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FAIR POLITICAL  
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2014 APR 10 PM 12:48

April 8, 2014

**VIA HAND DELIVERY**

Gary Winuk  
Chief, Enforcement Division  
Fair Political Practices Commission  
428 J Street, Suite 620  
Sacramento, CA 95814

Re: **VERIFIED FORMAL COMPLAINT AND DEMAND FOR  
INVESTIGATION: KEVIN JENSEN, CANDIDATE FOR SHERIFF,  
COUNTY OF SANTA CLARA; KEVIN JENSEN FOR SHERIFF 2014 (ID  
1358093); SANTA CLARA COUNTY PUBLIC SAFETY WORKERS  
SUPPORT KEVIN JENSEN FOR SHERIFF 2014 (ID 1362659); LANCE  
SCIMECA, TREASURER; AND DON MORRISSEY, ASSISTANT  
TREASURER**

Dear Mr. Winuk:

Kevin Jensen is a candidate who is merely going along for the ride. His controlled committee is not running a meaningful campaign, because Jensen knows he doesn't have to. He was recruited by the Deputy Sheriffs' Association of Santa Clara County and the Santa Clara County Correctional Peace Officers Association to run for Sheriff in Santa Clara County. He is complicit in the campaign being run on his behalf by a purported "independent expenditure" recipient committee sponsored and funded by these two labor organizations. This goes beyond exempt member communications or a candidate providing a photo to an outside group – this is coordination, plain and simple, in violation of the local contribution limit that applies. Mr. Jensen is told by the labor organizations where to show up, what to say, who to meet with, and as a result is relieved of having to run his own campaign. Mr. Jensen is completely relying on the labor organizations for his campaign strategy, plans, and funding. To wit, Jensen's most recent campaign filing shows a mere \$9,248.99 in contributions received. During the same reporting period, PSW reported receipt of contributions totaling \$235,000, and it is believed that DSA has committed an additional \$155,000 to the IE effort which has not yet been transferred from the DSA PAC.

This letter constitutes a formal complaint by Richard Alexander, a voter in Santa Clara County, against Kevin Jensen, in his capacity as a candidate for Sheriff in the County of Santa Clara, appearing on the June 3, 2014 ballot, his controlled committee Kevin Jensen for Sheriff 2014, and Santa Clara County Public Safety Workers Support Kevin Jensen for Sheriff 2014, a primarily formed recipient committee that has made independent expenditures in support of Kevin Jensen's candidacy, and Lance Scimeca and Don Morrissey, treasurer and assistant treasurer, respectively of Santa Clara County Public Safety Workers Support Kevin Jensen for Sheriff 2014, regarding violations of the California Political Reform Act (Gov. Code § 81000 et seq.; "PRA") and applicable local ordinances.

## **I. Grounds for Complaint**

Kevin Jensen and Kevin Jensen for Sheriff 2014 and Santa Clara County Public Safety Workers Support Kevin Jensen for Sheriff 2014 violated the contribution limit imposed by local ordinance, by illegally coordinating their activities in support of Jensen's candidacy, which is subject to contribution and expenditure limits in accordance with the Santa Clara County Code.

This complaint is made pursuant to Gov. Code section 83115. Complainant requests the FPPC to investigate and commence civil or administrative action against Kevin Jensen, Kevin Jensen for Sheriff 2014, and Santa Clara County Public Safety Workers Support Kevin Jensen for Sheriff 2014, based on failure to comply with the California Political Reform Act as described herein. Pursuant to section 83115 of the PRA, I respectfully request the Fair Political Practices Commission ("FPPC") notify the undersigned, on behalf of the complainant, in writing of the action the FPPC has taken or will take on this sworn complaint within 14 days.

## **II. Respondents**

Kevin Jensen ("Jensen") is a candidate for Sheriff in the County of Santa Clara appearing on the June 3, 2014 ballot. Kevin Jensen for Sheriff 2014 (ID 1358093) is Jensen's controlled committee (Kevin Jensen and Kevin Jensen for Sheriff 2014 referred to collectively as "KJS"). KJS' campaign filings to date are attached as Exhibit A.

"Santa Clara County Public Safety Workers Support Kevin Jensen for Sheriff 2014" (ID 1362659) ("PSW") is a primarily formed recipient committee, qualified on January 1, 2014, formed to engage in independent expenditures to support Kevin Jensen for Sheriff. SCCPSW is sponsored and funded by the Deputy Sheriffs' Association of Santa Clara County ("DSA") and the Santa Clara County Correctional Peace Officers Association ("CPOA") and their respective political action committees. Lance Scimeca, president of CPOA, is treasurer of PSW. Don Morrissey, president of DSA, is assistant treasurer of PSW. As of March 19, 2014, PSW reported independent expenditures supporting Jensen totaling \$213,556.82. PSW's campaign filings to date are attached as Exhibit B.

