GARY S. WINUK
Chief of Enforcement
NEAL P. BUCKNELL
Senior Commission Counsel
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814
Telephone: (916) 322-5660
Facsimile: (916) 322-1932

Attorneys for Complainant

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of: STUART WALDMAN, FRIENDS OF STUART WALDMAN, and KINDE DURKEE, Respondents.	FPPC No. 10/643 STIPULATION, DECISION AND ORDER

STIPULATION

Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission, and Respondents Stuart Waldman, Friends of Stuart Waldman, and Kinde Durkee agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

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

Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to

subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

As described in Exhibit 1, it is further stipulated and agreed that:

(i) Respondent Stuart Waldman failed to deposit personal funds into the single, designated campaign bank account for Respondent Friends of Stuart Waldman prior to expenditure, in violation of Government Code section 85201, subdivisions (d) and (e) (one count);

(ii) Respondents Stuart Waldman, Friends of Stuart Waldman, and Kinde Durkee failed to correctly report campaign expenditures on filed campaign statements, in violation of Government Code section 84211, subdivision (k) (one count); and

(iii) Respondents Stuart Waldman, Friends of Stuart Waldman, and Kinde Durkee failed to timely report subvendor information on the semi-annual campaign statement filed for the period ending June 30, 2008, in violation of Government Code sections 84211, subdivision (k), and 84303 (one count).

Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein, is a true and accurate summary of the facts in this matter.

Respondents agree to the issuance of the Decision and Order, which is attached hereto, and Respondents agree to the Commission imposing upon them an administrative penalty in the amount of $8,000, of which Respondent Stuart Waldman is jointly and severally liable for the full amount, and Respondents Friends of Stuart Waldman and Kinde Durkee are jointly and severally liable for $5,000. A cashier's check or money order from one or more Respondents totaling said amount, made payable to the "General Fund of the State of California," is/are submitted with this Stipulation as full payment of the administrative penalty and shall be held by the State of California until the Commission issues its Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and agree that in the event the Commission rejects the Stipulation and a full evidentiary hearing before

///

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

Dated: _____

_____
Roman G. Porter, Executive Director
Fair Political Practices Commission

Dated: _____

_____
Stuart Waldman, Individually and on Behalf of
Friends of Stuart Waldman, Respondents

Dated: _____

_____
Kinde Durkee, Respondent

DECISION AND ORDER

The foregoing Stipulation of the parties "In the Matter of Stuart Waldman, Friends of Stuart Waldman, and Kinde Durkee," FPPC No. 10/643, 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 Chairman.

IT IS SO ORDERED.

Dated: _____

_____
Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Stuart Waldman ("Respondent Waldman") was an unsuccessful candidate for California State Assembly, Fortieth District, in the 2008 Primary Election. Respondent Friends of Stuart Waldman ("Respondent Committee") was Respondent Waldman's candidate controlled committee for this election. Respondent Kinde Durkee ("Respondent Durkee") was the treasurer of Respondent Committee.

This case arose from a mandatory audit of Respondent Committee by the Franchise Tax Board for the period January 1, 2005 through June 30, 2008, which revealed multiple violations of the Political Reform Act (the "Act").[1]

For purposes of this stipulation, Respondents' violations of the Act are as follows:

Count 1: From January 1, 2006 through June 30, 2008, Respondent Stuart Waldman failed to deposit personal funds totaling approximately $76,000 into Respondent Committee's single, designated campaign bank account prior to expenditure, in violation of Section 85201, subdivisions (d) and (e).

Count 2: For the reporting periods from January 1, 2006 through June 30, 2008, Respondents Stuart Waldman, Friends of Stuart Waldman, and Kinde Durkee failed to correctly report campaign expenditures totaling approximately $76,000 on filed campaign statements, in violation of Section 84211, subdivision (k).

Count 3: Respondents Stuart Waldman, Friends of Stuart Waldman, and Kinde Durkee failed to timely report subvendor information for payments totaling approximately $173,013 on the semi-annual campaign statement filed for the period ending June 30, 2008, 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.

[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.

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. 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).)

Requirement that Personal Funds be Deposited into 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.) In furtherance of the goal of transparent campaign activity, any personal funds of a candidate that will be utilized to promote the candidate's election must be deposited into the single, designated campaign bank account prior to expenditure. (Section 85201, subds. (d) and (e).)

Required Filing of Campaign Statements and Reports

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, preelection campaign statements, and late contribution reports. (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).)

