



STATE OF WASHINGTON  
**PUBLIC DISCLOSURE COMMISSION**

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BEFORE THE PUBLIC DISCLOSURE COMMISSION  
OF THE STATE OF WASHINGTON

In RE COMPLIANCE WITH  
RCW 42.17A

JH Kelly, LLC

Respondent.

PDC Case 54324

Report of Investigation

**I. BACKGROUND**

**First Complaint**

- 1.1 United Association of Plumbers and Pipefitters Local 598 (UA Local 598) operates Plumbers & Steamfitters Local 598 PAC (Local 598 PAC), a political committee funded by voluntary payroll deductions of employees who are members of the union. Since 2014, over \$1.6 million has been withheld from the wages of employees of several employers, and contributed to Local 598 PAC.
- 1.2 On November 19, 2018, Maxford Nelsen, Director of Labor Policy, Freedom Foundation, filed a complaint with the Public Disclosure Commission (PDC) alleging 37 named respondents may have violated RCW 42.17A.495, WAC 390-17-100, and WAC 390-17-110 by: (1) failing to obtain a proper written request from employees before withholding wages or salaries for contributions to Plumbers & Steamfitters Local 598 PAC; and (2) failing to provide an annual notification to employees who have requested payroll deductions for political contributions of their right to withdraw their request at any time, and of the prohibition against discrimination for not contributing.
- 1.3 Two of the 37 respondents named in the complaint were United Association of Plumbers and Pipefitters Local 598, PDC Case 43672, and Plumbers & Steamfitters Local 598 PAC, PDC Case 43673. However, the statute and rules primarily apply to employers/contractors who withhold wages or salaries as payroll deductions for political contributions. The statute and rules apply to the union by prohibiting the union from discriminating against a member who does not make political contributions.
- 1.4 The remaining 35 respondents were employers/contractors whose employees made political contributions to the union's PAC through payroll deductions. The complaint alleged that two versions of the work dispatch forms in use at the time did not comply with the withholding authorization requirements of RCW 42.17A.495 and WAC 390-17-100.

- 1.5 The withholding authorization accepted by the employers/contractors was developed by the union, even though the employers/contractors have been, and continue to be, responsible when there are deficiencies in the authorization, and when the annual notification is deficient or not sent as required by statute and rule, informing the employee of their right to revoke their authorization at any time, and of the employee's protection against discrimination by both the union and the employer/contractor for not contributing to the union's PAC.
- 1.6 One of the 35 employers/contractors was JH Kelly, LLC, (JH Kelly) PDC Case 43692.
- 1.7 Staff's review of the November 19, 2018 complaint found the authorization form being accepted by the 35 employers/contractors did not conform to the requirements in RCW 42.17A.495 and WAC 390-17-100. Staff also found many of the employers/contractors had not been sending out the required annual notification to employees who have funds withheld for PAC contributions, as required by WAC 390-17-110.
- 1.8 In a letter sent February 14, 2019, PDC staff dismissed the complaint against the 35 employers/contractors even though staff found "the current authorization form being accepted by the 35 employers/contractors does not conform to the requirements in RCW 42.17A.495 and WAC 390-17-100." The dismissal letter included a formal written warning, and made it clear to the 35 employers/contractors, including JH Kelly, that in the future, they must: (1) receive proper "Political Contribution Withholding Authorization" forms before withholding wages or salaries for political contributions; (2) send out, or authorize the union to send out on its behalf, a proper annual notification to employees making PAC contributions through payroll deductions; and (3) maintain all required documents pertaining to political contribution withholding authorization forms, open for public inspection, for a period of three years after the last disbursement of wages or salaries, and maintain a copy of the annual notification and a listing of employees notified for a period of no less than five years. The February 14, 2019 letter made it clear that any revised authorization forms intended to correct the current deficiencies must have the following characteristics:
  - o The "Political Contribution Withholding Authorization" as it is described in WAC 390-17-100 should be a stand-alone form with its own signature. If the authorization is to be incorporated with additional information, it needs to have a separate section that clearly identifies it as a "Political Contribution Withholding Authorization." The authorization must be an "opt-in" system where the employee affirmatively requests to have wages or salaries withheld for political contributions. This means the authorization may not require the employee to "opt-out" in order to avoid making a political contribution.
  - o The authorization must either follow the suggested format provided in WAC 390-17-100, or include all of the required elements in WAC 390-17-100(2)(a) through (h), including a statement that the authorization may be revoked at any time, and a statement informing the employee of the prohibition against employer and labor organization discrimination,

including each element described in RCW 42.17A.495.

- 1.9 Staff informed the respondents, if the authorization form is different from the sample provided in WAC 390-17-100, it must include the language in WAC 390-17-100(2)(f) or an acceptable alternative statement. Staff stated, the language being suggested on behalf of the respondents of, *"I understand I have a right to refuse to so contribute without any reprisal"* is not an adequate substitute statement. Staff informed the respondents, the authorization must state, the prohibition against discrimination for failing to contribute to the union's PAC applies to both the employers/contractors and the union, and the authorization must describe or reference the three discrimination prohibitions found in RCW 42.17A.495(2) and WAC 390-17-100(2)(f).
- 1.10 Staff informed the respondents, WAC 390-17-110 states, "the written notification shall identify where the employee can submit the revocation, which shall be the name and address of the employer's contact, or the name and address of the person or entity responsible for the disbursement of funds in payment of wages or salaries." Staff also reminded the respondents of the "Written notification" distribution requirements in WAC 390-17-110(3) and the requirement in subsection (4) for the employer to maintain a copy of the annual notification and a listing of employees notified for a period of no less than five years.
- 1.11 Staff reminded the employers/contractors, including JH Kelly, they need to understand and comply with their responsibility to: (1) receive a proper authorization before withholding wages or salaries for a PAC contribution; (2) provide a proper annual notification to employees making political contributions through payroll deductions; and (3) maintain the required records related to the written authorizations and annual notifications.
- 1.12 The respondents stated they would ensure staff's suggested changes were incorporated into the written authorization form, and a proper annual notification would be sent to employees making PAC contributions through payroll deductions. United Association of Plumbers and Pipefitters Local 598 stated they would make staff's suggested changes to the written authorization form, would send the annual notification on behalf of the employers/contractors, and would provide a copy of the annual notifications sent, to the respective employers.
- 1.13 Based on its findings, staff determined, for the complaint filed in the instance described above, no evidence supported a finding of an actual violation warranting further investigation concerning the alleged failure of United Association of Plumbers and Pipefitters Local 598, PDC Case 43672, and Plumbers & Steamfitters Local 598 PAC, PDC Case 43673, to comply with RCW 42.17A.495, WAC 390-17-100, and WAC 390-17-110.
- 1.14 Based on its findings, staff determined, for the complaint filed November 19, 2018, the failure of the 35 employers/contractors to: (1) receive a proper authorization before withholding wages or salaries for a PAC contribution; and (2) provide a proper annual notification to employees making political contributions

through payroll deductions did not amount to an actual violation warranting further investigation.

- 1.15 On February 14, 2019, pursuant to WAC 390-37-060(1)(b), the 35 employers/contractors, including JH Kelly, received a formal written warning concerning: (1) their failure to obtain a proper written request from employees before withholding wages or salaries for contributions to Plumbers & Steamfitters Local 598 PAC; and (2) their failure to provide an annual notification to employees who have requested payroll deductions for political contributions, of their right to withdraw their request at any time, and of the prohibition against discrimination by the employer and the union for not contributing. The formal written warning included staff's expectation that the 35 employers/contractors would fully comply with RCW 42.17A.495, WAC 390-17-100, and WAC 390-17-110 in the future. Staff stated the Commission would consider the formal written warning in deciding on further Commission action if there were future violations of PDC laws or rules. Based on this information, the PDC found no further action was warranted and dismissed the matter in accordance with RCW 42.17A.755(1).

## **Second Complaint**

- 1.16 According to Maxford Nelsen, based on C-3 reports filed with the PDC, in January 2019, Plumbers & Steamfitters Local 598 PAC reported receiving \$39,916.45 from about 600 individuals. In February, the PAC received \$39,571.99 in contributions from about 650 individuals. In March, the first full month after the PDC issued its February 14, 2019 warning letter, the PAC reported receiving \$49,593.69 in contributions from about 730 individuals. In April 2019, UA 598's PAC disclosed receiving \$43,098.41 in contributions from about 780 individuals.
- 1.17 According to Mr. Nelsen, based on this information, the Freedom Foundation asked UA 598 to provide it an opportunity to inspect the "deduction authorization/'dispatch form' for every person listed on the form C3 filed by UA 598's political committee on April 5, 2019 with the Public Disclosure Commission," in accordance with RCW 42.17A.495(4). He said the Foundation was permitted to inspect records at the union's headquarters in Pasco on May 8, 2019.
- 1.18 Mr. Nelsen said the Freedom Foundation's inspection revealed the union possessed only 13 legally valid dispatch forms and continued to receive contributions to its PAC from hundreds of employees based on invalid authorizations.
- 1.19 On May 21, 2019, based on this information, Mr. Nelsen filed a second complaint, alleging 19 employers, including JH Kelly, had continued to violate RCW 42.17A.495 and WAC 390-17-100, after receiving the February 14, 2019 dismissal and warning letter from the PDC by deducting contributions to UA 598 PAC from employees' wages, without proper authorization.