**III. Violation of the California Political Reform Act and Local Ordinance**  
**(Gov. Code § 85500(b), Santa Clara County Code § A35-2(b))**

**A. Applicable Laws**

Candidates for Sheriff in Santa Clara County are subject to a contribution limit of \$500 per donor per election for candidates who decline to accept the expenditure limit, and a contribution limit of \$1,000 per donor per election for candidates who accept the expenditure limit. (Santa Clara County Code (“SCCC”) § A35-2(a)-(b).) The expenditure limit for county-wide candidates is \$500,000 per election. (SCCC § A35-3(a).) Kevin Jensen accepted the expenditure limit and therefore may accept contributions up to \$1,000 per donor per election. Payments “coordinated” with a candidate are deemed to be “contributions” subject to applicable limits. (Gov. Code § 85500(b).) Payments that are not coordinated with a candidate are “independent expenditures” and are not subject to limits that otherwise apply to contributions. (*Id.*)

“Independent expenditure” is defined by the PRA as follows:

an expenditure made by any person...in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate...or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.

(Gov. Code § 82031.)

In order for an expenditure to be *independent*, it must not be *made at the behest of the affected candidate*. The PRA explains:

An expenditure may not be considered independent, and shall be treated as a contribution from the person making the expenditure to the candidate on whose behalf, or for whose benefit, the expenditure is made, if the expenditure is made under any of the following circumstances:

- (1) The expenditure is made with the cooperation of, or in consultation with, the candidate on whose behalf, or for whose benefit, the expenditure is made, or any controlled committee or any agent of the candidate.
- (2) The expenditure is made in concert with, or at the request or suggestion of, the candidate on whose behalf, or for whose benefit, the expenditure is made, or any controlled committee or any agent of the candidate.
- (3) The expenditure is made under any arrangement, coordination, or direction with respect to the candidate or the candidate’s agent and the person making the expenditure.

(Gov. Code § 85500(b), emphasis added; see also 2 CCR § 18550.1.)

Notably, it is presumed “that an expenditure funding a communication that expressly advocates the nomination, election or defeat of a clearly identified candidate is not independent of the candidate on whose behalf, or for whose benefit, the expenditure is made, when ... [t]he person making the expenditure retains the services of a person who provides the candidate with professional services related to campaign or fundraising strategy for that same election.” (2 CCR § 18550.1(b)(3).) Further, it is presumed that a communication is not independent of a candidate when it “replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication designed, produced, paid for or distributed by the candidate.” (2 CCR § 18550.1(b)(4).)

### **B. Illegal Coordination by Respondents**

Complainant is informed and believes that Jensen has been coordinating his campaign activities extensively with PSW, by and through its sponsoring organizations DSA and CPOA and their agents, resulting in acceptance of contributions in excess of the limit imposed by local ordinance.

**COORDINATED FUNDRAISING:** On December 14, 2013, KJS reported receipt of a non-monetary contribution from Lance Scimeca for food provided at a fundraising event for Jensen (see Exhibit A, KJS campaign report for period 07/01/13 – 12/31/13, page 29). As indicated above, Lance Scimeca is President of CPOA and is treasurer of PSW. On December 26, 2013, KJS reported receipt of a non-monetary contribution from Michael Richmond, for food provided at a fundraising event for Jensen (see Exhibit A, KJS campaign report for period 07/01/13 – 12/31/13, page 29). At the time of the event, Michael Richmond was on the board of directors of DSA and treasurer for DSA’s sponsored PAC.

**COORDINATED PETITIONING:** On January 30, 2014 and February 17, 2014, emails were sent from DSA with a “Petition in Lieu of Filing Fees” for Jensen. The email exhorted “all members, associate members and retirees” to “start collecting signatures from family, friends and neighbors” (i.e. non-members, general public) and to “keep collecting those signatures” and to submit them to DSA’s office. DSA sent multiple emails specifically encouraging circulation of the Petition in Lieu (not as part of a regularly emailed newsletter), and was also indicated that DSA would be filing the completed Petition in Lieu directly with the Registrar of Voters. The Petition in Lieu of Filing Fees was a copy of the original form checked out from the Registrar of Voters by Kevin Jensen. Signatures collected on a Petition in Lieu of Filing Fees defrays or eliminates the filing fee that must be submitted by a candidate in order to qualify for placement on the ballot. (See Elec. Code §§ 8061, 8106.) Referenced emails attached as Exhibit C.

### **COORDINATED ADVERTISING AND APPEARANCES:**

— On February 1 and 2, 2014, Vietnamese Têt Festivals were held in San Jose. One event was held at the fairgrounds. KJS attempted to rent a booth at the fairgrounds event and was denied due to an event policy against political entries. CPOA then directed two deputies to rent 2 booths. Those booths were then used exclusively to promote Jensen’s candidacy.

