all relevant times,
9 Mainardi.

10 **VIOLATION**

11 **Count 1**

12 **Failure to Report Subvendor Information for Expenditures Made**

13 The Committee and Mainardi had a duty to report on the Committee's campaign statements
14 subvendor information for expenditures of \$500 or more made or incurred by an agent to a subvendor on
15 the Committee's behalf for campaign services, as if the expenditures were made directly by the
16 committee. The Committee and Mainardi failed to report on the Committee's semi-annual campaign
17 statement for the reporting period ending December 31, 2012 required subvendor information for
18 expenditures made or incurred totaling approximately \$304,500 made for television advertisements.

19 On April 30, 2015, the Committee filed an amendment to the semi-annual campaign statement for
20 the reporting period ending December 31, 2012, disclosing subvendor payments.

21 By failing to report required subvendor information for expenditures of \$500 or more, the
22 Committee and Mainardi violated Sections 84211, subdivision (k) and 84303.

23 **PROPOSED PENALTY**

24 This matter consists of one count of violating the Act, which carries a maximum administrative
25 penalty of five thousand dollars (\$5,000).
26

27 _____
⁸ Sections 81004, subdivision (b), 84100, and 84213, and Regulation 18427, subdivisions (a), (b) and (c).

28 ⁹ Sections 83116.5 and 91006; Regulation 18316.6.

1 In determining the appropriate penalty for a particular violation of the Act, the Commission
2 considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis
3 on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and
4 circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d):
5 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3)
6 whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated
7 good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6)
8 whether, upon learning of the violation, the violator voluntarily provided amendments to provide full
9 disclosure.

10 The penalty for non-disclosure of subvendor information for payments of \$500 or more has
11 typically been in the middle to high section of the penalty range, depending on the circumstances.

12 The Commission also considers penalties in prior cases involving similar violations. Recent cases
13 for similar violations include:

14 *In the Matter of Damon J. Dunn for Secretary of State 2010, Damon J. Dunn and Kelly Lawler,*
15 *FPPC No. 12/558*, in February 2013, the Commission approved a penalty of \$2,250 for failing to timely
16 report subvendor payments for the reporting period ending December 31, 2010, for expenditures totaling
17 approximately \$231,804, approximately 22% of the expenditures reported by the Committee during the
18 audit period. In mitigation, the Committee cooperated with the Enforcement Division and the treasurer
19 asserted that the failure to report the subvendor information was unintentional.

20 In this matter, the amount not disclosed were expenditures made for television advertisements,
21 which constituted approximately 60% of all expenditures made for the November 6, 2012 General
22 Election. In mitigation, the Committee and Mainardi have no prior history of violating the Act and
23 cooperated with the Enforcement Division. The Committee states that the invoices did not appear to
24 include a subvendor and amended the campaign statement once FTB identified the violation. Mainardi
25 states that this violation was not intentional.

26 Therefore, an administrative penalty \$2,000 is recommended for this violation.

27 CONCLUSION

28 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
Respondents Consumer Advocates for Safe Food and Water, Sponsored by Food & Water Watch and

1 Jesse Mainardi hereby agree as follows:

2 1. Respondents violated the Act as described in the foregoing pages, which are a true and
3 accurate summary of the facts in this matter.

4 2. This stipulation will be submitted for consideration by the Fair Political Practices
5 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

6 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
7 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
8 liability of Respondents pursuant to Section 83116.

9 4. Respondents, represented by counsel, understand, and hereby knowingly and voluntarily
10 waive, any and all procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations
11 18361.1 through 18361.9. This includes, but is not limited to the right to appear personally at any
12 administrative hearing held in this matter, to be represented by an attorney at Respondents' own expense,
13 to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at
14 the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer,
15 and to have the matter judicially reviewed.

16 5. Respondents agree to the issuance of the decision and order set forth below. Also,
17 Respondents agrees to the Commission imposing against it an administrative penalty in the amount of
18 \$2,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General
19 Fund of the State of California—is/are submitted with this stipulation as full payment of the
20 administrative penalty described above, and same shall be held by the State of California until the
21 Commission issues its decision and order regarding this matter.

22 6. If the Commission refuses to approve this stipulation—then this stipulation shall become
23 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
24 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to
25 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing
26 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
27 Director, shall be disqualified because of prior consideration of this Stipulation.

28 7. The parties to this agreement may execute their respective signature pages separately. A

1 copy of any party's executed signature page including a hardcopy of a signature page transmitted via fax
2 or as a PDF email attachment is as effective and binding as the original.

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Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

Dated: _____

Jim Sutton, Attorney on behalf of Consumer Advocates
for Safe Food and Water, Sponsored by Food & Water
Watch, Respondent

Dated: _____

Jesse Mainardi, individually, Respondent

1 The foregoing stipulation of the parties “In the Matter of Consumer Advocates for Safe Food and Water,
2 Sponsored by Food & Water Watch and Jesse Mainardi,” FPPC Case No. 16/037 is hereby accepted as
3 the final decision and order of the Fair Political Practices Commission, effective upon execution below
4 by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

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