- 1.20 On June 3, 2019, the PDC dismissed these cases, including the complaint against JH Kelly, Case 51814, pursuant to RCW 42.17A.755(1). In a case closure letter to JH Kelly, the PDC noted:
- “The PDC’s action was taken because Freedom Foundation did not submit evidence of violations based on direct contact with individual employers/contractors.”
  - “The responsibility to use proper authorization forms and maintain the required records for public inspection is not a responsibility of the union or its political committee, and these responsibilities cannot be delegated to the union or political committee on behalf of the employers/contractors... [E]mployers/contractors remain responsible for direct compliance with the law and rules even if the union or its political committee provides records to a requester.”
  - “PDC staff recommends you consult with your legal counsel to ensure you are fully compliant with RCW 42.17A.495, WAC 390-17-100, and WAC 390-17-110. The PDC’s action does not preclude Freedom Foundation from contacting individual employers/contractors and refiling a complaint based on evidence obtained from individual employers/contractors.”

## II. ALLEGATIONS IN COMPLAINT

### **Current Compliant**

- 2.1 On July 8, 2019, Maxford Nelsen, Director of Labor Policy, Freedom Foundation, filed a complaint with the Public Disclosure Commission, alleging JH Kelly, LLC is violating RCW 42.17A.495 and WAC 390-17-100 by deducting employees’ wages for political contributions to Plumbers & Steamfitters Local 598 PAC, the political action committee operated by United Association of Plumbers and Pipefitters Local 598, without first receiving proper authorization. **(Exhibit 1)**
- 2.2 The complaint states, despite receiving a warning letter from the PDC on February 14, 2019, informing the firm none of the existing employee authorizations were compliant, and receiving a *second* letter from the PDC on June 3, 2019 encouraging it to “consult with your legal counsel to ensure you are fully compliant with RCW 42.17A.495,” JH Kelly has continued to deduct political contributions to UA 598’s PAC from hundreds of its employees without first obtaining authorizations that comply with RCW 42.17A.495(3) and WAC 390-17-100.
- 2.3 The complaint alleges, from March-May 2019, JH Kelly withheld at least \$40,288.08 from hundreds of its employees’ wages for UA 598’s PAC, but was unable to produce any PAC deduction authorization forms for some of its employees, and the forms it produced for the remaining employees either were not signed or have already been recognized by the PDC as out of compliance with RCW 42.17A.495(3) and/or WAC 390-17-100.

### **Additional Allegation Based on Complaint Supplement (8/9/19)**

- 2.4 In a complaint supplement dated August 9, 2019, Mr. Nelsen stated JH Kelly admits it received the Foundation's June 6, 2019 request to inspect employees' authorization forms and, although JH Kelly provided some documents by the requested date of June 28, 2019, it did not produce many additional documents until a month later on July 30, 2019 when JH Kelly's Vice President and General Counsel, Craig Yabui, emailed Mr. Nelsen a link to two PDF documents consisting of additional UA 598 dispatch forms for JH Kelly employees. Mr. Nelsen alleged JH Kelly's failure to produce all of the PAC deduction authorization forms originally requested by the Freedom Foundation until July 30, 2019 was a violation of RCW 42.17A.495(4). **(Exhibit 3)**
- 2.5 In the complaint supplement, Mr. Nelsen also alleged JH Kelly's otherwise compliant Version 3 Authorization form violates RCW 42.17A.495 and WAC 390-17-100 because it does not allow the employee to designate the specific dollar amount for political contributions through payroll deductions, but instead requires contributions to be expressed as a percentage of the employee's salary.

## II. FINDINGS

*Alleged failure to obtain written authorizations from employees, before withholding wages or salaries, during the period March, April, and May 2019, that fully comply with RCW 42.17A.495 and WAC 390-17-100, for contributions to Plumbers & Steamfitters Local 598 PAC, the political committee of United Association of Plumbers and Pipefitters Local 598.*

### Findings Based on Freedom Foundation Compliant

- 3.1 On June 6, 2019, the Freedom Foundation sent a letter to JH Kelly requesting an opportunity to inspect the authorization forms for JH Kelly employees listed as contributors to Local 598 PAC in March, April and/or May 2019 on the PAC's C-3 forms. The letter asked for an opportunity to inspect the forms on or before June 28, 2019. **(Exhibit 1)**
- 3.2 On June 27, 2019, Craig Yabui, JH Kelly's vice president and general counsel, emailed the Freedom Foundation a link to download two PDF files totaling 155 pages of dispatch forms. The Freedom Foundation's review of the PAC's C-3 forms and the dispatch forms provided by JH Kelly found:
- From March-May 2019, JH Kelly withheld at least \$40,288.08 from the wages of its employees as contributions to Local 598 PAC.
  - Local 598 PAC reported receiving 584 contributions from JH Kelly employees during this period, with employees typically making 1-4 contributions during this period.
  - Of the 584 contributors, 410 (70%) came from an employee for whom JH Kelly produced a dispatch/authorization form. The remaining 174 contributions (30%) came from employees for whom JH Kelly was unable to produce a dispatch/authorization form.

- Of the 410 contributions from employees for whom JH Kelly produced a dispatch/authorization form, 256 (62%) came from employees whose dispatch forms were not signed.
- None of the 256 unsigned dispatch/authorization forms and none of the 154 signed dispatch/authorization forms complied with RCW 42.17A.495 and WAC 390-17-100. All were version one or version two forms previously found by PDC staff to be non-compliant.

Findings Based on Response Provided by Vanessa Soriano Power, Stoel Rives LLP, on Behalf of JH Kelly, LLC

3.3 Craig Yabui serves as JH Kelly's Vice President and General Counsel. In addition, Vanessa Soriano Power, with the law firm Stoel Rives LLP, serves as legal counsel for JH Kelly, LLC.

3.4 On July 24, 2019, Vanessa Soriano Power responded on behalf of JH Kelly, LLC. Ms. Power noted JH Kelly did not have actual notice of the Freedom Foundation's first complaint (Case 43692) including a copy of the PDC's closure letter to the complainant sent February 15, 2019 or the warning letter sent to JH Kelly on February 14, 2019, until, at the earliest, May 24, 2019, when JH Kelly's Vice President & General Counsel was notified of the Freedom Foundation's second complaint (Case 51814). **(Exhibit 2)**

3.5 Ms. Power said the notices to JH Kelly concerning the first complaint, in November 2018 and February 2019, and the second complaint, in May 2019, were sent solely by email to a general JH Kelly email address ("mail@jhkelly.com") that is not routinely monitored and is not used for legal notices. Ms. Powers said, it was JH Kelly's understanding that this email address was provided to the PDC by the Freedom Foundation. She said JH Kelly did not provide this email address to the PDC for notice purposes, nor would JH Kelly have done so because the email address is not routinely monitored and is not used for legal notices. Ms. Power said after the second complaint was sent on May 24, 2019, it was noticed by a staff member in the general inbox and forwarded to JH Kelly's general counsel, who then reached out to the PDC on May 30, 2019.

3.6 Ms. Soriano also argued the Freedom Foundation's prior complaints against JH Kelly should not be used to compound the evidence in the current case because JH Kelly lacked sufficient notice and opportunity for compliance. Ms. Power stated:

- Consistent with RCW 42.17A.495(4), JH Kelly responded timely to Mr. Nelsen's request to review dispatch/authorization forms.
- JH Kelly's compliance history does not reflect systemic or ongoing problems.
- The impact of noncompliance on the public was minimal.
- There is no evidence any person benefited politically or economically from the noncompliance.



- JH Kelly has taken corrective action and initiated remedial measures, in conjunction with UA 598, when noncompliance was brought to its attention.
- JH Kelly has made a good faith effort to comply with all laws and regulations, and is committed to compliance.

3.7 Ms. Power said, to the extent the PDC conditions resolution on JH Kelly reaching or maintaining compliance, JH Kelly is committed to taking appropriate action, including working with relevant third-parties to do so.

3.8 Ms. Power concluded her response to the complaint by stating JH Kelly has not intentionally violated RCW 42.17A.495 or WAC 390-17-100, and recognizes its role as an employer that has employees from whom funds are being withheld for contributions to Local 598 PAC, and the need for better coordination with Local 598 to ensure compliance with authorization requirements. She said JH Kelly is happy to provide any further information or supporting information as requested by the PDC.

#### **Supplement to Complaint Based on JH Kelly's Response to Complaint (8/9/2019)**

3.9 On August 9, 2019, Mr. Nelsen filed a complaint supplement in reply to JH Kelly's response to the complaint. Mr. Nelsen's complaint supplement suggested JH Kelly has conceded the alleged violations, while minimizing its errors and defending various pathways to leniency from the Public Disclosure Commission. Mr. Nelsen re-stated his position that JH Kelly's actions have too significant an effect on the public to be considered minor. He said the contributions Local 598 PAC receives from the employees of several employers, including JH Kelly, will be used for contributions to candidates whether in the year the complaint was filed or in a future year. **(Exhibit 3)**

3.10 Mr. Nelsen also noted JH Kelly has produced a second batch of authorization forms to the Freedom Foundation, and stated this second disclosure was delayed until after the Foundation filed a formal complaint, which he alleged means JH Kelly failed to comply with the inspection requirements of RCW 42.17A.495(4). Mr. Nelsen said the additional documents do nothing to change the fact that, in his view, all deductions from employees' wages made by JH Kelly for contributions to Local 598 PAC were improper.

3.11 Mr. Nelsen stated, JH Kelly responded to the Foundation's initial June 6, 2019 request to inspect employees' authorization forms on June 28, 2019, but then supplemented their response on July 30, 2019 with well over 100 pages of additional documents. Mr. Nelsen said the additional documents indicate, of the 577 contributions for which JH Kelly produced an authorization form, at most 19 were made pursuant to a signed version of the newest authorization form.