Jensen visited the booth during the event. Jensen banners were displayed, and t-shirts, stickers, reusable shopping bags and literature were distributed. These items contained Jensen's official campaign logo, campaign slogan and/or URL for his official campaign website (replication of candidate's materials is presumptively coordination). Photos of representative campaign items displayed and distributed at this event, photos of Jensen at the booth, as well as a printscreen of KJS website showing the campaign's official logo, are attached as Exhibit D. No campaign reports filed by KJS, PSW, DSA or CPOA reveal a payment for the booths, which were used exclusively for a *political purpose* in coordination with candidate Jensen.

- Jensen appeared at a general membership meeting of DSA. According to the meeting minutes, "Jensen gave a very good speech and answered questions about his campaign." Later, during the meeting but while Jensen was no longer present (he remained on site, but was not in this portion of the meeting), DSA discussed its "independent" expenditure activities. Minutes of this meeting are attached as Exhibit E.
- PSW sponsored a table at the Crime Victims United dinner in Sacramento on February 24 for \$2,500, according to campaign reports, coded as a "civic donation." Jensen was a guest at PSW's table. Based on information and belief, this was not a free ticket provided to Jensen by Crime Victims United. On March 20, Crime Victims United officially endorsed Jensen. Campaign filings by PSW show an expenditure for "travel" (see Form 460 for period January 1, 2014 through March 17, 2014, page 10). No reporting disclosed an in-kind to Jensen for his ticket or travel costs, if Jensen was the beneficiary of the payment reported for travel.
- On February 14, 23 new Sheriff's office recruits who recently graduated from the academy attended a new employee orientation. DSA hosted a luncheon at their office in conjunction with the Sheriff's office orientation. DSA invited Jensen to speak at the luncheon. An email to DSA members summarizing this activity is attached as Exhibit F.
- The South Bay Labor Council held a meeting on October 29, 2013 to discuss their candidate endorsements. Both Lance Scimeca and DSA Acting President Winslow were present at this meeting, despite the fact that neither individuals, nor their respective labor organizations, are members of the South Bay Labor Council. Scimeca and Winslow advocated for endorsing Jensen. Ultimately, the South Bay Labor Council decided against endorsing Jensen.
- On April 11, DSA and CPOA will be hosting a press conference related to the Jensen election. It is believed that Jensen has confirmed attendance at this event. Event details from Facebook are attached as Exhibit G.

#### STATEMENTS BY JENSEN PROVIDING EVIDENCE OF COORDINATION:

- Jensen has told numerous individuals and community leaders that his campaign could succeed without negative campaigning because "the unions" would handle the "dirty hit pieces."
- During an interview with members of the Santa Clara County Republican Party of Silicon Valley (central committee), Jensen remarked that the unions were going to spend \$750,000 in the form of an independent expenditure supporting his candidacy.

#### IV. Conclusion

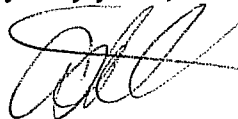
Complainant respectfully requests that the FPPC investigate this matter and commence appropriate enforcement action against Kevin Jensen (in capacity as candidate), Kevin Jensen for Sheriff 2014, Santa Clara County Public Safety Workers Support Kevin Jensen for Sheriff 2014, Lance Scimeca as Treasurer of PSW and Don Morrissey as Assistant Treasurer of PSW, in connection with the violations of the Political Reform Act and applicable local ordinances outlined herein.

In accordance with the Political Reform Act, committees that make independent expenditures must verify that the independent expenditures are—in fact—not coordinated with the relevant candidate and that the committee is reporting all contributions and reimbursements. (Gov. Code 84213(b).) Respondents have violated this requirement by actually coordinating with Jensen, a candidate subject to contribution limits, and by apparently failing to report several expenses, and failing to accurately report payments as contributions rather than independent expenditures. Any person who knowingly or willfully violates the Political Reform Act may be liable for penalties up to the greater of \$10,000 or three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received. (Gov. Code 91000.) If two or more persons are responsible for any violation, they shall be jointly and severally liable. (Gov. Code 91006.)

This complaint is also being referred to County Counsel for the County of Santa Clara, as the enforcement agency for the county campaign finance ordinances.

Please feel free to contact me if you have any questions or require additional information or contact information for witnesses.

Very truly yours,




Ashlee Titus,  
Attorney for Complainant

ANT/cfd  
Enclosures

cc: Orry P. Korb, County Counsel of Santa Clara County

VERIFICATION

I am informed and believe that the foregoing is true and correct. Executed under penalty of perjury under the laws of the State of California this 8<sup>th</sup> day of April, 2014 at San Jose, California.

A handwritten signature in black ink, reading "Richard Alexander", written over a horizontal line.

Richard Alexander, Complainant