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8
9 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

10 **STATE OF CALIFORNIA**

11 In the Matter of:

FPPC Case No. 18/330

12 JUDGE MIKE CUMMINS, JUDGE
13 MIKE CUMMINS FOR DISTRICT
14 ATTORNEY 2018, and MELISSA
CUMMINS,

STIPULATION, DECISION AND ORDER

15 Respondents.

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17 **INTRODUCTION**

18 Respondent, Judge Mike Cummins, was an unsuccessful candidate for San Luis Obispo County
19 District Attorney in the June 5, 2018 Primary Election. Respondent, Judge Mike Cummins for District
20 Attorney 2018 (ID# 1401872) (the “Committee”), was Cummins’ controlled committee. Respondent,
21 Melissa Cummins, served as the Committee’s treasurer.

22 The Political Reform Act (the “Act”)¹ requires candidates, committees, and treasurers to timely
23 report certain subvendor payments on their campaign statements. Respondents violated the Act by
24 failing to timely report subvendor payments on three campaign statements in 2018.

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28 ¹ The Political Reform Act – sometimes simply referred to as the Act – is contained in Government Code sections 81000 through 91014. 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. All regulatory references are to this source.

1 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. The violations in this case occurred
3 in 2018. For this reason, all legal references and discussions of law pertain to the Act’s provisions as
4 they existed at that time.

5 **Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act**

6 When enacting the Act, the people of California found and declared that previous laws regulating
7 political practices suffered from inadequate enforcement by state and local authorities.² Thus, it was
8 decreed the Act “should be liberally construed to accomplish its purposes.”³

9 A central purpose of the Act is to promote transparency by ensuring that receipts and
10 expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed
11 and improper practices are inhibited.⁴ Another purpose of the Act is to provide adequate enforcement
12 mechanisms so that the Act will be “vigorously enforced.”⁵

13 **Duty to Report Subvendor Payments**

14 A subvendor is a person or company that is hired by a committee’s agent or independent
15 contractor to provide a good or service for the committee. The Act requires committees to report
16 payments of \$500 or more made on its behalf or for its benefit by an agent or independent contractor the
17 same way it would if it were making the payment on its own.⁶ Disclosure of the expenditures made by
18 an agent or independent contractor are required to be made at the same time and in the same manner and
19 detail as required for the committee’s direct expenditures.⁷ Specifically, the following information must
20 be provided: (1) the subvendor’s full name; (2) his or her street address; (3) the amount of each
21 expenditures; and (4) a brief description of the consideration for which each expenditure was made.⁸
22 This information is commonly referred to as “subvendor information.”

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26 ² Section 81001, subdivision (h).

27 ³ Section 81003.

28 ⁴ Section 81002, subdivision (a).

⁵ Section 81002, subdivision (f).

⁶ Section 84303.

⁷ Regulation 18431, subdivision (c); Section 84211, subdivision (k).

⁸ Section 84211, subdivision (k).

1 **Joint and Several Liability of Candidate, Committee, and Treasurer**

2 It is the duty of the candidate and treasurer of a controlled committee to ensure that the
3 committee complies with all the requirements of the Act concerning the receipt, expenditure, and
4 reporting of funds.⁹ A treasurer may be held jointly and severally liable, along with the candidate, for
5 violations committed by the committee.¹⁰

6 **Liability for Violations**

7 Any person who violates any provision of the Act is liable for administrative penalties up to
8 \$5,000 per violation.¹¹

9 **SUMMARY OF THE FACTS**

10 According to the Committee’s statements of organization, the Committee qualified as a recipient
11 committee on January 16, 2018 and terminated as of December 30, 2018. According to the Committee’s
12 campaign statements, between January 1, 2018 and June 30, 2018, the Committee reported
13 approximately \$217,661 in contributions and \$225,740 in expenditures.

14 The Committee failed to timely disclose subvendor information for expenditures amounting to
15 \$97,478.52 across three reporting periods between January 1, 2018 and June 30, 2018.