3.12 Mr. Nelsen said, on July 30, 2019, Craig Yabui emailed a link to two PDF documents with the additional information that consisted mostly of additional dispatch/authorization forms for JH Kelly employees. He said a review of all documents produced to the Freedom Foundation by JH Kelly leads to the following conclusions:



- From March-May 2019, JH Kelly withheld at least \$40,288.08 from its employees' wages for Local 598 PAC.
- Local 598 PAC reported receiving 584 contributions from JH Kelly employees.
- Of the 584 contributors, 577 (99%) came from an employee for whom JH Kelly produced a dispatch/authorization form. The remaining 7 contributions (1%) came from employees for whom JH Kelly was unable to produce a dispatch/authorization form.
- Of the 577 contributions from employees for whom JH Kelly produced a dispatch/authorization form:
  - 162 (28%) were made pursuant to version one forms, previously determined by PDC staff to be noncompliant with RCW 42.17A.495 and WAC 390-17-100. Of these, 75 contributions (46%) were made pursuant to version one forms that lacked an employee signature.
  - 390 (68%) were made pursuant to version two forms, also previously determined by PDC staff to be noncompliant with RCW 42.17A.495 and WAC 390-17-100. Of these, 315 contributions (81%) were made pursuant to version two forms that lacked an employee signature.
  - 25 (4%) were made pursuant to version three forms, previously viewed by PDC staff as compliant with RCW 42.17A.495 and WAC 390-17-100. Of these, six contributions (24%) were made pursuant to version three forms that lacked an employee signature.

### **Alleged Failure to Allow Employees to Designate Specific Dollar Amounts to be Contributed**

3.13 Mr. Nelsen alleged even the newest authorization form (version three) violates PDC regulations because it does not designate specific dollar amounts to be contributed, but instead, designates a percentage of the employee's wages for political contributions. He suggested this may seriously mislead employees by minimizing the size of their contributions.

3.14 Mr. Nelsen said, even the most current dispatch/authorization form inappropriately restricts employees' ability to determine how much to contribute to the political committee by fixing the deduction rate at 0.7% of wages. Mr. Nelsen noted the template authorization form in WAC 390-17-100 permits an employee to designate the specific dollar amount to be contributed when the contribution will be allocated between two or more recipients, and said the only proper way to understand WAC 390-17-100 is to apply that same permission to an employee designating a contribution to one recipient, such as Local 598 PAC. Mr. Nelsen alleged deducting political contributions based on a percentage of an employee's wages is not sanctioned by law or rule.

- 3.15 Staff found no evidence to suggest a payroll deduction for a political contribution based on a percentage of an employee's salary is less valid than a payroll deduction for a political contribution based on a request for a specific dollar amount to be deducted.

### **PDC Staff Comments**

- 3.16 On May 24, 2019, JH Kelly became aware of the Freedom Foundation's first complaint and subsequent February 14, 2019 warning letter resolving the first complaint, and of the Foundation's second complaint.
- 3.17 On June 6, 2019, Maxford Nelsen asked JH Kelly for an opportunity to inspect the authorization forms of those JH Kelly employees listed as contributors to Local 598 PAC in March, April and/or May 2019 on the PAC's C-3 forms.
- 3.18 On June 27, 2019, JH Kelly produced two PDF files totaling 155 pages of dispatch/authorization forms that were for 410 of the 584 contributions identified by Mr. Nelsen. As of June 27, 2019, JH Kelly was unable to produce authorization forms for the remaining 174 contributions.
- 3.19 On July 30, 2019, JH Kelly supplemented its initial production by producing well over 100 pages of additional documents that included authorization forms for 577 of the 584 contributions identified by Mr. Nelsen. As of July 30, 2019, JH Kelly was unable to produce authorization forms for the remaining seven contributions.
- 3.20 JH Kelly produced 410 authorization forms 21 days after Mr. Nelsen's initial request was made on June 6, 2019, and an additional 167 authorization forms 54 days after Mr. Nelsen's initial request. In his complaint supplement dated August 9, 2019, Mr. Nelsen suggested the PDC could consider JH Kelly's failure to produce all authorization forms on June 28, 2019 to be a violation of RCW 42.17A.495(4).
- 3.21 The authorization forms provided to the Freedom Foundation on June 27, 2019 are described in paragraph 3.2. The authorization forms provided to the Freedom Foundation on July 30, 2019 are described in paragraph 3.12.

### **Additional Response by JH Kelly (11/9/2020)**

- 3.22 On November 9, 2020, Vanessa Soriano Power, of Stoel Rives, LLP, responded on behalf of JH Kelly. Following are staff's follow-up questions and JH Kelly's responses. **(Exhibit 4)**
- 3.23 *In your response, you stated, "JH Kelly has taken corrective action and initiated remedial measures, in conjunction with UA 598, when noncompliance was brought to its attention." Please describe the corrective action and remedial measures taken since noncompliance was brought to JH Kelly's attention, and the dates the actions were taken.*

- (Answer): May 2019 – Present (Ongoing): Communications with UA 598 regarding revisions to authorization forms and annual notice requirements;

- June -July 2019: Review of authorization forms on file and communications with UA 598 to confirm, on a going forward basis, authorization form approved by PDC will be used for JH Kelly dispatches.
- July 2019: Communications with UA 598 to address and confirm: (a) employees who opted out of contributions (one confirmed); (b) employees who were with JH Kelly less than a year.
- July 2020: Confirmation that UA 598 provided annual notice to members, on behalf of JH Kelly, regarding authorization of contributions.
- July 2020: Processing of opt out notice from one JH Kelly employee and review of employees working January – June 2020 to confirm status of dispatches.

3.24 *On June 27, 2019, Craig Yabui responded to the Freedom Foundation's request by supplying a link to 155 pages of dispatch/authorization forms. For the 584 contributions identified by Mr. Nelsen, JH Kelly produced 410 authorization forms, but was unable to produce authorizations for the remaining 174 contributions. After Mr. Nelsen submitted the Freedom Foundation's complaint on July 8, 2019, Mr. Yabui supplemented his production to Mr. Nelsen on July 30, 2019 by producing over 100 pages of dispatch/authorization forms. With this production, for the 584 contributions identified by Mr. Nelsen, JH Kelly produced 577 authorization forms, and was unable to produce authorizations for the remaining seven contributions. Why did JH Kelly not produce all 577 authorization forms on June 27, 2019 with its initial production to Mr. Nelsen?*

3.25 (Answer) JH Kelly's initial disclosure on June 27, 2019 was intended to be complete, but as of the date of the disclosure on June 27, 2019, JH Kelly was still in the process of reviewing records to determine whether further responsive documents existed. After the disclosure was made on June 27, 2019, JH Kelly did, in good faith, continue to review records and ultimately did identify additional responsive documents. Those documents were then collected and a supplemental disclosure was made on July 30, 2019. The timing of JH Kelly's supplemental disclosure, which occurred after Mr. Nelsen's complaint on behalf of the Freedom Foundation, was not in any way intended to interfere with or impair Freedom Foundation's request to inspect forms or Freedom Foundation's complaint filed with the PDC.

3.26 *Why were contributions withheld from the wages of seven employees without an authorization form?*

3.27 (Answer) This appears to have been an error, which JH Kelly regrets. JH Kelly recognizes that without the missing authorization forms to confirm agreement to contributions, we are unable to state with certainty whether the individuals did, indeed, consent to the contributions. The action was not intentional on JH Kelly's part, and stemmed from errors or omissions involving an authorization form prepared by UA 598, not JH Kelly directly. JH Kelly recognizes its role as employer and the need for better coordination with UA 598 to ensure compliance, and has engaged further with UA 598 to that end.

- 3.28 *Based on the July 30, 2019 production to Mr. Nelsen, of the 577 authorization forms for the 584 contributions withheld during March, April, and May 2019, 162 were noncompliant version one forms, 390 were noncompliant version two forms, and 25 were compliant version three forms. Why were there only 25 compliant, version three authorization forms used during the period March, April, and May 2019?*
- 3.29 (Answer) JH Kelly relied on UA 598 to bring authorization forms into compliance. The July 30, 2019 production to Mr. Nelsen reflected authorization forms for contributions during the March, April, and May 2019 time period, during which time, on information and belief, UA 598 was still in progress to confirm full use of authorization forms that met PDC requirements. It is also JH Kelly's understanding that between March and May 2019, there was still a determination being made as to whether versions one and two of the authorization form were in compliance with PDC requirements if supplemented by the annual notice that UA 598 agreed to provide. That understanding is based on a communication from UA 598 at the end of May 2019, which is the same time at which JH Kelly became aware of the complaints regarding the authorization forms.
- 3.30 *Do these three versions of the authorization form represent changes made to the form by Local 598 on behalf of JH Kelly, in response to the first and second complaints and their disposition, without input from JH Kelly or an awareness by JH Kelly of why the changes were being made? (i.e. Was JH Kelly the passive recipient of whatever authorization form Local 598 provided as part of its dispatch form?)*
- 3.31 (Answer) JH Kelly was the passive recipient of authorization forms provided by UA 598. The versions of the authorization represent changes that were made to the form by UA 598 on behalf of JH Kelly, but without input from JH Kelly. In fact, JH Kelly was not aware of the Freedom Foundation's first complaint (Case No. 43692) or the PDC's closure of the case and related written warning letters dated February 14 and 15, 2019, until on or about May 24, 2019, when JH Kelly's General Counsel received notice of the Freedom Foundation's *second* complaint. That is because the email address, on information and belief, that was provided to the PDC by the Freedom Foundation was not a proper email address for legal notices because it is not routinely monitored.
- 3.32 *Of the 577 authorizations produced in the July 30, 2019 production to Mr. Nelsen, 552 were noncompliant version one or version two authorizations and 25 were compliant version three authorizations. In addition, no authorizations were produced for seven employees. In your July 24, 2019 response letter, page 4, you stated, in response to the PDC's February 14, 2019 warning letter Local 598 began using compliant authorization forms after that date for union members being dispatched to JH Kelly. Thus, it appears compliant authorization forms were used for new employees being dispatched after February 14, 2019. Has JH Kelly obtained compliant authorization forms for all existing employees who were dispatched prior to February 14, 2019?*
- 3.33 (Answer) JH Kelly has not affirmatively obtained new authorization forms for employees dispatched before February 14, 2019, but for all *existing* employees who are dispatched via UA 598, compliant, version three authorizations have been used since the version three forms were finalized by UA 598 in late Spring 2019. That includes any JH Kelly employees whose

prior authorization forms were previously deemed insufficient. For context, JH Kelly has not had a steady workforce in the area since July 2019 and, as a result, has had few workers dispatched. As an example, only one JH Kelly employee was dispatched in June – July 2019. JH Kelly has confirmed that a valid authorization form was on file for that employee (see attached – Cowan). Since that time, the employee opted out of contributions, and that opt-out has been processed (see attached).

