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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of COMMON SENSE VOTERS, SF 2010; VOTE FOR MARK FARRELL FOR DISTRICT 2 SUPERVISOR AND CHRIS LEE Respondents.	FPPC No. 10/973 STIPULATION, DECISION and ORDER

Complainant Fair Political Practices Commission and Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor committee and Chris Lee 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 administrative hearing to determine the liability of Respondents, pursuant to Section 83116 of the Government Code.

Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1 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

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.

It is further stipulated and agreed that Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor committee and Chris Lee violated the Political Reform Act by failing to file an amended statement of organization within 10 days to disclose that Respondent Committee was controlled by a candidate, in violation of Sections 84102, subdivisions (e) and (g), and 84103, subdivision (a), of the Government Code (1 count) and failing to use proper sender identification on mass mailers sent in support of Mark Farrell for District 2 Supervisor and against his opponent, Janet Reilly, which failed to display the name of the candidate controlling the committee, in violation of Section 84305 (4 counts). All counts are described in Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 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. Respondents also agree to the Commission imposing upon them an administrative penalty in the amount of Fourteen Thousand Five Hundred Dollars ($14,500). A cashier's check from Respondents in said amount, made payable to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the administrative penalty, to 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.

made payable to the "General Fund of the State of California,"

by Respondents in connection with this Stipulation shall be reimbursed

Dated: _____

Gary Winuk, Enforcement Chief,
on behalf of the
Fair Political Practices Commission

Dated: _____

Chris Lee, Respondent
Individually and on behalf of Common Sense Voters,
SF 2010; Vote for Mark Farrell for District 2 Supervisor

DECISION AND ORDER

The foregoing Stipulation of the parties "In the Matter of Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor and Chris Lee," FPPC No. 10/973, 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: _____

Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

In November 2010, the City and County of San Francisco held a ranked-choice voting election to elect the representative for District 2 of the Board of Supervisors. Respondent Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor ("Respondent CSV") qualified as a primarily formed committee on October 1, 2010, and registered on October 13, 2010. At all relevant times, Respondent Stacy Owens ("Respondent Owens") was the treasurer of the Respondent CSV and Henry C. Levy, was assistant treasurer. The principal officer for Respondent CSV was Jack Helfand ("Principal Officer Helfand").

In August 2009, Mark Farrell created a campaign committee for the November 2010 Supervisor race named the Mark Farrell for District 2 Supervisor 2010 committee ("Farrell Committee"). At all relevant times, Respondent Owens was the treasurer of the Respondent CSV and Henry C. Levy, was assistant treasurer. Respondent CSV's Principal Officer, Principal Officer Helfand, was a member of the fundraising subcommittee for the Farrell Committee for the November 2010 election campaign before leaving to form Respondent CSV. During this campaign, the Farrell Committee retained Chris Lee of Townsquare Consulting ("Respondent Lee"), as its campaign consultant.

In September 2010, incumbent Supervisor Michela Alioto-Pier was informed by the California courts that she was unable to run for reelection for her District 2 Supervisor seat. She then chose Mark Farrell, a candidate for District 2 Supervisor, to endorse as her replacement. She and her staff worked with Mark Farrell and his campaign consultant, Respondent Lee, during the course of the campaign to offer her endorsement and appear at events in support of Mark Farrell. In addition to this interaction with Mark Farrell and his staff, Supervisor Alioto-Pier was also in charge of the fundraising activities for Respondent CSV. Supervisor Alioto-Pier raised 86% of the contributions received by Respondent CSV.

While Respondent Lee was a campaign consultant for the Farrell Committee, he also coordinated with Respondent CSV, Principal Officer Helfand and the campaign consultant for Respondent CSV, MSHC Partners, regarding the setup, fundraising, and initial campaign planning of Respondent CSV. Respondent Lee reached out to Principal Officer Helfand, who had previously volunteered for the Farrell Committee, to assist Principal Officer Helfand with the formation of Respondent CSV. In addition, Respondent Lee also had contacts with another mail house used by Respondent CSV to produce a door hanger. The door hanger was being produced as a Farrell support piece containing an endorsement letter written by Supervisor Alioto-Pier. Respondent Lee's interactions with Respondent CSV and its staff caused Respondent CSV to become a controlled committee of Mark Farrell, instead of a committee primarily formed for his election. The evidence supports the finding that Mark Farrell did not authorize Respondent Lee, as an agent of the Farrell Committee, to coordinate with Respondent CSV.

