

**STATE OF COLORADO
IN THE OFFICE OF THE SECRETARY OF STATE**

ELECTIONS DIVISION OF THE SECRETARY OF STATE,

Complainant,

vs.

ANDY4DCSD, et al

Respondents.

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the Elections Division of the Colorado Secretary of State (“Division”), and ANDY4DCSD, JASON4DCSD, MARIA4DCSD, Andy Jones, Jason Page and Maria Sumnicht (collectively “Respondents” when the context so indicates).

Recitals

A. Respondents Andy Jones, Jason Page and Maria Sumnicht were candidates who ran for school board director in Douglas County School District Re-1 in the November 2023 election. Respondents ANDY4DCSD, JASON4DCSD, MARIA4DCSD were their candidate committees, respectively. Respondents ran on a common platform and shared some of their campaign costs.

B. On October 20, 2023, the Division received a Complaint filed by Benjamin Boaz against Respondents alleging that Respondents JASON4DCSD and MARIA4DCSD had failed to reimburse Respondent ANDY4DCSD for certain shared campaign expenses incurred with two vendors (i360 and Bonfire) in violation of Rule 10.11.

C. In its Initial Review of the Complaint, the Division determined that the alleged violations may be curable and so notified the Respondents on November 1, 2023. The statutorily imposed deadline of ten business days within which the cure had to be accomplished was November 16, 2023. On November 2, 2023, the registered agent for the Respondent committees delivered to the Division a Notice of Intent to Cure.¹ In the Notice, the registered agent advised that resolution of a billing error by i360 had delayed payment of the reimbursement to Respondent ANDY4DCSD, that the billing error now had been corrected, and that “Maria Sumnicht and Jason Page will be reimbursing Andy Jones now that we have the correct dollar amount on our invoice.”²

¹ Each Respondent committee appointed the same registered agent and designated filing agent.

² The Division determined that the allegation that the Bonfire expense had not been reimbursed did not have merit.

D. Due to an oversight, Respondents JASON4DCSD and MARIA4DCSD did not cure and thereby reimburse Respondent ANDY4DCSD for their proportionate shares of the i360 expense until well beyond the end of cure period. Consequently, the Division has determined that the eventual cure well beyond the November 16, 2023 deadline resulted in Respondents not being in substantial compliance with their legal obligations under Colorado campaign and political finance laws.

E. In its review and investigation, the Division also determined that Respondent ANDY4DCSD did not report in TRACER as returned expenditures reimbursements in the cumulative amount of \$412.62 received from the other Respondent committees for shared campaign costs incurred with Bonfire and FedX Office. These returns should have been reported in Respondent's October 30, 2023 Report, but were not reported until well beyond the end of the cure period.

G. The Division has advised Respondents that the Division must file an administrative complaint with the Administrative Hearing Officer (the "Administrative Proceedings") before this proposed Settlement Agreement can be presented to the Deputy Secretary of State for approval. The Administrative Proceedings, including the administrative complaint, shall be dismissed only if the Settlement Agreement is approved by the Deputy Secretary of State.

H. The Division and Respondent desire to resolve and settle this matter without expending the time and expense of continued litigation.

THEREFORE, IN CONSIDERATION OF the mutual covenants contained in this Settlement Agreement, the parties agree and covenant as follows:

Section 1. Recitals Are Part of the Agreement. The foregoing recitals are true and correct, are binding on the parties hereto, and are part of the terms of this Settlement Agreement.

Section 2. Deputy Secretary of State Approval. This Settlement Agreement and all promises contained herein are contingent upon approval of the Settlement Agreement by the Deputy Secretary of State. In the event the Deputy Secretary of State does not approve this Settlement Agreement, nothing in this Settlement Agreement shall be binding upon, or enforceable against, the Division or Respondents.

Section 3. Payment of Stipulated Penalties. Within 14 calendar days of the receipt of an invoice from the Division, **Respondent ANDY4DCSD shall pay a stipulated penalty in the amount of \$160.75 to the Division, Respondent JASON4DCSD shall pay a stipulated penalty in the amount of \$100.45 to the Division, and Respondent MARIA4DCSD shall pay a stipulated penalty in the amount of \$100.45 to the Division.** If a Respondent fails to comply with this term or any other terms of the Settlement Agreement, the Division shall be entitled to pursue all remedies against that Respondent allowed under state or federal law.

Section 4. Determination of Stipulated Penalty for ANDY4DCSD. The stipulated penalty of \$160.75 was determined as follows.

(a) First, regarding the failure to comply with Rule 10.11 regarding the i360 shared cost, the penalty attributable to that violation derives from Rule 23.3.3(f), as no specific penalty provision exists in Rule 23.3.3 for a violation of Rule 10.11. Failing to share a campaign cost that was intended to be shared is tantamount to the candidates who did not pay their proportionate share receiving a prohibited contribution from the candidate who paid the entire cost to the vendor. Rule 23.3.3(c)(1) pertaining to prohibited contributions requires a fine of at least \$100 plus 10% of the prohibited activity. The i360 costs intended to be shared totaled \$3,026.69, so each Respondent's one-third share equaled \$1,008.90. Consequently, an equitable base penalty under Rule 23.3.3(f) for each Respondent for failing to share a cost that they intended to share is \$200.89 (\$100 plus 10% of \$1,008.90).