3.34 *To resolve this matter, all employees who have made PAC contributions since March 2019 through a payroll deduction must sign a compliant authorization form if they have not already done so. Please note, an employee signing an annual notice, to show receipt of the notice required by WAC 390-17-110, will not be considered receipt of an acceptable substitute for a compliant, signed and dated authorization form, as required by WAC 390-17-100. The compliant authorization forms needed to resolve this matter include the seven employees for whom no authorizations were obtained and the 552 employees for whom noncompliant authorizations were obtained, for the period March, April, and May 2019, and all additional individuals employed since May 2019 from whom contributions have been withheld, if compliant authorizations have not already been obtained. If additional compliant authorization forms need to be signed and dated as described above, by what date can this be accomplished?*

3.35 (Answer) JH Kelly will confirm, via coordination with UA 598, that all employees who have made PAC contributions since March 2019 through a JH Kelly payroll deduction have signed a compliant authorization form if they have not already done so. JH Kelly will confirm that this includes the seven individuals for whom no authorization form was previously identified.

3.36 *Did JH Kelly, or Local 598 on behalf of JH Kelly, provide the annual notice required by WAC 390-17-110, by June 30, 2019 and June 30, 2020, to employees from whom funds are being withheld for contributions to Local 598 PAC? On what date was the notice provided in 2019 and 2020? Does JH Kelly, or Local 598 on behalf of JH Kelly, have in its possession a copy of the annual notice and a list of employees notified, and will they maintain this information for a period of no less than five years?*

3.37 (Answer) Annual notice required by WAC 390-17-110 was provided in 2019 and 2020 to employees from whom funds are being withheld for contributions to the Local 598 PAC. Attached are the notices provided in 2019 (dated March 4, 2019) and 2020 (dated July 14, 2020). This confirms that JH Kelly has a copy of the 2020 annual notice and that UA 598, on behalf of JH Kelly, has a list of employees notified, and that JH Kelly and UA 598 will maintain that information for a period of no less than five years. **(Exhibit 4)**

3.38 JH Kelly anticipated it would be able to confirm compliance with staff's requests by November 30, 2020. On December 2, 2020, staff requested an update by contacting JH Kelly, but did not provide the request for an update to Vanessa Power, JH Kelly's legal counsel. The request for an update was sent to Ms. Power on December 28, 2020. On January 25, 2021, Ms. Power confirmed that of the three remaining employees needing to sign a compliant authorization form, two were no longer employed and the one who was still employed, Cale Gjerdevig, has signed a compliant authorization form. **(Exhibit 5)**

### **Initial Hearing (Case Status Review)**

3.39 On September 13, 2019, PDC staff held an Initial Hearing (Case Status Review) for JH Kelly, LLC, Case 54324, and opened a formal investigation.

### **III. SCOPE**

4.1 PDC staff reviewed the complaint, the response to the complaint, and a complaint supplement filed after the response was received. In addition, staff reviewed two previous complaints of a similar nature, dismissed by staff, one with a formal written warning, and one for a lack of evidence concerning the activities of the Respondent.

### **IV. LAW**

**RCW 42.17A.495, WAC 390-17-100 and WAC 390-17-110** state, No employer may withhold wages or salaries for contributions to political committees or for use as political contributions except upon the written request of the employee. The written request must be on a form prescribed by the commission informing the employee of the prohibition against employer and labor organization discrimination stating, "No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (a) the failure to contribute to, (b) the failure in any way to support or oppose, or (c) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee."

The employee may revoke the request at any time, and at least annually, by June 30 of each year, employees from whom funds are being withheld for contributions to a candidate or political committee shall be notified, in writing, of the nondiscriminatory provisions, and of each employee's right to revoke the authorization at any time.

In addition, employers and other persons who withhold or divert wages or salaries must: (1) maintain the completed forms for as long as the withholding or diversion continues; (2) keep the forms and other documents open for public inspection for three years after the last disbursement of wages or salaries; and (3) maintain a copy of the annual notification and a listing of employees notified for a period of no less than five years.

Respectfully submitted this 25<sup>th</sup> day of January 2021.

*Electronically Signed Philip E. Stutzman*

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Philip E. Stutzman  
Compliance Officer

### **EXHIBIT LIST**

- Exhibit 1** Complaint filed July 8, 2019
- Exhibit 2** Response to Complaint filed July 24, 2019
- Exhibit 3** Complaint Supplement filed August 9, 2019

**Exhibit 4** Additional Response to Complaint filed November 9, 2020

**Exhibit 5** Compliant Authorization - Cale Gjerdevig, received January 25, 2021



<b>Complaint Description</b>
<p style="text-align: right;">Complainant: Maxford Nelsen Respondent: JH Kelly, LLC</p> <p><u>Maxford Nelsen</u> reported via the portal Mon, 8 Jul 2019 @ 4:16PM</p> <p>See attached.</p> <p>PDC complaint - JH Kelly - Appendix - Compressed.pdf 14.45 MB</p> <p>PDC complaint - JH Kelly.pdf 279.16 KB</p>
<b>What impact does the alleged violation(s) have on the public?</b>
See attached.
<b>List of attached evidence or contact information where evidence may be found.</b>
See attached.
<b>List of potential witnesses with contact information to reach them.</b>
See attached.
<b>Complaint Certification:</b>
I certify (or declare) under penalty of perjury under the laws of the State of Washington that information provided with this complaint is true and correct to the best of my knowledge and belief.

July 8, 2019

Public Disclosure Commission  
711 Capitol Way S. #206  
P.O. Box 40908  
Olympia, WA 98504

Public Disclosure Commission Staff,

Unfortunately, I write for the third time in less than a year to bring to your attention continued illegal political deductions from the wages of certain employees of JH Kelly, LLC,<sup>1</sup> represented by the United Association of Plumbers and Pipefitters Local 598 ("UA 598").

In short, JH Kelly is violating RCW 42.17A.495 and WAC 390-17-100 by deducting political contributions from employees' wages for the political action committee ("PAC") operated by UA 598 without first receiving proper authorization.

Even though the Public Disclosure Commission ("PDC") issued a warning letter to JH Kelly on February 14, 2019, informing the firm that none of the existing employee authorizations were valid, JH Kelly continues to divert employee wages to the PAC without legal authorization.

From March-May 2019, JH Kelly withheld at least \$40,288.08 from hundreds of its employees' wages for UA 598's PAC. However, JH Kelly was unable to produce any PAC deduction authorization forms for some of its employees, and the forms it produced for the remaining employees either were not signed or have already been recognized by the PDC as out of compliance with RCW 42.17A.495(3) and/or WAC 390-17-100.

## **Background**

### **1. The First Complaint**

UA 598 maintains and operates a political committee, as defined by RCW 42.17A.005(40), called the Plumbers & Steamfitters Local 598 PAC. *See Appendix page 2*, the PAC's most recent form C1PC. The PAC is funded by contributions taken via payroll deduction from the wages of UA 598 members. Since 2014, over \$1.6 million has been withheld from employees' wages and contributed to the PAC.

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<sup>1</sup> Respondent's contact information: Craig Yabui, vice president and general counsel. JH Kelly, LLC. P.O. Box 2038, Longview, WA, 98632; (360) 905-1378; cyabui@jhkelly.com.

UA 598 PAC Contributions	
Year	Amount
2014	\$235,749.56
2015	\$291,591.92
2016	\$296,377.64
2017	\$263,422.60
2018	\$281,129.98
2019	\$269,951.50
<b>Total</b>	<b>\$1,638,223.20</b>

Although it is not the employer, UA 598 develops the terms of “dispatch forms” that employers, including JH Kelly, use. The employees UA 598 represents must sign these “dispatch forms” before being assigned to work a particular job for a particular contractor.<sup>2</sup> The dispatch forms include authorization for the employer to deduct both union dues and PAC contributions.

UA 598 has utilized at least three versions of its dispatch forms during the five-year statute of limitations established by RCW 42.17A.770.

The terms of the **first version** of the dispatch form in use prior to October 2018 provided:

“I authorize the Employer to withhold and to pay working dues on my behalf at the current rate of 3%, IAP at 2.25%, and PAC at 0.7% of my gross pay to Local Union 598. This authorization shall be valid for the period of one year or the balance of the term of the current agreement, whichever is sooner, and shall automatically renew itself for successive one-year periods. This authorization is subject to cancellation by written notice to the Employer and Local 598 given within the 60-day period preceding an automatic renewal date.”