While Respondent Lee was a campaign consultant for the Farrell

Under the Political Reform Act[1] (the "Act"), any person who violates any provision of this title, who purposely or negligently causes any other person to violate any provision of this title, or who aids and abets any other person in the violation of any provision of this title, shall be liable under the provisions of this chapter. As a result, Respondents were required to amend the statement of organization to reflect being a controlled committee and have all mailers identify the Farrell Committee as the sender of the mailer.

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

COUNT 1: Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor failed to file an amended statement of organization within 10 days to disclose that Respondent Committee was a controlled committee and failed to add the name of the controlling candidate to the committee name. Respondent Chris Lee purposely or negligently caused this violation (within the meaning of Section 83116.5) through his role of campaign consultant for the Farrell Committee and his coordination with Respondent CSV, Principal Officer Helfand and the campaign consultant for Respondent CSV, MSHC Partners, regarding CSV's setup, fundraising, and initial campaign planning. In this way, Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor and Chris Lee violated Government Code Sections 84102, subdivisions (e) and (g), and 84103, subdivision (a).

COUNT 2: Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor failed to use proper sender identification on a mass mailer sent on or about October 17, 2010, sent in support of Mark Farrell for District 2 Supervisor and against his opponent, Janet Reilly, which failed to display the name of the candidate controlling the committee. Respondent Chris Lee purposely or negligently caused this violation (within the meaning of Section 83116.5) through his role of campaign consultant for the Farrell Committee and his coordination with Respondent CSV, Principal Officer Helfand and the campaign consultant for Respondent CSV, MSHC Partners, regarding CSV's setup, fundraising, and initial campaign planning. In this way, Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor and Chris Lee violated Government Code Section 84305.

COUNT 3: Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor failed to use proper sender identification on a mass mailer sent on or about October 19, 2010, sent in support of Mark Farrell for District 2 Supervisor and against his opponent, Janet Reilly, which failed to display the name of the

[1] The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code as it was in effect at the time of the violations, 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 as in effect at the time of the violations, unless otherwise indicated.

candidate controlling the committee. Respondent Chris Lee purposely or negligently caused this violation (within the meaning of Section 83116.5) through his role of campaign consultant for the Farrell Committee and his coordination with Respondent CSV, Principal Officer Helfand and the campaign consultant for Respondent CSV, MSHC Partners, regarding CSV's setup, fundraising, and initial campaign planning. In this way, Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor and Chris Lee violated Government Code Section 84305.

COUNT 4: Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor failed to use proper sender identification on two mass mailers sent on or about October 20, 2010, sent in support of Mark Farrell for District 2 Supervisor and against his opponent, Janet Reilly, which failed to display the name of the candidate controlling the committee. Respondent Chris Lee purposely or negligently caused this violation (within the meaning of Section 83116.5) through his role of campaign consultant for the Farrell Committee and his coordination with Respondent CSV, Principal Officer Helfand and the campaign consultant for Respondent CSV, MSHC Partners, regarding CSV's setup, fundraising, and initial campaign planning. In this way, Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor and Chris Lee violated Government Code Section 84305.

COUNT 5: Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor failed to use proper sender identification on a mass mailer sent on or about October 25, 2010, sent in support of Mark Farrell for District 2 Supervisor and against his opponent, Janet Reilly, which failed to display the name of the candidate controlling the committee. Respondent Chris Lee purposely or negligently caused this violation (within the meaning of Section 83116.5) through his role of campaign consultant for the Farrell Committee and his coordination with Respondent CSV, Principal Officer Helfand and the campaign consultant for Respondent CSV, MSHC Partners, regarding CSV's setup, fundraising, and initial campaign planning. In this way, Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor and Chris Lee violated Government Code Section 84305.

SUMMARY OF THE LAW

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.

