

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made and entered into by the Board of Ethics of the City of Philadelphia, J. Shane Creamer, Jr., the Executive Director of the Board, Trustwave PAC, Derrick Susswell, the Treasurer of Trustwave PAC, Kristen Stoner, the Chair of Trustwave PAC, and Ismail Shahid, the former Chair of Trustwave PAC, jointly referred to as “the Parties.”

### **RECITALS**

- A. The Board of Ethics of the City of Philadelphia is an independent, five-member City board established in 2006 through voter approval of an amendment to the Philadelphia Home Rule Charter. Pursuant to Section 4-1100 of the Home Rule Charter, the Board is charged with administering and enforcing the City’s Campaign Finance Law.
- B. Trustwave PAC is a political committee based in Philadelphia. On April 16, 2017, Kristen Stoner filed a Political Committee Registration Statement for Trustwave PAC with the Department of State. The Statement listed Derrick Susswell as Treasurer and Ismail Shahid as Chair of the PAC. On May 6, 2017, Ms. Stoner filed an amended Political Committee Registration Statement for Trustwave PAC that made her the Chair in place of Mr. Shahid.
- C. Under the City’s Campaign Finance Law, a political committee cannot make contributions of more than \$23,800<sup>1</sup> in 2017 to a candidate for District Attorney. An excess contribution by a political committee violates Philadelphia Code § 20-1002(2) and is subject to a civil monetary penalty of three times the amount by which the contribution exceeded the limit, or \$2,000, whichever is less.
- D. As provided by Board Regulation No. 1, Paragraph 1.1(q), if a political committee coordinates its expenditures with a candidate’s campaign and those expenditures are made to advocate or influence the election of the candidate, the expenditures are an in-kind contribution to the candidate. In-kind contributions are subject to the contributions limits of the City’s Campaign Finance Law.
- E. Regulation No. 1, Paragraph 1.38 provides detailed guidance on what conduct gives rise to coordination between a political committee and a candidate’s campaign, including expenditures made in cooperation, consultation, or concert with the candidate’s campaign or with the knowledge and assent of the candidate’s campaign. A political committee’s expenditures are also coordinated with a candidate’s campaign if the candidate solicits funds for or directs funds to the political committee within the 12 months before the election that the expenditures seek to influence.

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<sup>1</sup> This figure is double the usual contribution limit because one of the candidates for District Attorney in 2017 contributed more than \$250,000 of his own money to his campaign.

- F. Board Regulation No. 1 defines a candidate's campaign as a "candidate, the candidate's candidate political committee (or litigation fund committee), or an agent of any of the foregoing."
- G. Pursuant to the City's Campaign Finance Law, if a political committee makes expenditures or incurs debt to influence a covered City election, it is required to electronically file with the Board a campaign finance report that discloses the committee's financial transactions during the relevant reporting period. Pursuant to Philadelphia Code § 20-1006(4) and Regulation No. 1, Paragraph 1.24, the making of a material misstatement or omission in a report filed with the Board is a violation of the City's Campaign Finance Law.
- H. Board enforcement staff learned in May of 2017 of potential violations of the City's Campaign Finance Law involving Trustwave PAC. Accordingly, the Executive Director opened an investigation, during which enforcement staff obtained documents, including bank records, emails, and text messages, and interviewed witnesses.
- I. For a period of time during the 2017 Primary Election, Ismail Shahid acted as an agent and unpaid senior adviser of the campaign of Tariq El Shabazz for District Attorney.
- J. In the months leading up to the 2017 Primary Elections, Mr. Shahid solicited contributions for both the El Shabazz campaign and Trustwave PAC, in some cases from common donors. After he stepped down as Chair in early May of 2017, Mr. Shahid remained actively involved in Trustwave PAC's activities, including involvement in implementing and directing its election day get-out-the-vote activities and ordering a Trustwave PAC sample ballot.
- K. Trustwave PAC's activities during the 2017 Primary Election almost exclusively involved printing and distributing a sample ballot promoting candidates for District Attorney, Controller, and judicial office. A copy of the ballot is attached hereto as Exhibit A.
- L. Among its expenditures, Trustwave PAC paid the consulting company Countywide Strategies for consulting services, including management of Trustwave's ballot distribution in a part of Philadelphia. One of the principals/partners of Countywide Strategies is Steven Vaughn, who also held a leadership position in the El Shabazz campaign.
- M. The candidate for Controller and most of the judicial candidates paid to be on Trustwave PAC's ballot. The El Shabazz campaign contributed \$5,000 to Trustwave PAC, approximately 5% of the total amount contributed by the candidates on the ballot. Given Mr. El Shabazz's prominence on the ballot, the amount the other candidates contributed, and the amount Trustwave PAC spent to print and distribute it, the amount the El Shabazz campaign contributed was not the usual and normal charge.
- N. The total amount Trustwave PAC charged candidates to be on its ballot was approximately \$80,000. Trustwave PAC used this money, as agreed with those candidates, to promote their election. Trustwave PAC raised an additional \$81,500 from non-candidate PACs, which it also used to pay for and distribute its sample ballot.