From October 2018 through March 2019, UA 598 used a **second version** of its dispatch form that provided:

“I authorize the Employer to withhold and to pay working dues on my behalf at the current rate of 3% and IAP at 2.25% of gross pay to Local Union 598. So that the common interests of Local 598 members to secure jobs, fair wages, and safe working conditions can be heard by state and federal candidates for office, I voluntarily authorize and direct the above-named employer and any signatory to the Collective Bargaining Agreement for whom I work to deduct the suggested 0.70% (0.0070) as ratified by the Local 598 Membership, each week from my pay for transfer to the Local 598 Political Action Committee, where funds will be used for federal or state races as deemed

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<sup>2</sup> The Public Disclosure Commission’s notice of resolution in Case No. 43692 found that “[t]he withholding authorization accepted by the employer/contractors was developed by the union (United Association of Plumbers and Pipefitters Local 598), even though the employer/contractors have been and continue to be responsible when there are deficiencies in the authorization...” See **App. 3-9**, the PDC’s combined case closure letter.

necessary by PAC leadership. I understand that I have a right to refuse to so contribute without any reprisal. Furthermore, I recognize that the contribution guideline is just that, and that I may contribute any amount or not at all to the Political Action Committee – although only the suggested amount is supported by the paycheck deduction process. Contributing an alternative amount will require contacting the Local’s staff. Furthermore, I understand that to comply with the Federal law, the PAC must use its best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 per calendar year. I understand that my contribution is not tax-deductible. This authorization shall be valid for the period of one year or the balance of the term of the current agreement, whichever is sooner, and shall automatically renew itself for successive one-year periods. This authorization is subject to cancellation by written notice to the Employer and Local 598 given within the 60-day period preceding an automatic renewal date.”

Around March 2019, UA 598 developed a **third version** of its dispatch form providing:

“So that the common interest of Local 598 members to secure jobs, fair wages, and safe working conditions can be heard by state and federal candidates for office, I voluntarily authorize and direct the above-named employer and any signatory to the Collective Bargaining Agreement for whom I work to deduct the suggested 0.70% (0.0070) as ratified by the Local 598 Membership, each week from my pay for transfer to the Local 598 Political Action Committee, where funds will be used for federal and state races as deemed necessary by PAC leadership. I understand that I have a right to refuse to so contribute without reprisal. Furthermore, I recognize that the contribution guideline is just that, and that I may contribute any amount or not at all to the Political Action Committee – although only the suggested amount is supported by the paycheck deduction process. Contributing an alternative amount will require contacting the Local’s staff. Note: No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (i) the failure to contribute to, (ii) the failure in any way to support or oppose, or (iii) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee. Furthermore, I understand that to comply with the Federal law, the PAC must use its best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 per calendar year. I understand that my contribution is not tax-deductible. I understand that I may revoke my authorization at any time in writing.”

On November 19, 2018, the Freedom Foundation filed a complaint with the PDC against UA 598, its PAC and the 35 employers that had deducted PAC contributions from the wages of UA 598-represented employees in October 2018, including JH Kelly. The PDC assigned a unique case number to each of the 37 respondents.<sup>3</sup>

The complaint alleged, among other things, that the first and second versions of UA 598’s

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<sup>3</sup> PDC case numbers: 43672, 43673, 43675, 43676, 43677, 43678, 43679, 43680, 43681, 43682, 43683, 43684, 43685, 43686, 43687, 43688, 43689, 43690, 43691, **43692** (JH Kelly), 43693, 43694, 43695, 43696, 43697, 43698, 43699, 43700, 43701, 43702, 43703, 43704, 43705, 43706, 43707, 43708, and 43709.

dispatch forms in use at the time did not comply with RCW 42.17A.495(3), which provides:

“No employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries may withhold or divert a portion of an employee's wages or salaries for contributions to political committees or for use as political contributions except upon the written request of the employee. The request must be made on a form prescribed by the commission informing the employee of the prohibition against employer and labor organization discrimination described in subsection (2) of this section. The employee may revoke the request at any time. At least annually, the employee shall be notified about the right to revoke the request.”

Similarly, the complaint alleged the forms were out of compliance with WAC 390-17-100, which states:

- “(1) Each employer or other person who withholds or otherwise diverts a portion of wages or salary of a Washington resident or a nonresident whose primary place of work is in the state of Washington shall have on file the individual's written authorization before withholding or diverting the individual's wages or salary for:
- (a) The purpose of making one or more contributions to any political committee required to report pursuant to RCW 42.17A.205, 42.17A.215, 42.17A.225, 42.17A.235 or 42.17A.240; or
  - (b) Use, specifically designated by the contributing employee, for political contributions to candidates for state or local office.
- (2) Forms used for payroll deduction may either conform to the suggested format below or be in a different format including an electronic format if it provides the following information:
- (a) The name of the individual authorizing the withholding or diversion;
  - (b) The name of the individual's employer;
  - (c) The name of each political committee or candidate for which contributions are to be withheld;
  - (d) If more than one political committee or candidate is specified, the total dollar amount per pay period (or per week, month or year) to be withheld for each committee or candidate;
  - (e) A statement specifying that the authorization may be revoked at any time and such revocation shall be in writing;
  - (f) A statement that reads: ‘No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (i) the failure to contribute to, (ii) the failure in any way to support or oppose, or (iii) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee’; or a statement that informs the employee of the prohibition against employer and labor organization discrimination described in RCW 42.17A.495;
  - (g) The individual's signature or other reliable and secure verification that the individual is authorizing the withholding or diversion; and
  - (h) The date on which the form was completed.”

In its notice of resolution issued February 14, 2019, the PDC found that, “the current

authorization form being accepted by the 35 employer/contractors [first version above] does not conform to the requirements in RCW 42.17 A.495 and WAC 390-17-100.”

In a warning letter, the PDC,

“...reminded the employer/contractor respondents that they need to understand and comply with their responsibility to: (1) receive a proper authorization before withholding wages or salaries for a PAC contribution...” (Emphasis added)

Finally, the warning letter concluded that,

“...the current revised authorization [second version above] that includes a statement that the authorization is subject to cancellation by written notice to the Employer and Local 598 given within the 60-day period preceding an automatic renewal date is not acceptable, and [] the ‘Political Contribution Withholding Authorization’ form must inform the employee that their request may be revoked at any time.” (Emphasis added)

*See App. 3-9.*

## **2. The Second Complaint**

Nevertheless, in January 2019, the PAC reported receiving \$39,916.45 from about 600 individuals. In February, the PAC received \$39,571.99 in contributions from about 650 individuals. In March, the first full month after the PDC issued its warning letter, the PAC reported receiving \$49,593.69 in contributions from about 730 individuals. And in April 2019, UA 598’s PAC disclosed receiving \$43,098.41 in contributions from about 780 individuals. *See App. 10-411*, the PAC’s forms C3 filed in 2019.

In other words, the PDC’s invalidation of UA 598’s PAC deduction authorization forms had no discernable effect on the PAC’s contribution rate, which is curious to say the least.

Accordingly, the Freedom Foundation requested that UA 598 provide it an opportunity to inspect the “deduction authorization/‘dispatch form’ for every person listed on the form C3 filed by UA 598’s political committee on April 5, 2019 with the Public Disclosure Commission,” in accordance with RCW 42.17A.495(4). The Foundation was permitted to inspect records at the union’s headquarters in Pasco on May 8, 2019.

The Freedom Foundation’s inspection revealed the union possessed only 13 legally valid dispatch forms and continued to receive contributions to its PAC from hundreds of employees on the basis of invalid authorizations.

Consequently, in a second complaint filed with the PDC on May 21, 2019, the Freedom Foundation alleged that 19 employers, including JH Kelly, had violated RCW 42.17A.495 and WAC 390-17-100 by deducting contributions to UA 598’s PAC from employees’ wages without

proper authorization. The PDC assigned a unique case number to 18 of the 19 respondents.<sup>4</sup>

On June 3, 2019, the PDC purported to dismiss the cases pursuant to RCW 42.17A.755(1). In a case closure letter to JH Kelly, the PDC noted:

- “The PDC’s action was taken because Freedom Foundation did not submit evidence of violations based on direct contact with individual employers/contractors.”
- “The responsibility to use proper authorization forms and maintain the required records for public inspection is not a responsibility of the union or its political committee, and these responsibilities cannot be delegated to the union or political committee on behalf of the employers/contractors... [E]mployers/contractors remain responsible for direct compliance with the law and rules even if the union or its political committee provides records to a requester.”
- “PDC staff recommends you consult with your legal counsel to ensure you are fully compliant with RCW 42.17A.495, WAC 390-17-100, and WAC 390-17-110. The PDC’s action does not preclude Freedom Foundation from contacting individual employers/contractors and refileing a complaint based on evidence obtained from individual employers/contractors.”

See **App. 412-417**, the PDC’s dismissal letter.

### **3. The Present Complaint**

On June 6, 2019, the Freedom Foundation sent a letter to JH Kelly via email and USPS certified mail requesting an opportunity to inspect, in accordance with RCW 42.17A.495(4), the authorization forms of those JH Kelly employees listed as contributors to UA 598’s PAC in March, April and/or May 2019 on the PAC’s C3 forms. The letter requested to be provided such an opportunity on or prior to June 28, 2019. See **App. 418-427**, the Freedom Foundation’s letter to JH Kelly.

