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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

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11 In the Matter of:

12 AMERICAN FEDERATION OF
TEACHERS – KIDS, FAMILIES AND
13 TEACHERS SUPPORTING
TORLAKSON FOR SUPERINTENDENT
14 OF PUBLIC INSTRUCTION 2014 (MPO)
AND LORETTA JOHNSON,

15 Respondents.
16

FPPC Case No. 17/845

STIPULATION, DECISION AND ORDER

17 **INTRODUCTION**

18 American Federation of Teachers – Kids, Families and Teachers Supporting Torlakson for
19 Superintendent of Public Instruction 2014 (MPO) (the “Committee”) was a committee primarily formed
20 to support Tom Torlakson (“Torlakson”), a successful candidate for Superintendent of Public Instruction
21 in the November 4, 2014 General Election. The Committee was sponsored by the American Federation
22 of Teachers, AFL-CIO. Its treasurer and principal officer was Lorretta Johnson (“Johnson”).

23 The Committee was the subject of an audit by the Franchise Tax Board (“FTB”), which covered
24 the time period of January 1, 2014 to December 22, 2014. The audit revealed that Respondents
25 committed multiple violations of the Political Reform Act (the “Act”),¹ including a failure to timely
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27 ¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to this code.
28 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 report \$179,750 in independent expenditures opposing Torlakson’s opponent prior to the pertinent
2 election, and a failure to timely report \$299,285 in subvendor payments related to online advertising.

3 **SUMMARY OF THE LAW**

4 The Act and its regulations are amended from time to time. The violations in this case occurred in
5 2014. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they
6 existed at that time.

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

8 When enacting the Act, the people of California found and declared that previous laws regulating
9 political practices suffered from inadequate enforcement by state and local authorities.² To that end, the
10 Act is to be construed liberally to accomplish its purposes.³

11 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in
12 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
13 practices are inhibited.⁴ Along these lines, the Act includes a comprehensive campaign reporting system.⁵
14 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be
15 “vigorously enforced.”⁶

16 Duty to File 24-Hour Independent Expenditure Reports

17 When a committee makes a late independent expenditure, the committee must disclose the
18 expenditure in a 24-hour independent expenditure report filed at each office with which the committee is
19 required to file its next campaign statement within 24 hours of making the late independent expenditure.⁷
20 A “late independent expenditure” means any independent expenditure which totals in the aggregate
21 \$1,000 or more and is made for or against any specific candidate or measure involved in an election
22 within 90 days before the date of the election.⁸

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25 ² Section 81001, subd. (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subd. (a).

28 ⁵ Sections 84200, *et seq.*

⁶ Section 81002, subd. (f).

⁷ Section 84204.

⁸ Section 82036.5.

1 Duty to Report Subvendor Payments

2 A subvendor is a person or company that is hired by a committee’s agent or independent
3 contractor to provide a good or service for the committee. The Act requires that an agent or independent
4 contractor notify a committee of all expenditures of \$500 or more made to subvendors on behalf of or for
5 the benefit of the committee no later than three working days prior to the time the campaign statement
6 reporting the expenditure is required to be filed, except that an expenditure that is required to be reported
7 on a 24-hour independent expenditure report shall be reported to the committee within 24 hours of the
8 time that it is made.⁹

9 The Act further requires committees to report payments of \$500 or more made on its behalf by an
10 agent or independent contractor the same way it would if it were making the payment on its own.¹⁰
11 Disclosure of the expenditures made by an agent or independent contractor are required to be made at the
12 same time and in the same manner and detail as required for the committee’s direct expenditures.¹¹
13 Specifically, the following information must be provided: (1) the subvendor’s full name; (2) his or her
14 street address; (3) the amount of each expenditure; and (4) a brief description of the consideration for
15 which each expenditure was made.¹² This information reported by the candidate or committee is
16 commonly referred to as “subvendor information.”

17 Joint and Several Liability of Committee, Principal Officer, and Treasurer

18 It is the duty of a committee treasurer to ensure that the committee complies with the Act.¹³ It is
19 the duty of the committee’s principal officer to authorize the content of communications made by the
20 committee, authorize expenditures made by the committee, and determine the committee’s campaign
21 strategy.¹⁴ A treasurer and principal officer may be held jointly and severally liable, along with the
22 committee, for violations committed by the committee.¹⁵

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25 ⁹ Section 84303, subd. (b).

26 ¹⁰ Section 84303, subd. (a).

27 ¹¹ Regulation 18431, subd. (c); Section 84211, subd. (k).

