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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. 12/558  
13 )  
14 ) STIPULATION, DECISION and  
15 DAMON J. DUNN, DAMON J. DUNN FOR ) ORDER  
16 SECRETARY OF STATE 2010 COMMITTEE,)  
17 AND KELLY LAWLER, )  
Respondents. )

18 Complainant Enforcement Division of the Fair Political Practices Commission and Respondents  
19 Damon J. Dunn, Damon J. Dunn for Secretary of State 2010 committee, and Kelly Lawler agree that this  
20 Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next  
21 regularly scheduled meeting.  
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23 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this  
24 matter and to reach a final disposition without the necessity of holding an administrative hearing to  
25 determine the liability of Respondents, pursuant to Section 83116 of the Government Code.

26 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural  
27 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1  
28 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,  
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 Damon J. Dunn, Damon J. Dunn for Secretary of State 2010  
5 committee, and Kelly Lawler violated the Political Reform Act by failing to timely report required  
6 subvendor information for expenditures, in violation of Sections 84211, subdivision (k), and 84303 of  
7 the Government Code (1 count). All counts are described in Exhibit 1, which is attached hereto and  
8 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of  
9 the facts in this matter.

10 Respondents agree to the issuance of the Decision and Order, which is attached hereto.  
11 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount  
12 of Two Thousand Two Hundred and Fifty Dollars (\$2,250). A cashier's check from Respondents in said  
13 amount, made payable to the "General Fund of the State of California," is submitted with this  
14 Stipulation as full payment of the administrative penalty, to be held by the State of California until the  
15 Commission issues its decision and order regarding this matter. The parties agree that in the event the  
16 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)  
17 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered  
18 by Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents  
19 further stipulate and agree that in the event the Commission rejects the Stipulation, and a full evidentiary  
20 hearing before the Commission becomes necessary, neither any member of the Commission, nor the  
21 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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Dated: \_\_\_\_\_

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Damon J. Dunn, Respondent,  
Individually and on behalf of  
Damon J. Dunn for Secretary of State 2010 Committee

Dated: \_\_\_\_\_

\_\_\_\_\_  
Kelly Lawler, Respondent,  
Individually and on behalf of  
Damon J. Dunn for Secretary of State 2010 Committee

**DECISION AND ORDER**

The foregoing Stipulation of the parties “In the Matter of Respondents Damon J. Dunn, Damon J. Dunn for Secretary of State 2010 committee, and Kelly Lawler,” FPPC No. 12/558 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

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## EXHIBIT 1

### INTRODUCTION

Respondent Damon J. Dunn was an unsuccessful candidate for Secretary of State in the November 2, 2010 General Election, and Damon J. Dunn for Secretary of State 2010 (“Respondent Committee”) was his candidate-controlled recipient committee. At all time relevant, Respondent Kelly Lawler (“Respondent Lawler”) served as treasurer of Respondent Committee. This case arose from a Franchise Tax Board (“FTB”) audit of Respondent Committee for the period January 1, 2009 – December 31, 2010. During the period covered by the audit, Respondent Committee reported receiving contributions of \$1,030,654 and making expenditures of \$1,032,754.

As a candidate-controlled recipient committee under the Political Reform Act<sup>1</sup> (the “Act”), Respondents have a duty to timely file campaign statements and reports and disclose particular information on those reports and statements. However, Respondents failed to timely report required subvendor information.

For the purposes of this Stipulation, Respondents’ violation of the Act is stated as follows:

COUNT 1: Respondents Damon J. Dunn, Damon J. Dunn for Secretary of State 2010 committee, and Kelly Lawler failed to timely report required subvendor information on a semi-annual campaign statement for the reporting period ending December 31, 2010, for expenditures totaling approximately \$231,804, in violation of Sections 84211, subdivision (k), and 84303 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.

#### **Duty to Disclose Expenditures on Campaign Statements**

Section 82025 defines “expenditure” as a payment, forgiveness of a loan, a 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. Section 84211, subdivision (b), requires committees to disclose the total amount of expenditures made during the period covered by the campaign statement. In addition, for each person to whom the committee makes an expenditure of \$100 or more during the period covered by the campaign statement, a committee must disclose information that includes the payee’s name and address, the amount of

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<sup>1</sup>The Political Reform 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.

each expenditure, and a brief description of the consideration for which each expenditure is made. (Section 84211, subs. (i) and (k).) “Expenditure” includes any individual payment or accrued expense (i.e., an unpaid bill). (Sections 82025, 84211, subd. (k)(6).) Further, 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.)