On June 27, 2019, Craig Yabui, JH Kelly’s vice president and general counsel, emailed the Freedom Foundation a link to download two PDF files totaling 155 pages of dispatch forms. See **App. 428**, Mr. Yabui’s email.

The Freedom Foundation’s review of the PAC’s C3 forms and the dispatch forms provided by JH Kelly determined:

- From March-May 2019, JH Kelly withheld at least \$40,288.08 from its employees’ wages for UA 598’s PAC.
- UA 598’s PAC reported receiving 584 contributions from JH Kelly employees. Typically, 1-4 contributions per person were recorded during this period.
- Of these, 410 contributions (70%) came from an employee for whom JH Kelly produced

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<sup>4</sup> PDC case numbers: 51802, 51803, 51804, 51805, 51806, 51807, 51808, 51809, 51810, 51811, 51812, 51813, **51814** (JH Kelly), 51815, 51816, 51817, 51818, and 51819. No case number was assigned regarding the allegations against Critical Path Resources.



a dispatch form. The remaining 174 contributions (30%) came from employees for whom JH Kelly was unable to produce a dispatch form.

- Of the 410 contributions from employees for whom JH Kelly had a dispatch form, 256 (62%) came from employees whose dispatch forms were not signed.
- Although 154 contributions came from employees who had signed dispatch forms, *none of the signed or unsigned dispatch forms were FCPA-compliant*. All were either the aforementioned version one or version two forms the PDC has already determined to be invalid.

See **App. 429-434**, a summary of the dispatch forms provided by JH Kelly, and **App. 435-589**, the dispatch forms provided by JH Kelly.

## **Allegations**

### **1. Deduction of PAC contributions from employees' wages without legal authorization.**

Despite receiving a warning letter from the PDC on February 14, 2019 and receiving a *second* letter from the PDC on June 3, 2019 encouraging it to “consult with your legal counsel to ensure you are fully compliant with RCW 42.17A.495,” JH Kelly has continued to deduct political contributions to UA 598’s PAC from hundreds of its employees without first obtaining authorizations that comply with RCW 42.17A.495(3) and WAC 390-17-100.

## **Enforcement Options**

RCW 42.17A.755(1) provides that, when presented with a citizen complaint, the PDC “must” either: (1) dismiss it or otherwise resolve it as a remedial or technical violation; (2) initiate an investigation, conduct hearings and take enforcement action; or, (3) refer the complaint to the attorney general.

### **1. The PDC should not dismiss the complaint as the allegations are not “obviously unfounded or frivolous.”**

WAC 390-37-005(2)(a) and WAC 390-37-060 provide the PDC may dismiss a complaint if it is “obviously unfounded or frivolous, or outside of the PDC’s jurisdiction.”

There should be no disputing the PDC’s jurisdiction over the present complaint against JH Kelly, as a matter of law. Similarly, there should be no disputing the supporting documentation, given that it came directly from UA 598 and JH Kelly. Lastly, since the PDC has already determined that the version one and version two PAC deduction authorization forms in use by JH Kelly are invalid, the complaint is not “obviously unfounded or frivolous.”

### **2. The allegations against JH Kelly involve “actual violations,” not “remedial violations” or “requests for technical correction.”**

RCW 42.17A.005(2) defines an “actual violation” as one “that is not a remedial violation or technical correction.” Thus, violations are considered “actual violations” by default unless they

meet the criteria to be considered lesser “remedial” or “technical” violations. Since JH Kelly’s deduction of PAC contributions from its employees’ wages without proper authorization involves neither “remedial violations” nor “technical corrections,” it involves, by definition, “actual violations.”

**a. JH Kelly’s violations were not “remedial.”**

As defined by RCW 42.17A.005(45), a “remedial violation” is one that meets *all* the following criteria:

- “(a) Involved expenditures totaling no more than the contribution limits set out under RCW 42.17A.405(2) per election, or one thousand dollars if there is no statutory limit;
- (b) Occurred:
  - (i) More than thirty days before an election, where the commission entered into an agreement to resolve the matter; or
  - (ii) At any time where the violation did not constitute a material violation because it was inadvertent and minor or otherwise has been cured and, after consideration of all the circumstances, further proceedings would not serve the purposes of this chapter;
- (c) Does not materially affect the public interest, beyond the harm to the policy of this chapter inherent in any violation; and
- (d) Involved:
  - (i) A person who:
    - (A) Took corrective action within five business days after the commission first notified the person of noncompliance, or where the commission did not provide notice and filed a required report within twenty-one days after the report was due to be filed; and
    - (B) Substantially met the filing deadline for all other required reports within the immediately preceding twelve-month period; or
  - (ii) A candidate who:
    - (A) Lost the election in question; and
    - (B) Did not receive contributions over one hundred times the contribution limit in aggregate per election during the campaign in question.”

JH Kelly’s violations did not involve making or disclosing political expenditures, so prong (a) above is inapplicable.

JH Kelly’s ongoing deduction of political contributions from employees’ wages without legal authorization has occurred for several years, including during periods within 30 days of an election. Further, JH Kelly’s actions directly contradict an FCPA statute. They result from JH Kelly’s standard practice and procedure. They are not “inadvertent” and, far from being “cured,” have continued unabated despite multiple warnings from the PDC. Prong (b) is not satisfied.

The illegal deduction of \$40,288.08 from employees’ wages by JH Kelly in

March-May 2019 alone harms not only the affected employees, but also materially harms the public by allowing UA 598's PAC to influence Washington elections using illegally-seized funds. Thus, prong (c) is not satisfied.

Lastly, JH Kelly has not ceased the illegal deductions despite receiving two formal notices from the PDC in 2019 about complying with RCW 42.17A.495, so prong (d)(i) is not satisfied. And because JH Kelly is not a candidate, prong (d)(ii) is inapplicable.

In short, JH Kelly's violations meet none of the criteria necessary to be considered "remedial."

**b. JH Kelly's violations did not involve "requests for technical corrections."**

RCW 42.17A.005(51) defines "technical correction" as:

"...a minor or ministerial error in a required report that does not materially impact the public interest and needs to be corrected for the report to be in full compliance with the requirements of this chapter."

JH Kelly's violations do not fall under this definition, because the statute at issue, RCW 42.17A.495, does not pertain to disclosure of contributions or expenditures or require that JH Kelly file any reports with the PDC. Consequently, the definition of "technical correction" simply does not include JH Kelly's violations of the employee-authorization provisions of that statute.

**3. The PDC cannot resolve the present complaint against JH Kelly with another written warning as involving "minor violations."**

WAC 390-37-060(1)(d) purports to authorize the PDC to "resolve any complaint that alleges minor violations of chapter 42.17A by issuing a formal written warning."

WAC 390-37-061 provides:

- "(2) A minor violation is an actual violation that occurs:
- (a) When required information is not timely disclosed, but the public is not deprived of critical information; or
  - (b) When incomplete information is disclosed, but a good faith effort to comply with disclosure is made, and the public is not deprived of critical information.
  - (c) When any other violation of chapter 42.17A RCW has occurred that does not materially affect the public interest."

**a. WAC 390-37-060(1)(d) and WAC 390-37-061 conflict with and are preempted by RCW 42.17A.755 and RCW 42.17A.001(1).**

While the PDC has been granted authority to engage in rulemaking, any rules it

adopts must “carry out the policies and purposes” of the FCPA<sup>5</sup> and otherwise be consistent with its textual commands.

As such, regulations governing “minor violations” may arguably have been valid at the time they were first adopted by the PDC in 2016, but passage of HB 2938 in 2018 rendered them a dead letter, as violative of the new statute.

Specifically, RCW 42.17A.755(1) now requires the PDC to take one of several actions after a complaint has been submitted. It “must” either: (1) dismiss the complaint; (2) resolve it as a remedial violation or request for technical correction; (3) initiate an investigation, conduct hearings and issue an enforce an appropriate order; or (4) refer the complaint to the Attorney General.

Neither RCW 42.17A.755 nor any other statute permits the PDC to designate some “actual violations” as merely “minor” and resolve them with a warning letter.

Accordingly, WAC 390-37-060(1)(d) and WAC 390-37-061 conflict with RCW 42.17A.755, do not “carry out the policies and purposes” of the FCPA established by RCW 42.17A.001(1), and are of no legal effect.

**b. JH Kelly’s violations were not “minor” for the purposes of WAC 390-37-061.**

Even if the enforcement process for “minor violations” established by WAC 390-37-061 was valid and statutorily authorized, JH Kelly’s violations still would not qualify as “minor” for purposes of the regulation.

WAC 390-37-061(2)(a) and (2)(b) apply to the disclosure of required information to the PDC and are inapplicable to violations of RCW 42.17A.495, much like the definition of “technical corrections.”

Further, the illegal deduction of \$40,288.08 from employees’ wages by JH Kelly in March-May 2019 alone harms the affected employees and materially harms the public by allowing UA 598’s PAC to influence Washington elections using illegally-seized funds, so WAC 390-37-061(2)(c) is not satisfied.

**Conclusion**

JH Kelly continues to deduct contributions from hundreds of employees on the basis of legally invalid authorizations, even after being warned multiple times that the authorizations are invalid. In the space of merely three months, JH Kelly has illegally deducted more than \$40,000 from hundreds of its employees for political activity the employees may not support. Notably, the PDC’s warning letter explicitly stated that “[t]he Commission will consider this formal warning in deciding on further Commission action if there are future violations of PDC laws or rules.” See **App. 3**.

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<sup>5</sup> RCW 42.17A.110(1).