- O. As a result of Mr. Shahid's and Mr. Vaughn's activities, Trustwave PAC's expenditures were coordinated with the El Shabazz campaign, as provided by Regulation No. 1. Accordingly, the expenditures Trustwave PAC made to advocate for or influence Mr. El Shabazz's election in the 2017 Primary were in-kind contributions to the El Shabazz campaign. These in-kind contributions exceeded the limits for contributions from a political committee to a candidate for District Attorney in 2017.
- P. Trustwave PAC filed a 2017 Cycle 3 campaign finance report with the Board in which it disclosed all of its expenditures related to the 2017 Primary Election. But, Trustwave's Cycle 3 report did not disclose that some of the expenditures were in-kind contributions to the El Shabazz campaign.
- Q. Trustwave PAC, Mr. Susswell, Ms. Stoner, and Mr. Shahid fully and promptly cooperated with the Board's investigation.
- R. The Parties desire to enter into this Agreement in order to resolve the issues described herein.

## **AGREEMENT**

The Parties agree that:

1. By making in-kind contributions to Tariq El Shabazz's campaign in excess of the City's contribution limits, Trustwave PAC violated Philadelphia Code § 20-1002(2), for which it is liable for a civil monetary penalty of \$2,000, which shall be paid on the following schedule:
  - 1.1 \$1,000 within 30 days of the effective date of the Agreement; and
  - 1.2 \$1,000 within 60 days of the effective date of the Agreement.Payment shall be by check or money order made payable to the City of Philadelphia and delivered to the offices of the Board of Ethics.
2. Because the 2017 Cycle 3 campaign finance report they filed with the Board contained material misstatements, Trustwave PAC and Mr. Susswell violated Philadelphia Code § 20-1006(4), for which they are jointly and severally liable for a civil monetary penalty of \$2,000, which shall be paid on the following schedule:
  - 2.1 \$1,000 within 90 days of the effective date of the Agreement; and
  - 2.2 \$1,000 within 120 days of the effective date of the Agreement.Payment shall be by check or money order made payable to the City of Philadelphia and delivered to the offices of the Board of Ethics.
3. Within thirty days of the effective date of the Agreement, Trustwave PAC will file an amended Cycle 3 campaign finance report with the Board correcting the reporting failures described in this Agreement.
4. Trustwave PAC, Mr. Susswell, Ms. Stoner, and Mr. Shahid release and hold harmless the Board and its staff from any potential claims, liabilities, and causes of action arising from the Board's investigation, enforcement, and settlement of the matters described in the Agreement.