(b) Second, regarding this Respondent's failure to report three returned expenditures unrelated to the i360 costs discussed above, Rule 23.3.3(b)(1) pertains to violations for failing to file complete and accurate disclosures. The Rule imposes a fine of \$100 per report plus 5% of the activity not accurately or completely reported. The three returned expenditures should have been reported in Respondent's October 30, 2023 Report in TRACER, and total cumulatively \$412.64. Five percent of \$412.64 equals \$20.62. Consequently, the base penalty under Rule 23.3.3(b)(1) for Respondent ANDY4DCSD's failure to report these returned expenditures is \$120.62 (\$100 plus 5% of \$412.64).

The base penalties under (a) and (b) added together equal \$321.51. However, there is a mitigating factor. Although under the law a principal is bound by its agent's acts and omissions committed when the agent is acting within its authority, Respondent ANDY4DCSD reasonably relied on its registered agent and designated filing agent, respectively, to complete the cure within the statutorily imposed deadline. This reasonable reliance should be taken into account to achieve a just and equitable outcome as contemplated by Rule 23.3.5(f). Accordingly, the Division finds that a 50% reduction of the cumulative penalty is appropriate, resulting in the stipulated penalty of \$160.75.

Section 5. Determination of Stipulated Penalties for JASON4DCSD and MARIA4DCSD. The stipulated penalty of \$100.45 each for these Respondents was determined as follows. First, the same method used in Section 4(a) was followed to arrive at an equitable base penalty of \$200.89 under Rule 23.3.3(f) for each Respondent. Then, the same mitigation factor of reasonable reliance described in Section 4 was applied, resulting in a 50% reduction of the base penalty to a stipulated penalty for each of these Respondents of \$100.45.

Section 6. Dismissal of Administrative Proceedings. The Division will move to dismiss the Administrative Proceedings with prejudice after the Secretary of State approves this Settlement Agreement.

Section 7. Admissions. Respondents admit that they violated the cost-sharing provisions in Rule 10.11 as detailed above.

Section 8. Release and Covenant Not to Sue. Each Respondent, for themselves and for their respective agents, assigns, representatives, attorneys and subrogees, release and forever discharge the Division, the Secretary of State, the State of Colorado, and all of their former, current, and successor officers, employees, agents, and attorneys, from any and all claims, actions, causes of action, debts, demands, liabilities, losses, injuries, and/or damages arising from or relating to the Complaint filed on October 20, 2023, the Division's initial review and investigation of the Complaint, and the Administrative Proceedings. Each Respondent further expressly agrees and covenants that they, individually or jointly, will not sue or assert any claim or cause of action at law or in equity in or before a court of law, administrative agency or any other forum, against the Division, the Secretary of State, the State of Colorado, or any of their former, current, and successor officers, employees, agents, and attorneys, for any claim arising from or relating to the Complaint filed on October 20, 2023, the Division's initial review and investigation of the Complaint or the Administrative Proceedings.

Section 9. Waiver of Appeal Rights. Each Respondent expressly waives any right for further administrative or judicial review of any matter related to the Administrative Proceedings or this Settlement Agreement, including but not limited to any rights provided by §§ 24-4-105, C.R.S., and 24-4-106, C.R.S.

Section 10. Public Records. Each Respondent understands and agrees that this Settlement Agreement will be made available to the public on the Secretary of State's TRACER Campaign Finance reporting system and may also be made available to members of the public who serve a request under the Colorado Open Records Act, Part 2, § 24-72-200.1, *et seq.*, C.R.S.

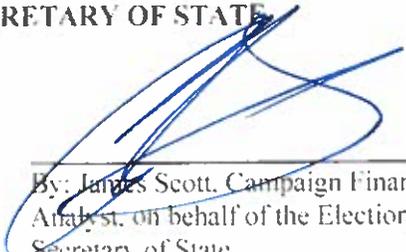
Section 11. Full and Complete Agreement. This Settlement Agreement constitutes the full and complete agreement of the parties and shall supersede any and all prior agreements and understandings, whether written or oral.

Section 12. Final Agency Action. Upon its approval by the Deputy Secretary of State, this Settlement Agreement shall become final agency action under the State Administrative Procedure Act, §§ 24-4-101 *et seq.*

Section 13. Warranties. Each Respondent and the Division expressly warrant that they have carefully and completely read the terms of this Settlement Agreement. Each Respondent and the Division expressly warrant that they have had an adequate opportunity to consult with legal counsel before executing this Settlement Agreement, that they fully understand the terms of this Settlement Agreement, and that they enter into this Settlement Agreement knowingly and voluntarily, and without coercion, duress or undue influence. Each Respondent and the Division warrant that in signing this Settlement Agreement, neither has relied upon any promise, warranty, or representation made by anyone, including but not limited to any Respondent or the Division, except as to those promises, warranties, or representations that are expressly stated in this Settlement Agreement.

ELECTIONS DIVISION OF THE SECRETARY OF STATE

4/10/2024
DATE


By: James Scott, Campaign Finance Enforcement Analyst, on behalf of the Elections Division of the Secretary of State

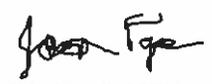
ANDY JONES and ANDY4DCSD

4/4/2024
DATE

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Andy Jones, individually and on behalf of ANDY4DCSD

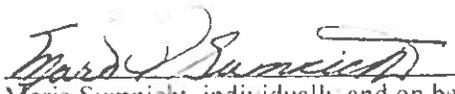
JASON PAGE and JASON4DCSD

04/03/2024
DATE


Jason Page, individually and on behalf of JASON4DCSD

MARIA SUMNICHT and MARIA4DCSD

April 3, 2024
DATE


Maria Sumnicht, individually and on behalf of MARIA4DCSD

ADOPTED AND APPROVED BY:

April 24, 2024
DATE


By: Christopher P. Beall
Deputy Secretary of State