This situation is somewhat unique in that the violations of the FCPA committed by JH Kelly may largely result from the actions of UA 598. Nonetheless, as the PDC has already observed, JH Kelly may not pass-off its legal responsibility to comply with the FCPA to UA 598, and the law provides the employer must be held accountable for FCPA violations resulting from the union's behavior and policies.

Further, the contributions to the PAC illegally deducted from employees' wages have allowed UA 598 to significantly influence, through political contributions and expenditures, dozens of elections around the state.<sup>6</sup> The extent of UA 598's undue influence on these elections is difficult to neatly quantify, but the sheer number of elections and the amount of money involved make the issue one of substantial public concern.

Indeed, influencing Washington elections with money illegally collected from employees' wages is a far more fundamental violation of the FCPA than more commonplace failures to properly disclose contributions and expenditures.

Given that these are "actual violations," as defined by RCW 42.17A.005(2), and have continued to occur even after formal warnings from the PDC, we respectfully request that the PDC resolve this complaint through an investigation and enforcement action pursuant to RCW 42.17A.755(1)(b) or, alternatively, that it refer the matter to the Attorney General pursuant to RCW 42.17A.755(1)(c).

It is imperative that state authorities act decisively to put a stop to the ongoing illegal deductions from employees' wages to deter such behavior in the future. Please do not hesitate to contact me if the Freedom Foundation can be of any further assistance in this matter.

Sincerely,



Maxford Nelsen  
Director of Labor Policy  
Freedom Foundation  
P.O. Box 552, Olympia, WA 98507  
(360) 956-3482  
mnelsen@freedomfoundation.com

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<sup>6</sup> PDC records indicate the PAC contributed to at least 12 candidates and two other PACs in 2018 alone.  
[https://www.pdc.wa.gov/reports/expenditures\\_download?filer\\_id=PLUMSF%20301&election\\_year=2018](https://www.pdc.wa.gov/reports/expenditures_download?filer_id=PLUMSF%20301&election_year=2018)



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July 24, 2019

**VIA EMAIL: PDC@PDC.WA.GOV**

Public Disclosure Commission  
711 Capitol Way S. #206  
P.O. Box 40908  
Olympia, WA 98504

**Re: Complaint Filed by Maxford Nelson (Freedom Foundation)**  
**PDC Case No. 54324**  
**Response of JH Kelly, LLC**

Dear Public Disclosure Commission Staff:

Stoel Rives LLP is counsel for JH Kelly, LLC ("JH Kelly"). JH Kelly submits this response to the complaint submitted by Maxford Nelson of the Freedom Foundation. Mr. Nelson asserts that JH Kelly has made payroll deductions for contributions to the United Association of Plumbers and Pipefitters Local 598 ("UA 598") without authorization. Based on this allegation, Mr. Nelson asks the Public Disclosure Commission to direct an investigation or enforcement action, or to refer the matter to the attorney general. Neither is necessary or appropriate. In light of the facts and law, and in light of JH Kelly's good faith commitment to compliance, an alternative remedy and dismissal of the Complaint is warranted.

## **ANALYSIS**

This matter stems from Mr. Nelson's allegation that JH Kelly has deducted contributions to UA 598's Political Action Committee from "hundreds" of employees without first obtaining authorizations that comply with RCW 42.17A.495(3) and WAC 390-17-100. *See* Complaint at 7. Since receiving the Complaint, however, JH Kelly has gathered and reviewed authorizations on file involving employees associated with UA 598 to ensure compliance.<sup>1</sup>

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<sup>1</sup> Mr. Nelson repeatedly asserts that JH Kelly improperly deducted over \$40,000 from employees' wages. *See* Complaint at 1, 6, 8, 10. This assumes, however, that every single signed authorization on file is noncompliant, and that remedial measures taken to address any alleged noncompliance should be disregarded. Mr. Nelson's position is inconsistent with the PDC's encouragement to consider corrections to address compliance issues.

**A. JH Kelly's Alleged Errors Should be Categorized as a "Minor Violation."**

JH Kelly's alleged errors in payroll deductions should be categorized as a "minor violation." WAC 390-37-061 defines a minor violation as one that occurs:

- (a) When required information is not timely disclosed, but the public is not deprived of critical information;
- (b) When incomplete information is disclosed, but a good faith effort to comply with disclosure is made, and the public is not deprived of critical information; or
- (c) When any other violation of chapter 42.17A RCW has occurred that does not materially affect the public interest.

The circumstances presented here constitute a minor violation under subsection (c). Subsection (a) deals with untimely disclosure of information, such as reporting requirements. Subsection (b) deals with partial disclosure of information coupled with an attempt to make full disclosure. Subsection (c) is applicable here. JH Kelly's alleged errors in ensuring signed authorizations on updated forms before making payroll deductions is "any other violation of chapter 42.17A RCW . . . that does not materially affect the public interest."

In an attempt to show JH Kelly's payroll deductions are an issue of substantial public concern, Mr. Nelson cites to contributions by UA 598 to "at least 12 candidates and two other PACs in 2018" as evidence that UA 598 was able to "significantly influence . . . dozens of elections around the state." *See* Complaint at 11. The report Mr. Nelson cites, however, reflects political contributions made by UA 598 based on payroll deductions from all applicable employers, not specifically JH Kelly. Further, the report reflects political contributions in the 2018 election year, not the time period Mr. Nelson contends is at issue in the Complaint (commencing March 2019). Finally, in total, the report reflects less than \$20,000 in political contributions for the 2018 election, without reference to any portion allegedly attributable to deductions from JH Kelly employees, let alone deductions allegedly lacking sufficient authorization.

In sum, while JH Kelly does not seek to minimize the errors at issue, given the scope and actions to address them, including JH Kelly's disclosure of records upon request by Mr. Nelson, they do not raise an issue materially affecting the public interest. As such, the errors are properly characterized as minor. This is consistent with the PDC's prior assessment as well. *See* Case No. 43692, Case No. 51814.

**B. The Governing Regulations Do Not Conflict.**

In an attempt to avoid the PDC's categorization of JH Kelly's payroll deductions as involving minor violations, Mr. Nelson asks the PDC to find that its own authority and rules are in conflict. Mr. Nelson argues that two of the Washington Administrative Code provisions



governing the PDC's response to complaints (WAC 390-37-060(1)(d) and WAC 390-37-061) are somehow in conflict with statutory provisions, RCW 42.17A.755 and RCW 42.17A.001(1). Mr. Nelson contends the statutory scheme no longer allows the PDC to categorize something as a "minor violation" to be resolved by a warning letter. Mr. Nelson's argument lacks merit.

*First*, there is no conflict between the PDC's options in responding to a complaint, outlined in RCW 42.17A.755, and the more detailed enforcement procedures outlined in WAC 390-37-060 and 390-37-061. Mr. Nelson appears to believe that the lack of specific reference to a "minor violation" in RCW 42.17A.755(1) means that the categorization is now invalid. That is simply not the case. A review of the full statutory scheme confirms that the "minor violation" categorization remains and is valid.

Indeed, in 2019, the Legislature updated the definitions under RCW 42.17A.005. *See* SHB 1195.SL. In doing so, the Legislature removed the definition of "actual violation" (used by Mr. Nelson in his Complaint) and replaced the definition with "violation." "Violation" means "a violation of this chapter that is not a remediable violation, minor violation, or an error classified as appropriate to address by a technical correction." RCW 42.17A.005(53). The Legislature thus clearly had in mind at least three types of violations/errors (remediable, minor, and technical corrections) that do not rise to the level of a "violation" as otherwise used in the regulations.

The defined term is wholly consistent with RCW 42.17A.755(1), which calls for the PDC to "dismiss a complaint or otherwise resolve the matter in accordance with subsection (2) of this section, as appropriate under the circumstances after conducting a preliminary review." The reference to subsection (2) (addressing remediable violations and technical corrections) is not the sole means of addressing a complaint; a plain reading of the statutory provision is that it allows the PDC to: (a) dismiss a complaint as appropriate under the circumstances after conducting a preliminary review; or (b) otherwise resolve a complaint in accordance with subsection (2) – also as appropriate under the circumstances after conducting a preliminary review. Thus, under the plain language of the statute, a complaint alleging a minor violation may be subject to dismissal under this provision.

*Second*, there is no conflict between the regulations and RCW 42.17A.001. RCW 42.17A.001 sets forth the Legislature's declaration of public policy regarding political campaign and lobbying contributions. Mr. Nelson specifically asserts a conflict with RCW 42.17A.001(1), which provides that "political campaign and lobbying contributions and expenditures [are to] be fully disclosed to the public and that secrecy is to be avoided." Mr. Nelson offers no evidence, let alone argument, that JH Kelly has stood in the way of required public disclosures. Indeed, the evidence shows just the opposite.

Mr. Nelson himself concedes that on June 6, 2019, the Freedom Foundation sent a letter to JH Kelly seeking an opportunity to inspect employee authorization forms and in response, on

June 27, 2019, JH Kelly timely responded. *See* Complaint at p. 6, Complaint App. at 418-589.<sup>2</sup> There is simply no basis for Mr. Nelson's suggestion that the Legislature's public policy guidance directing full disclosure has not been met. JH Kelly has nothing to hide. The company readily acknowledges the facts as they stand, and is committed to working with the PDC to address any compliance concerns.