A committee includes any person or combination of persons who receive contributions totaling $1,000 or more in a calendar year. (Section 82013, subd. (a).) This type of committee commonly is referred to as a recipient committee. Section 82047.5 defines a primarily formed

committee, in relevant part, as a committee which is formed or exists primarily to support or oppose a single candidate, a single measure, a group of specific candidates being voted upon in the same city, county, or multicounty election, or two or more measures being voted upon in the same city, county, multicounty, or state election. By contrast, a *controlled committee* is one that is controlled directly or indirectly by a candidate or that acts jointly with a candidate in connection with the making of expenditures. (Section 82016.) A candidate controls a committee if the candidate, *the candidate's agent*, or any other committee controlled by the candidate has a significant influence on the actions or decisions of the committee. Section 84102, subdivision (g), requires any other information shall be required by Commission regulations that are consistent with the purposes and provisions of this chapter.

To further the well-established state interest in the integrity of its election processes, the Act imposes certain restrictions on candidates for elective offices, chiefly in the form of contribution limits and disclosure requirements. To insure that candidates and their supporters do not evade the Act's contribution limits and disclosure requirements, these restrictions are extended to include the activities of persons who coordinate campaign spending with the candidates themselves, or with the candidates' committees and agents.

Duty to Amend Statement of Organization

Section 84101 requires every recipient committee to file a statement of organization with the Secretary of State. Section 84102, subdivision (a), states that the statement of organization shall include the committee's name, street address and telephone number, if any. The statement of organization shall also include the full name, street address and telephone number, if any, of the treasurer and other principal officers of the committee. (Section 84102, subd. (c).)

Section 84102, subdivision (e), states that the statement of organization shall include a statement of whether the committee is independent or controlled, and if controlled, the name of each candidate or state measure proponent by which it is controlled, or the name of any controlled committee with which it acts jointly. Regulation 18402, subdivision (c), requires that whenever identification of a committee is required by law, the identification shall include the full name of the committee as required in the statement of organization including the last name of each candidate that controls the committee.

Section 84103, subdivision (a), requires that whenever there is a change in any of the information contained in a statement of organization, an amendment shall be filed within 10 days to reflect the change. requires every recipient committee to file a statement of organ

Duty to Disclose Proper Sender Identification

Section 84305, subdivision (a), requires candidates and committees to properly identify themselves when sending a mass mailing. Specifically, the statute provides that no candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing. If the sender of the mass mailing is a controlled committee, Section 84305, subdivision (c), requires that the

name of the candidate, as well as the name of the committee, be included on the mass mailing.

Section 82041.5 defines a "mass mailing" as over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry. Regulation 18435, subdivision (a), clarifies this section, and further defines a mass mailing as over two hundred substantially similar pieces of mail sent in a calendar month.

Joint and Several Liability for Causing Another to Violate the Act

Recognizing that the law should hold accountable not only those persons who directly commit violations, but also those persons who encourage or assist in the commission of violations, the Act extends liability for a violation to include anyone who causes, either intentionally or negligently, or aids and abets in the violation of the Act. Section 83116.5 imposes liability for violating the Act on those who: (i) violate the Act; (ii) purposely or negligently cause another to violate the Act; or (iii) aid and abet another in violating the Act. When two or more persons are responsible for a violation of the Act, they are jointly and severally liable. (Section 91006.)

SUMMARY OF THE FACTS

In November 2010, the City and County of San Francisco held a ranked-choice voting election to elect the representative for District 2 of the Board of Supervisors. Respondent CSV qualified as a primarily formed committee on October 1, 2010, and registered on October 13, 2010. As discussed above, while Respondent Lee was a campaign consultant for the Farrell Committee, he also coordinated with Respondent CSV, Principal Officer Helfand and the campaign consultant for Respondent CSV, MSHC Partners, regarding the setup, fundraising and initial campaign planning of Respondent CSV. Respondent Lee's interactions with Respondent CSV and its staff caused Respondent CSV to become a controlled committee of Mark Farrell, instead of a committee primarily formed for his election. As such, under the Act, Respondents were required to amend the statement of organization to reflect being a controlled committee and have all mailers identify the Farrell Committee as the sender of the mailer.