### **Duty to Report Subvendor Payments**

Section 84303 provides that no expenditure of five hundred dollars (\$500) or more shall be made, other than 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 candidate or committee, unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee. Regulation 18431, subdivision (a), provides specific types of expenditures that must be reported pursuant to Section 84303, including expenditures for design of campaign literature or advertising and printed campaign literature, as well as expenditures to printers of mass mailings and providers of advertising time or space. Regulation 18431, subdivision (c), requires disclosure of the expenditures made by an agent or independent contractor to be made at the same time and in the same manner and detail as required under Section 84211, subdivision (k), for the committee’s direct expenditures.<sup>2</sup> This information reported by the candidate or committee is commonly referred to as “subvendor information.”

### **Liability of Committee Treasurers**

As provided in Section 84100, every committee shall have a treasurer. Under Section 84100 and Regulation 18427, subdivision (a), it is the duty of a committee’s treasurer 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 may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee. (Sections 83116.5 and 91006; Regulation 18316.6.)

## **SUMMARY OF THE FACTS**

Respondent Dunn was an unsuccessful candidate for Secretary of State in the November 2, 2010 General Election. Respondent Committee was his candidate-controlled recipient committee. For all times relevant, Respondent Lawler served as treasurer of Respondent Committee.

### **COUNT 1**

#### **Failure to Report Subvendor Information for Payments Made**

In addition to requiring committees to report direct expenditures they make, the Act also requires committees to report expenditures made by an agent or independent contractor (such as a campaign worker, advertising agency, or campaign management firm) on behalf of the

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<sup>2</sup>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).)

committee. (Sections 84211(k)(6) and 84303 and Regulation 18431.) Respondents had a duty to report on their campaign statements subvendor information for payments of \$500 or more made by an agent to a subvendor on Respondent Committee's behalf for campaign products or services, as if the expenditures were made directly by the committee.

Respondents failed to timely report required subvendor information on a semi-annual campaign statement for the reporting periods ending December 31, 2010, for expenditures totaling approximately \$231,804. According to Respondent's campaign statements and records, subvendor information for expenditures made that should have been reported during the reporting periods included expenditures made for media advertisements.

By failing to timely report required subvendor information for expenditures of \$500 or more, Respondents violated Sections 84211, subdivision (k) and 84303.

### CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of five thousand dollars (\$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 deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

The public harm involved when subvendor information is not disclosed is that the public is deprived of important information such as name of subvendors, amount of subvendor expenditures, and description of products and services they provided to the campaign.

Similar cases regarding missing subvendor expenditure information recently approved by the Commission include penalties of \$2,250 each. The Commission approved a \$2,250 penalty amount for failing to report subvendor information for \$297,182 of expenditures for six reporting periods. (*In the Matter of Zack Scrivner, Scrivner for Supervisor 2010, and Shawn Kelly*, FPPC No. 10/1099 – approved December 13, 2012). In addition, *In the Matter of Shannon Grove, Shannon Grove for Assembly 2010, and Karen Cain*, FPPC No. 10/1098, which the Commission approved December 13, 2012, Respondents failed to timely report subvendor information for payments totaling approximately \$229,374 for two pre-election reporting periods, which comprised approximately 44% of reported expenditures for the committee and the Commission issued a fine of \$2,250. In both cases, the parties amended to disclose the information when contacted by the Commission and cooperated with the investigation.

The amount of subvendor expenditures that were not timely reported was significant, totaling over \$231,000, comprising approximately 22% of the expenditures reported by Respondent Committee during the audit period. Under these circumstances, it is respectfully

submitted that imposition of an agreed upon penalty in the amount of \$2,250 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, Respondent Lawler contends that the failure to report the subvendor information was unintentional and process used will be changed for the future.

### **PROPOSED PENALTY**

Accordingly, the facts of this case justify imposition of a total administrative penalty of \$2,250.