28 ¹² Section 84211, subd. (k)(1)-(4) and (6).

¹³ Sections 81004, 84100, 84104, and 84213; Regulation 18427.

¹⁴ Section 82047.6; Regulation 18402.1, subd. (b).

¹⁵ Sections 83116.5 and 91006.

1 **SUMMARY OF THE FACTS**

2 The Committee qualified on October 7, 2014 as a primarily formed committee supporting
3 Torlakson, and filed its initial statement of organization on October 10, 2014. Torlakson was re-elected
4 in the November 4, 2014 General Election, receiving 52.1 percent of the vote. During its existence, the
5 Committee received \$458,955 in contributions and made \$458,955 in expenditures. The Committee
6 terminated effective December 22, 2014.

7 On October 20, 2014, the Committee filed a 24-hour independent expenditure report (the
8 “Original Report”) that disclosed \$227,250 in late independent expenditures related to online and radio
9 advertisements opposing Marshall Tuck (“Tuck”), Torlakson’s opponent. However, the Committee failed
10 to timely report an additional \$179,750 in late independent expenditures, also opposing Tuck, on 24-hour
11 independent expenditure reports. In particular, the Committee made independent expenditures totaling
12 \$179,750 to Groundswell Public Strategies (“Groundswell”) on October 23, 2014, which were not timely
13 reported on 24-hour reports.¹⁶ It was not until an amendment to the Original Report filed on June 8, 2016,
14 that the Committee disclosed the \$179,750 in independent expenditures made to Groundswell.

15 Respondents also failed to timely report the \$179,750 in independent expenditures made to
16 Groundswell on the Committee’s campaign statements. On June 30, 2016, the Committee filed an
17 amendment to its pre-election campaign statement covering the period of January 1, 2014 to October 18,
18 2014, disclosing the missing \$179,750 in independent expenditures.

19 Further, although Respondents were required to report all payments of \$500 or more made by
20 Groundswell to third parties on the Committee’s behalf, Respondents failed to timely report a total of
21 \$299,285 of such “subvendor payments” on the Committee’s campaign statements. The pertinent
22 subvendor payments were made by Groundswell to Google, Facebook, Inc., and MightyHive, Inc., for
23 online advertising. On June 30, 2016, the Committee filed an amendment to its pre-election campaign
24 statement for the period of January 1, 2014 to October 18, 2014, disclosing the pertinent subvendor
25 payments.

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28 ¹⁶ The Committee also made an independent expenditure in the amount of \$48,955 to Adelstein Liston on October
20, 2014, that was not timely reported on a 24-hour report; however, the expenditure was reported just one day late, on
October 22, 2014, on an amendment to the Original Report.

1 **VIOLATIONS**

2 Count 1: Failure to Timely Report Independent Expenditures

3 The Committee failed to timely report \$179,750 in independent expenditures on 24-hour
4 independent expenditure reports, in violation of Section 84204.

5 Count 2: Failure to Timely Report Subvendor Payments

6 The Committee failed to timely report \$299,285 in subvendor payments made during the
7 reporting period of October 19, 2014 to December 22, 2014, in violation of Sections 84303 and 84211,
8 subdivision (k)(6).

9 **PROPOSED PENALTY**

10 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per
11 count. Thus, the maximum penalty that may be imposed is \$10,000.¹⁷

12 In determining the appropriate penalty for a particular violation of the Act, the Commission
13 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
14 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
15 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
16 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
17 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
18 record of violations.¹⁸

19 In this case, during its investigation, the Enforcement Division did not discover any evidence
20 displaying an intention by Respondents to conceal, deceive, or mislead the public. Respondents also do
21 not have a prior history of violating the Act. Further, Respondents filed corrective amendments
22 disclosing the missing independent expenditures and subvendor payments, although this did not occur
23 until they received notice of the FTB audit. In aggravation, the violations at issue here are serious, given
24 the large amounts of financial activity at issue.

25 The public harm inherent in campaign reporting violations is that the public is deprived of
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¹⁷ Section 83116, subd. (c).

28 ¹⁸ Regulation 18361.5, subd. (d).

1 important, time-sensitive information regarding political contributions. Generally, these types of
2 violations are considered to be more serious where the public is deprived of information that was
3 required to be disclosed before an election because this has the potential to affect how votes are cast—so
4 greater public harm is involved, and a higher penalty is warranted. Another factor that influences the
5 amount of the penalty is whether the public harm was mitigated because some of the reportable activity
6 was disclosed to the public on another campaign filing.