COUNT 1
Failure to Amend Statement of Organization

Respondent CSV qualified as a primarily formed committee on October 1, 2010, and filed a statement of organization reflected that information on October 13, 2010. Respondent CSV disclosed that it was formed to support candidate Mark Farrell for County Supervisor of the City and County of San Francisco for District 2. As mentioned above, Mark Farrell had a campaign committee for this election, the Farrell Committee. While Respondent Lee was a campaign consultant for the Farrell Committee, he coordinated with Respondent CSV, Principal Officer Helfand and the campaign consultant for Respondent CSV, MSHC Partners, regarding its setup, fundraising and initial campaign planning. In addition, Respondent Lee also had contacts with another mail house used by Respondent CSV to produce a door hanger. The door hanger

was being produced as a Farrell support piece containing an endorsement letter written by Supervisor Alioto-Pier. Through these interactions, Respondent Lee, an agent of the Farrell Committee, thereby had significant influence on the Respondent CSV and thus caused Respondent CSV to become a controlled committee of Mark Farrell.

As a candidate controlled committee, Respondents were required to include in the name of the candidate controlling the committee in the name of Respondent Committee. Respondents failed to provide this required information in the name of Respondent CSV and failed to amend the statement of organization.

Thus, Respondent CSV failed to file an amended statement of organization within 10 days to disclose that Respondent Committee was a controlled committee and failed to add the name of the controlling candidate to the committee name. Respondent Chris Lee caused this violation (within the meaning of Section 83116.5) through his role of campaign consultant for the Farrell Committee and his coordination with Respondent CSV, Principal Officer Helfand and the campaign consultant for Respondent CSV, MSHC Partners, regarding its setup, fundraising and initial campaign planning. In this way, Respondents CSV and Chris Lee violated Government Code Sections 84102, subdivisions (e) and (g), and 84103, subdivision (a).

COUNTS 2 - 5
Failure to Disclose the Controlling Candidate in Mass Mailings

Section 82041.5 and Regulation 18435 define a "mass mailing" as over 200 substantially similar pieces of mail sent in a calendar month, which are not sent in response to an unsolicited request. Section 84305, subdivision (a), requires candidates and committees to properly identify themselves when sending a mass mailing. Pursuant to Section 84305, subdivision (b), if a candidate or committee sends a mass mailing, the name, street address, and city of the candidate or committee must be shown on the outside of each piece of mail sent as part of the mass mailing, in no less than 6-point type, which shall be in a color or print which contrasts with the background, so as to easily legible. Furthermore, if the sender of a mass mailing is a controlled committee, the name of the person controlling the committee must also be included in each piece of mail. (Section 84305, subd. (c).)

Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor failed to use proper sender identification on mass mailers sent on or about October 17, 2010, through October 25, 2010, sent in support of Mark Farrell for District 2 Supervisor and against his opponent, Janet Reilly, which failed to display the name of the candidate controlling the committee. Respondent Chris Lee caused this violation (within the meaning of Section 83116.5) through his role of campaign consultant for the Farrell Committee and his coordination with Respondent CSV, Principal Officer Helfand and the campaign consultant for Respondent CSV, MSHC Partners, regarding its setup, fundraising and initial campaign planning. The mailers are detailed below:

Mailer Title	Date	Quantity (approx.)
The Man Behind the Curtain	10/17/10	12,248
Captain Mysterious Mail Piece	10/19/10	20,239
CMV1003: Proposition H Negative/CMV 1005: Comparative	10/20/10	40,478
11757 Farrell Doorhanger 03	10/25/10	25,000

Thus, Respondents Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor and Chris Lee violated Government Code Section 84305 four times.

CONCLUSION

This matter consists of five counts of violating the Act, which carries a maximum administrative penalty of five thousand dollars ($5,000) per count.