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.)

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.

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.

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." Regulation 18431, subdivision (a), provides that expenditures of the type that must be reported pursuant to Section 84303 include:

1. Expenditures for expert advice, expert analysis, or campaign management services, including but not limited to analysis, advice, or management services in connection with:
    a. development of campaign strategy;
    b. campaign management;
    c. design or management of campaign literature or advertising;
    d. campaign fund raising;

2. Expenditures for products or services which show how the campaign is conducted, including but not limited to expenditures for:
    a. printed campaign literature;
    b. advertising time or space;
    c. campaign buttons and other campaign paraphernalia;
    d. surveys, polls, signature gathering and door-to-door solicitation of voters;
    e. facilities, invitations, or entertainment for fundraising events;
    f. postage for campaign mailings; and

3. Expenditures to printers of mass mailings.

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, subd. (k)(1)-(4) and (6).)

Treasurer and Candidate Liability

Under Sections 81004, subdivision (b), 84100, and 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

At all relevant times, Respondent Committee was Respondent Waldman's candidate-controlled committee and Respondent Durkee was the treasurer of Respondent Committee.

Count 1: Failure to Deposit Candidate's Personal Funds into a Single, Designated Campaign Bank Account Prior to Expenditure

(Respondent Waldman Only)

From January 1, 2006 through June 30, 2008, Respondent Waldman used personal funds to pay campaign expenditures totaling approximately $76,000, without first depositing the funds into Respondent Committee's single, designated campaign bank account. Respondent Waldman charged the majority of these expenditures on several personal credit cards, which were paid off directly from Respondent Waldman's personal funds. The rest of the expenditures were paid directly out of personal funds using cash or bank debit cards. (More information about the expenditures is provided below in connection with Count 2.)

By using personal funds to pay campaign expenditures without first depositing the funds into Respondent Committee's single, designated campaign bank account, Respondent Waldman committed one violation of Section 85201, subdivisions (d) and (e).

Count 2: Failure to Report Expenditure Information

(Respondents Waldman, Committee and Durkee)

For the reporting periods from January 1, 2006 through June 30, 2008, Respondents Waldman, Committee and Durkee failed to correctly report campaign expenditures totaling approximately $76,000 on filed campaign statements. The expenditures were paid by Respondent Waldman out of personal funds as described in Count 1. Of these expenditures, approximately $65,000 was for expenditures totaling $100 or more, which required disclosure of full payee names, street addresses, amounts received, and descriptions of the consideration received. The largest of these payments were made to Shallman Communications ($15,500) and Wright Graphics, Inc. ($15,431) for the production and sending of mail.

Respondents reported the expenditures in question as nonmonetary contributions from Respondent Waldman to Respondent Committee, which resulted in partial disclosure of the

required information for the expenditures (the purposes and amounts).[2] However, this partial disclosure did not reveal the names and addressees of payees who received $100 or more.

By failing to correctly report campaign expenditures as described above, Respondents Waldman, Committee and Durkee committed one violation of Section 84211, subdivision (k).

Count 3: Failure to Timely Report Subvendor Information
(Respondents Waldman, Committee and Durkee)

Respondents Waldman, Committee and Durkee failed to timely report subvendor information for payments totaling approximately $173,013 on the semi-annual campaign statement filed for the period ending June 30, 2008. The payments were for television advertising time.

The original semi-annual campaign statement was filed on August 1, 2008. After Respondents were notified during the course of the Franchise Tax Board audit that the required subvendor information had not been reported, an amendment to the June 30, 2008 semi-annual campaign statement was filed in November 2009 to disclose the missing subvendor information. (The due date for the original filing was July 31, 2008.)

By failing to timely report payments to subvendors as described above, Respondents Waldman, Committee and Durkee committed one violation of Sections 84303 and 84211, subdivision (k).

CONCLUSION

This matter consists of three counts of violating the Act, which carry a maximum administrative penalty of $5,000 per count, for a total penalty of $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. 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):

[2] Nonmonetary contributions received are reported on "Schedule C Nonmonetary Contributions Received" of the campaign statements. The names of the contributors, a description of each nonmonetary contribution received, its amount and date received are required to be reported on Schedule C for contributions of $100 or more. However, the names and addresses of the payees paid by the contributors for the goods or services donated are not required to be disclosed on Schedule C.