16 For the pre-election reporting period of January 1, 2018 to April 21, 2018, the Committee
17 reported a total of \$144,376.42 in expenditures. During the same period, the Committee failed to timely
18 report \$62,994.82 in subvendor payments of \$500 or more. This amounts to approximately 43% of the
19 Committee’s total expenditures for this reporting period. Of the \$62,994.82 worth of subvendor
20 payments that were required to be reported on the Committee’s first pre-election campaign statement,
21 \$12,893.97 worth of subvendor payments were reported on an amended pre-election campaign statement
22 filed prior to the election. Thus, approximately \$50,100 worth of subvendor payments were not reported
23 prior to the election, which amounts to approximately 34% of the Committee’s total expenditures for
24 this reporting period.

25 For the pre-election reporting period of April 22, 2018 to May 19, 2018, the Committee reported
26 a total of \$64,586.67 in expenditures. During the same period, the Committee failed to timely report

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28 ⁹ Sections 81004, 84100, 84213, and Regulation 18427.

¹⁰ Sections 83116. 5 and 91006.

¹¹ Sections 83116 and 83116. 5.

1 \$20,499 in subvendor payments of \$500 or more. This amounts to approximately 31% of the
2 Committee's total expenditures for this reporting period. Of the \$20,499 worth of subvendor payments
3 that were required to be reported on the Committee's second pre-election campaign statement, \$2,000
4 worth of subvendor payments were reported on an amended pre-election campaign statement filed prior
5 to the election. Thus, approximately \$18,499 worth of subvendor payments were not reported prior to
6 the election, which amounts to approximately 28% of the Committee's total expenditures for this
7 reporting period.

8 For the semi-annual reporting period of May 20, 2018 to June 30, 2018, the Committee reported
9 a total of \$16,777.77 in expenditures. During the same period, the Committee failed to timely report
10 \$13,984 in subvendor payments of \$500 or more. This amounts to approximately 83% of the
11 Committee's total expenditures for this reporting period.

12 These subvendor payments were made on behalf of the Committee by Kumani, Inc., Savage
13 Political Consulting, and S. Lombardi and Associates for expenditures related to electronic and print
14 advertisements, political consulting, campaign management, COPS Voter Guide, and television
15 advertisements.

16 VIOLATIONS

17 **Counts 1-2: Failure to Timely Report Subvendor Payments on Campaign Statements**

18 Judge Mike Cummins, the Committee, and Melissa Cummins failed to timely report \$62,994.82
19 in subvendor payments for the reporting period of January 1, 2018 to April 21, 2018; \$20,499 in
20 subvendor payments for the reporting period of April 22, 2018 to May 19, 2018; and \$13,984 in
21 subvendor payments for the reporting period of May 20, 2018 to June 30, 2018, in violation of
22 Government Code Sections 84303 and 84211, subdivision (k).

23 **PROPOSED PENALTY**

24 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per
25 count. Thus, the maximum penalty that may be imposed here is \$10,000.¹²

26 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
27 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an

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¹² Section 83116, subdivision (c).

1 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division
2 considers the facts and circumstances of the violation in the context of the following factors set forth in
3 Regulation 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused
4 by the specific violation; (2) The level of experience of the violator with the requirements of the
5 Political Reform Act; (3) Penalties previously imposed by the Commission in comparable cases; (4) The
6 presence or absence of any intention to conceal, deceive or mislead; (5) Whether the violation was
7 deliberate, negligent or inadvertent; (6) Whether the violator demonstrated good faith by consulting the
8 Commission staff or any other governmental agency in a manner not constituting complete defense
9 under Government Code Section 83114(b); (7) Whether the violation was isolated or part of a pattern
10 and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
11 (8) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide
12 full disclosure.¹³

13 The public harm inherent in campaign reporting violations is that the public is deprived of
14 important, time-sensitive information regarding campaign activity. Here, the Committee's failure to
15 timely report subvendor payments prior to the June 5, 2018 Primary Election resulted in the public
16 having limited knowledge of the Committee's expenditures. Approximately \$82,584.55 worth of
17 subvendor payments were not reported prior to the election. This amounts to approximately 36% of the
18 Committee's total expenditures made between January 1, 2018 and June 30, 2018.