7 The typical penalty levied for the failure to timely file 24-hour independent expenditure reports
8 has historically fallen in the middle range of available penalties. Comparable cases in which a penalty
9 was charged for violating Section 84204 include the following:

10 • *In the Matter of Gray for Assembly 2014, Adam Gray, and Douglas L. White*; FPPC No. 16/455.
11 Respondents, a candidate for State Assembly, his controlled committee, and its treasurer, failed to timely
12 report \$24,884 in independent expenditures on a 24-hour independent expenditure report. Further, the
13 respondents failed to timely report the same expenditures on the necessary pre-election campaign
14 statement. In August 2017, the Commission approved a penalty of \$2,500 on one count.

15 As to Count 1, Respondents here are deserving of a penalty higher than that approved in the *Gray*
16 case, given the significantly higher amount of independent expenditures that went unreported in a timely
17 fashion prior to the subject election. As in *Gray*, the subject independent expenditures here were also not
18 timely disclosed on the appropriate campaign statement. Given the higher amount of expenditures at
19 issue here, a penalty greater than that reached in *Gray* is warranted.

20 Comparable cases in which a penalty was charged for failure to timely report subvendor
21 payments include the following:

22 • *In the Matter of Kenneth Pon and For the Children of West County*; FPPC No. 14/403.
23 Respondents, a primarily formed ballot measure committee and its treasurer, failed to timely report a
24 total of \$459,790.10 in subvendor payments across five different reporting periods, including pre-election
25 periods, in 2012. The pertinent subvendor payments accounted for 58 percent of all expenditures in 2012.
26 In November 2016, the Commission approved a penalty of \$3,000 on each of two counts.

27 As to Count 2, the violation here is deserving of a penalty similar to that applied in the
28 comparable case given the similar amount of subvendor payments (per count) at issue. Further, given that

1 the unreported subvendor payments here amounted to 65 percent of all expenditures during the pertinent
2 election year, the overall percentage of expenditures is also similar to that in *Pon*. As a result, a similar
3 penalty is justified.

4 In mitigation of all counts, Respondents cooperated fully with the Enforcement Division and do
5 not have a history of violating the Act. Further, Respondents proactively amended their filings as soon as
6 they became aware of the material omissions in the Committee’s prior filings. In addition, Respondents
7 contend that they requested subvendor information from vendors and, in the case of one vendor, were not
8 timely provided with the pertinent information.

9 Based on the foregoing, a penalty in the amount of \$3,000 is recommended for Count 1, and a
10 penalty in the amount of \$3,000 is recommended for Count 2.

11 CONCLUSION

12 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
13 Respondents, American Federation of Teachers – Kids, Families and Teachers Supporting Torlakson for
14 Superintendent of Public Instruction 2014 (MPO) and Loretta Johnson, hereby agree as follows:

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

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

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

22 4. Respondents have consulted with their attorney, Richard R. Rios, Olson Hagel & Fishburn
23 LLP, and understand, and hereby knowingly and voluntarily waive, all procedural rights set forth in
24 Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not
25 limited to the right to appear personally at any administrative hearing held in this matter, to be
26 represented by an attorney at Respondents’ own expense, to confront and cross-examine all witnesses
27 testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
28 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially

1 reviewed.

2 5. Respondents agree to the issuance of the decision and order set forth below. Also,
3 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
4 \$6,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General
5 Fund of the State of California—is/are submitted with this stipulation as full payment of the
6 administrative penalty described above, and same shall be held by the State of California until the
7 Commission issues its decision and order regarding this matter.

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

14 7. The parties to this agreement may execute their respective signature pages separately. A
15 copy of any party's executed signature page including a hardcopy of a signature page transmitted via fax
16 or as a PDF email attachment is as effective and binding as the original.

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18 Dated: _____
19 Galena West, Chief of Enforcement
20 Fair Political Practices Commission

21 Dated: _____
22 Loretta Johnson, individually and on behalf of
23 American Federation of Teachers – Kids, Families and
24 Teachers Supporting Torlakson for Superintendent of
25 Public Instruction 2014 (MPO)

1 The foregoing stipulation of the parties “In the Matter of American Federation of Teachers – Kids,
2 Families and Teachers Supporting Torlakson for Superintendent of Public Instruction 2014 (MPO) and
3 Loretta Johnson,” FPPC Case No. 17/845 is hereby accepted as the final decision and order of the Fair
4 Political Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

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10 Joann Remke, Chair
11 Fair Political Practices Commission
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