(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, one of the most recent stipulations involving Section 85201 imposed a penalty in the mid-range. (See *In the Matter of George Barich*, FPPC No. 09/774, approved Jan. 28, 2011 [$3,000 penalty imposed for city council candidate who failed to establish single campaign bank account upon receipt of contributions of $1,000 or more].)

When committee activity is not limited solely to the single, designated campaign bank account, it becomes more difficult to detect whether other violations of the Act may have been committed, and in this case, the amount of money that Respondent Waldman failed to deposit into the designated campaign bank account was significant, comprising approximately 13% of reported expenditures for the committee.

Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of $3,000 for Count 1 is justified. A higher penalty is not being sought because Respondent Waldman did cooperate 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, and the violation does not appear to be intentional. Also, Respondent Waldman's failure to deposit his own personal funds into his campaign account before expending the funds was based upon his interpretation of Regulation 18215, subdivision (b)(2), which provides that a "contribution" includes a "candidate's own money or property used on behalf of his candidacy." Additionally, Respondent Waldman has no prior history of violating the Act.

Regarding Count 2, one of the more recent stipulations involving Section 84211, subdivision (k), imposed a penalty in the mid-range. (See *In the Matter of Michael Ramos, Committee to Re Elect Mike Ramos San Bernardino County District Attorney-2010, and Marvin Reiter*, FPPC No. 10/269, approved Jan. 28, 2011 [$2,500 penalty imposed for failure to disclose required vendor information for credit card expenditures of $100 or more].)

The public harm inherent in campaign reporting violations is that the public is deprived of important information such as the amounts expended by the campaign, the identities of the recipients of such expenditures, and the reasons for such expenditures. In this case, the total amount of the expenditures in question was significant, comprising approximately 13% of reported expenditures for the committee. Also, the failure to properly report expenditures spanned multiple reporting periods from January 2006 through June 2008, which warrants a higher than normal penalty since all of the reporting periods are being charged as a single count. Additionally, Respondent Durkee has been a professional campaign treasurer for many years for numerous committees, and she has been the subject of previous Fair Political Practices Commission enforcement matters. Accordingly, she should have been aware of the requirements of the Act.

Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of $2,500 for Count 2 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, in reporting campaign expenses paid by Respondent Waldman from personal funds as nonmonetary contributions, Respondents partially disclosed the required information for the expenses (the purpose of making the expenditures and their amounts). Additionally, Respondents' reporting of the expenses as nonmonetary contributions was based upon their interpretation of Regulation 18215, subdivision (b)(2), which provides that "contribution" includes a "candidate's own money or property used on behalf of his candidacy."

Regarding Count 3, a couple of the more recent stipulations involving failure to properly report subvendor information imposed penalties in the mid-range. (See *In the Matter of Bryan Batey, Committee to Elect Bryan Batey, and Lisa King*, FPPC No. 10/53, approved Jun. 10, 2010 [$2,500 penalty per count imposed for two counts of failure to report subvendor information by school board candidate, committee and treasurer]; *In the Matter of Mary Ann Andreas, Andreas for Assembly, Marta Baca, and Phyllis Nelson*, FPPC No. 06/77, approved Jun. 10, 2010 [$2,250 - $2,750 penalty per count imposed for multiple counts of failure to report subvendor information].)

The public harm inherent in campaign reporting violations is that the public is deprived of important information such as the amounts expended by the campaign, the identities of the recipients of such expenditures, and the reasons for such expenditures. In this case, the amount in question was significant, comprising approximately 29% of reported expenditures for the committee. Also, Respondent Durkee has been a professional campaign treasurer for many years for numerous committees, and she has been the subject of previous Fair Political Practices Commission enforcement matters. Accordingly, she should have been aware of the requirements of the Act. Additionally, although Respondents voluntarily filed an amendment disclosing the missing subvendor information prior to an enforcement action, the information was not disclosed until more than one year after the due date for the campaign statement on which the information should have been reported originally.

Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of $2,500 for Count 3 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, the failure to report the subvendor information was unintentional, having resulted from Respondents' expectation of receiving additional information from their consultant to resolve differences in invoice amounts (and setting aside the subvendor information pending receipt of the additional information).

Based on the facts of this case, including the factors discussed above, an agreed upon penalty of $3,000 for Count 1, $2,500 for Count 2, and $2,500 for Count 3 is recommended, for a total penalty of $8,000, of which Respondent Waldman is jointly and severally liable for the full amount, and Respondents Committee and Durkee are jointly and severally liable for $5,000 (because Respondents Committee and Durkee are not named in Count 1).