5. Mr. Susswell, Ms. Stoner, and Mr. Shahid will cooperate, as is reasonably necessary, with further Board investigation and/or enforcement related to the conduct described in this Agreement. Mr. Susswell, Ms. Stoner, and Mr. Shahid will not destroy any documents or records related to Trustwave PAC without first obtaining the consent of the Board's Executive Director, through August 31, 2018, unless the Executive Director requests an extension due to a pending investigation or enforcement action.
6. Mr. Susswell shall terminate Trustwave PAC by January 31, 2018. If Mr. Susswell fails to comply with this requirement, he shall pay a penalty of \$500 per month for any delay, up to a maximum of \$2,000, which shall be due within 14 days of receiving notice from the Board's Executive Director of the failure to terminate the PAC. The Executive Director shall grant a reasonable extension of the termination deadline if Mr. Susswell requires additional time to wind down the PAC's affairs.
7. From the effective date of agreement through December 31, 2019, Mr. Shahid and Mr. Susswell shall notify the Board's Executive Director within 14 days if either of them becomes a treasurer or chair of a political committee registered with the City Commissioners or Department of State. If either Mr. Shahid or Mr. Susswell fails to comply with this requirement, he shall pay a penalty of \$500, which shall be due within 14 days of receiving notice from the Board's Executive Director of the failure.
8. In consideration of the above and in exchange for the compliance of Trustwave PAC, Mr. Susswell, Ms. Stoner, and Mr. Shahid with all of the terms of the Agreement, the Board waives any further penalties or fines against them for the conduct described in the Agreement and any related conduct.
9. The Parties will not make any public statements that are inconsistent with the terms of the Agreement.
10. If the City is forced to seek judicial enforcement of Paragraphs 1, 2, 3, 6 or 7, or an order of the Court, and prevails, Trustwave PAC, Mr. Susswell, Ms. Stoner, and Mr. Shahid shall be liable for attorneys' fees and costs reasonably expended in enforcing compliance with the Agreement. Fees for time spent by City attorneys shall be calculated based upon standard and customary billing rates in Philadelphia for attorneys with similar experience.
11. The Agreement contains the entire agreement between the Parties.
12. The Executive Director will submit a signed copy of the Agreement to the Board for approval. The Agreement shall become effective upon approval by the Board. The effective date of the Agreement shall be the date the Board approves the Agreement.

Dated: 10/17/17

By the Executive Director of the Board of Ethics:



J. Shane Creamer, Jr.  
Executive Director

By Trustwave PAC:

Dated: 10/16/17

  
Derrick Susswell, Treasurer

By Derrick Susswell:

Dated: 10/16/17

  
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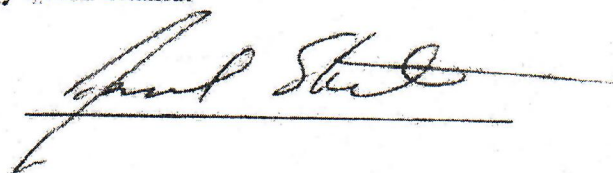
By Kristin Stoner:

Dated: 10/16/17


  
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By Ismail Shahid:

Dated: 10-16-17

  
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Approved by the Board of Ethics on 10/18/2017

  
Michael H. Reed  
Chair

## **EXHIBIT A**



# DEMOCRATIC CANDIDATES BALLOT

## Primary Election - Tuesday, May 16, 2017

Primary Election - Tuesday, May 10, 2011									
OFFICES	DEMOCRATIC		DEMOCRATIC		DEMOCRATIC		DEMOCRATIC		
Justice of the Supreme Court (Vote for 1)									
Judge of the Superior Court									
Judge of the Commonwealth Court									
Judge of the Court of Common Pleas (Vote for no more than 9)	<small>VIKki</small> <b>KRISTIANSSON</b>	<b>14</b>	<small>LEON</small> <b>GOODMAN</b>	<b>26</b>	<small>DAVID</small> <b>CONROY</b>	<b>36</b>			
	<small>JOHN</small> <b>MACORETTA</b>	<b>16</b>	<small>DEBORAH</small> <b>CANTY</b>	<b>27</b>	<small>DANYL S</small> <b>PATTERSON</b>	<b>38</b>			
			<small>LEONARD</small> <b>DEUTCHMAN</b>	<b>30</b>					
			<small>ZAC</small> <b>SHAFFER</b>	<b>31</b>					
Judge of the Municipal Court (Vote for no more than 3)	<small>MARK B</small> <b>COHEN</b>	<b>23</b>	<b>SHAFER</b>						
	<small>MATT</small> <b>WOLF</b>	<b>44</b>							
	<small>MARISSA</small> <b>BRUMBACH</b>	<b>45</b>							
District Attorney (Vote for 1)	<b>TARIQ KARIMI</b> <b>EL SHAABAZZ</b>								
Controller (Vote for 1)	<small>REBECCA</small> <b>RHYNHART</b>	<b>61</b>							

Paid for by TrustWave PAC



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