19 In this case, there was no evidence to support an intent to conceal, deceive or mislead the public
20 as to the Committee's expenditures. The violations here appear to be negligent as the Committee was
21 advised of the subvendor reporting requirement prior to the election by at least one of its agents. Judge
22 Mike Cummins, the Committee, and Melissa Cummins do not have prior enforcement history. Judge
23 Mike Cummins has prior campaign experience as he previously ran for office and controlled a campaign
24 committee.

25 The Commission considers penalties in prior cases with the same or similar violations and
26 comparable facts.

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¹³ Regulation 18361.5, subdivision (e).

1 *In the Matter of Roger Aceves for Supervisor 2014, Roger S. Aceves, and Tony Vallejo*; FPPC
2 Case No. 17/145. Respondents, a candidate for Santa Barbara Supervisor, his controlled committee, and
3 its treasurer, failed to timely report subvendor information for expenditures totaling \$261,229.21 across
4 four reporting periods, including pre-election periods, between July 1, 2013 and June 30, 2014. This
5 amounts to approximately 54% of the committee's total expenditures between July 1, 2013 and June 30,
6 2014. On June 21, 2018, the Commission approved a penalty of \$2,000 on each of the two counts.

7 A lower penalty than that approved in *Aceves* is recommended. Here, the Committee failed to
8 timely report subvendor information for expenditures totaling \$97,478.52 across three reporting periods,
9 including pre-election periods. In mitigation, unlike *Aceves*, the Committee amended its first pre-
10 election campaign statement prior to the election and reported \$14,893.97 worth of expenditures made
11 through subvendors. Thus, approximately \$82,584.55 worth of subvendor payments were not reported
12 prior to the election, amounting to approximately 36% of the Committee's total expenditures made
13 between January 1, 2018 and June 30, 2018.

14 In aggravation, Respondents committed additional violations of the Act that are not being
15 charged herein, in the interest of settlement. Specifically, Respondents failed to timely file 24-hour
16 contribution reports for two late contributions received totaling \$65,000. In mitigation, the late
17 contributions were reported on the timely filed first pre-election campaign statement, and were loans
18 from the candidate; and the 24-hour contribution reports were late-filed prior to the election. Further,
19 Respondents committed minor violations related to campaign reporting.

20 Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty
21 in the amount of \$3,000 is justified, as reflected in the chart below:

Count	Violation	Penalty
1	Failure to Timely Report Subvendor Payments	\$1,500
2	Failure to Timely Report Subvendor Payments	\$1,500
	TOTAL:	\$3,000

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1 **CONCLUSION**

2 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
3 Respondents, Judge Mike Cummins, Judge Mike Cummins for District Attorney 2018, and Melissa
4 Cummins, hereby agree as follows:

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

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

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

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

19 5. Respondents agree to the issuance of the decision and orders set forth below. Also,
20 Respondents agree to the Commission imposing against them an administrative penalty in the
21 amount of \$3,000. One or more cashier’s checks or money orders totaling said amount – to be
22 paid to the General Fund of the State of California – is/are submitted with this stipulation as full
23 payment of the administrative penalty described above, and same shall be held by the State of
24 California until the Commission issues its decision and order regarding this matter.

25 6. If the Commission refuses to approve this stipulation – then this stipulation shall become
26 null and void, and within fifteen business days after the Commission meeting at which the
27 stipulation is rejected, all payments tendered by Respondents in connection with this stipulation
28 shall be reimbursed to Respondents. If this stipulation is not approved by the Commission, and if

1 a full evidentiary hearing before the Commission becomes necessary, neither any member of the
2 Commission, nor the Executive Director, shall be disqualified because of prior consideration of
3 this stipulation.

4 7. The parties to this agreement may execute their respective signature pages separately. A
5 copy of any party's executed signature page, including a hardcopy of a signature page
6 transmitted via fax or as a PDF email attachment, is as effective and binding as the original.
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9 Dated: _____

Angela J. Brereton, Chief of Enforcement
Fair Political Practices Commission

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13 Dated: _____

Judge Mike Cummins, individually and on behalf of
Judge Mike Cummins for District Attorney 2018,
Respondents

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17 Dated: _____

Melissa Cummins, individually and on behalf of
Judge Mike Cummins for District Attorney 2018,
Respondents