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. The Enforcement Division also considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6), which include: 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; whether there was a pattern of violations; and whether upon learning of the violation the Respondent voluntarily filed amendment to provide full disclosure. Additionally, liability under the Act is governed in significant part by the provisions of Section 91001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

Statement of Organization: Respondents had a duty to file an amendment to the statement of organization to disclose it was no longer a primarily formed committee but a controlled committee after the actions of Respondent Lee caused this status change. The amendment was needed to include in the name of the candidate controlling the committee in the name of Respondent CSV. Respondents failed to provide this required information in the name of Respondent CSV and failed to amend the statement of organization.

the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6), which include:

The failure to amend the statement of organization concealed from the public the true nature of the Respondent CSV's activity. In aggravation, these actions coordinating the committees gave an unlawful advantage to one side in an election which was decided by only the slimmest of margins. In mitigation, Respondents filed other campaign information correctly and the name of the committee disclosed its support of Mark Farrell.

Other cases regarding the failure to amend a statement of organization recently approved by the Commission include:

In the Matter of Put California Back to Work, Sponsored by the Civil Justice Association of California and J. Richard Eichman, FPPC No. 10/504. Respondents formed as a state general purpose committee and failed to amend the statement of organization when the committee became primarily formed. The committee was aware of the requirement, having been told by the treasurer, and chose not to timely amend the statement. A $3,500 stipulated settlement was approved for this violation by the Commission on March 15, 2012.

In the Matter of Californians for SAFE Food, a coalition of public health and food safety experts, labor unions, consumers, family farmers, and veterinarians. No on Proposition 2, FPPC No. 08/515. This case involved one count of failing to name a sponsor on the statement of organization and one count of failing to amend the statement of organization to include a sponsor. A $2,500 penalty for the each count was approved by the Commission on April 8, 2010.

In this matter, Respondent CSV's actions were serious as Respondent CSV coordinated with the candidate's campaign consultant. However, in mitigation, Principal Officer Helfand had little campaign experience and neither of the Respondents have a history of violating the Act. Therefore, imposition of an administrative penalty in the amount of two thousand five hundred dollars ($2,500) is recommended.

Sender Identification: As a candidate controlled committee, Respondents had a duty to display on the mass mailing the name of the controlling candidate. The failure to provide proper disclosure in a mass mailing deprives the public of important information by making them believe that the mailing is independent of a candidate. In aggravation, Respondent CSV was able to send out hit pieces on opponents without disclosing its association with the candidate. Also, without the statement of organization's amendment, the public would not have been able to trace the association back to the candidate. Further, Respondent CSV was involved in multiple advertisements, all of which failed to provide proper disclosure. In mitigation, the name of Respondent CSV clearly presented its support of candidate Mark Farrell and Respondents have cooperated with the investigation and assert that the contacts and coordination were the actions of only one individual who believed that he was acting within the law.

Other similar cases regarding failing to properly include the required disclosure statements on mailers recently approved by the Commission include:

In the Matter of Alan Frank, Alan Frank for City Council 2012, and Jeff Buchanan, FPPC No. 12/890. Staff: Commission Counsel Zachary Norton and Special Investigator Paul Rasey. Respondent, Alan Frank, was an unsuccessful candidate for Placentia City Council in the November 6, 2012 election. Alan Frank for City Council 2012 was Respondent Frank's candidate controlled committee, and Respondent Jeff Buchanan was the Treasurer of the committee. Prior to the election, Respondents paid for and caused to be sent two mass mailers which failed to identify Respondents as the senders of the mailers in violation of Government Code Section 84305, subdivision (a) (1 count). A stipulated settlement of $2,500 was approved by the Commission on September 19, 2013.

In the Matter of Protect Burlingame and Kevin Osborne, FPPC No. 09/804. This case involved two mailers in a local election campaign, each sent to approximately 7,000 households, which lacked sender identification. Respondent in this matter did not have an Enforcement history. A $2,500 penalty was approved by the Commission on April 11, 2011.

In this matter, Respondents failed to provide proper disclosure statements as a result of failing to properly file as a candidate controlled committee and concealing the connection between the candidate-controlled committee and the committee which was supposed to be independent of it. Taking into consideration the factors above, imposition of an administrative penalty of three thousand dollars ($3,000) is recommended for each of the four counts.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Fourteen Thousand Five Hundred Dollars ($14,500) is recommended.