### **C. An Alternative Response to Noncompliance is the Appropriate Remedy.**

In considering the appropriate response to JH Kelly's alleged errors, the PDC considers whether an investigation or adjudicative proceeding would be an efficient and effective use of public funds or "whether an alternative response better meets the PDC's mission and public expectations by allowing the expedited resolution of minor violations, and the focusing of resources on more significant violations of chapter 42.17A RCW and Title 390 WAC." WAC 390-37-061(1). Here, an investigation or adjudicative proceeding would not be an efficient or effective use of public funds. The key facts are limited in scope and are undisputed, and JH Kelly is committed to compliance.

In authorizing an alternative response to alleged noncompliance, under WAC 390-37-061(3), the PDC may consider the nature of the alleged violation and "any relevant circumstances" including, without limitation, factors described in WAC 390-37-061(4). Numerous circumstances and factors weigh in favor of permitting an alternative response to noncompliance, not an investigation or adjudicative hearing. They include:

- Mr. Nelson concedes that "[t]his situation is somewhat unique in that the [alleged] violations of the FCPA committed by JH Kelly may largely result from the actions of UA 598." *See* Complaint at 11. Indeed, the PDC previously determined that the withholding authorization form was developed by UA 598. *See* PDC Letter dated February 15, 2019 re 37 complaints by Freedom Foundation. JH Kelly's alleged noncompliance thus resulted from good faith errors or omissions involving an authorization form prepared by UA 598, not JH Kelly directly. That said, JH Kelly recognizes its role as employer and the need for better coordination with UA 598 to ensure compliance.
- In response to the PDC's warning letter issued on February 14, 2019, on information and belief, authorization forms used by UA 598 with respect to JH Kelly employees after that date met PDC requirements. *See, e.g.* Ex. A.
- JH Kelly permits employees to revoke their written authorization.

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<sup>2</sup> After making the disclosure, JH Kelly continued, in good faith, to review records to confirm whether further responsive documents existed. JH Kelly has since identified additional documents, which are pending disclosure now.

- In response to the PDC's warning letter issued on February 14, 2019, UA 598 agreed to acquire annual notice using an authorization form that meets all PDC requirements. *See* PDC Letter dated February 15, 2019 re 37 complaints by Freedom Foundation ("United Association of Plumbers and Pipefitters Local 598 has stated that they will make staff's suggested changes to the written authorization form, and that they will send the annual notifications on behalf of the employer/contractors, and will provide a copy of the annual notifications they send, to the respective employers.").
- JH Kelly has not had full opportunity to address alleged noncompliance but is committed to doing so.
  - JH Kelly did not have actual notice of the Freedom Foundation's first complaint (Case No. 43692) or the PDC's closure of the case and related written warning letters dated February 14 and 15, 2019, until, at the earliest, May 24, 2019, when JH Kelly's Vice President & General Counsel was notified of the Freedom Foundation's second complaint (Case No. 51814).
  - The PDC's notices to JH Kelly in November 2018, February 2019, and May 2019 were sent solely by email to "mail@jhkelly.com." It is JH Kelly's understanding that this email address was provided to the PDC by the Freedom Foundation. JH Kelly did not provide this email address to the PDC for notice purposes, nor would JH Kelly have done so because the email address is not routinely monitored and is not used for legal notices. While RCW 42.17A.055 established email as the PDC's official means of communication as of June 7, 2018, JH Kelly is not a filer with the PDC so until May 2019 when JH Kelly had actual notice of prior complaints and PDC determinations, JH Kelly was unaware that the PDC had an incorrect email address for legal, notice purposes.
- The Freedom Foundation's prior complaints against JH Kelly should not be used to compound the evidence in the current case because JH Kelly lacked sufficient notice and opportunity for compliance (see above) and the prior complaints are closed. Case No. 43692 was closed with a written warning. Case No. 51814 was closed for lack of evidence.
- Consistent with RCW 42.17A.495(4), JH Kelly was timely and responsive in providing information in response to the Freedom Foundation's request for information. *See* Complaint at p. 6.
- JH Kelly's compliance history does not reflect systemic or ongoing problems.
- The impact of noncompliance on the public was minimal.

- There is no evidence that any person benefited politically or economically from the noncompliance.
- JH Kelly has taken corrective action and initiated remedial measures, in conjunction with UA 598, when noncompliance was brought to its attention.
- JH Kelly has made a good faith effort to comply with all laws and regulations, and is committed to compliance.

Weighing all the relevant factors and circumstances, and taken as a whole, an alternative response to noncompliance is warranted in this instance.

Under WAC 390-37-060(1)(d), the PDC may resolve a complaint that alleges minor violations of RCW 42.17A by issuing a formal written warning. That is the appropriate remedy here. To the extent the PDC conditions resolution on JH Kelly reaching or maintaining compliance, JH Kelly is committed to taking appropriate action, including working with relevant third-parties, to do so.

## CONCLUSION

JH Kelly has not intentionally violated RCW 42.17A.495 or WAC 390-17-100. Consistent with RCW 42.17A.495(s) and WAC 390-17-100(4), JH Kelly recognizes its role as employer and the need for better coordination with UA 598 to ensure compliance with authorization requirements. JH Kelly thus asks that the Complaint be dismissed.

JH Kelly's request for dismissal is consistent with WAC 390-37-010, which provides that the "policy of the PDC is to facilitate the resolution of compliance matters in a fair and expeditious manner." To that end, the PDC "encourages parties to consider corrections, alternative resolution, partial resolution" and other options "whenever appropriate." Such alternative resolution is appropriate here. JH Kelly is happy to provide any further information or supporting information as requested by the PDC.

Thank you for your consideration of JH Kelly's position. Please note that for purposes of formal notification, notice from the PDC to JH Kelly should continue to be directed to JH Kelly's Vice President and General Counsel Craig Yabui at [cyabui@jhkelly.com](mailto:cyabui@jhkelly.com).

Very truly yours,



Vanessa Soriano Power

1328 Road 28  
Pasco, WA 99301

## U.A. LOCAL 598 DISPATCH FORM

Phone : (509) 545-1446  
Fax : (509) 547-2139

Contractor : J H Kelly  
Site Name : Project Trident - Lamb Weston  
Site Address : 78153 Westland Road  
Hermiston, OR 97838

Report Date : 03/11/19  
Report Time : 06:00 PM

Job Steward : Gary Clouse  
Assigned To : Barney, Doug M xxx-xx-7451  
Comments : NIGHT SHIFT. 5-8'S W/OT. DRUG TEST ON SITE. \$100 PER DAY  
TRAVEL.

Pay Rate : \$55.52  
Job Desc : Pipefitter  
Job Type : List Call  
Hiring List : Book B - Fitter

Site Notes:

*Imy Nights*

### PAC Authorization

So that the common interest of Local 598 members to secure jobs, fair wages, and safe working conditions can be heard by state and federal candidates for office, I voluntarily authorize and direct the above-named employer and any signatory to the Collective Bargaining Agreement for whom I work to deduct the suggested 0.70% (0.0070) as ratified by the Local 598 Membership, each week from my pay for transfer to the Local 598 Political Action Committee, where funds will be used for federal or state races as deemed necessary by PAC leadership. I understand that I have a right to refuse to so contribute without any reprisal. Furthermore, I recognize that the contribution guideline is just that, and that I may contribute any amount or not at all to the Political Action Committee - although only the suggested amount is supported by the paycheck deduction process. Contributing an alternative amount will require contacting the Local's staff. Note: No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (i) the failure to contribute to, (ii) the failure in any way to support or oppose, or (iii) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee. Furthermore, I understand that to comply with the Federal law, the PAC must use its best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 per calendar year. I understand that my contribution is not tax-deductible. I understand that I may revoke my authorization at any time in writing.

Signature : *D. Mest Barney* Date : *3/11/19*

### Work Assessment Check-Off Authorization

I authorize the Employer to withhold and to pay working dues on my behalf at the current rate of 3% and IAP at 2.25% of gross pay to Local Union 598. This authorization shall be valid for the period of one year or the balance of the term of the current agreement, whichever is sooner, and shall automatically renew itself for successive one-year periods. This authorization is subject to cancellation by written notice to the Employer and Local 598 given within the 60-day period preceding an automatic renewal date.

Signature : *D. Mest Barney* Date : *3/11/19*

Member Copy

EXHIBIT A

August 9, 2019

Ms. Tabatha Blacksmith  
Public Disclosure Commission  
711 Capitol Way S. #206  
P.O. Box 40908  
Olympia, WA 98504

***Re: PDC Case No. 54324, complaint supplement***

Ms. Blacksmith,

This is a supplement to our complaint against JH Kelly, Inc. of July 8, 2019, addressing several issues raised by JH Kelly's response to our complaint. As requested in your email of July 10, 2019, I am providing the supplemental information within 30 days.

In brief, JH Kelly concedes it has violated the Fair Campaign Practices Act (FCPA). And despite claiming that it "does not seek to minimize the errors at issue," JH Kelly focuses the bulk of its response seeking to do just that. Rather than defend the legality of its actions or even state its intention to bring its practices into alignment with RCW 42.17A.495 and WAC 390-17-100, JH Kelly instead spends its response defending various pathways to leniency from the Public Disclosure Commission (PDC).

In this case, however, JH Kelly's violations cannot be resolved as "minor violations," both because there is no legal pathway to do so and because, even if there were, JH Kelly's actions have too significant an effect on the public to be considered minor. Further, JH Kelly has attempted to improve its situation by producing a second batch of authorization forms to the Freedom Foundation. This second disclosure, delayed until after the Foundation's filing of a formal complaint, means that JH Kelly failed to comply with the public inspection requirements of RCW 42.17A.495(4). Further, the additional documents do nothing to change the fact that all of the deductions from employees' wages made by JH Kelly for the United Association of Plumbers and Pipefitters Local 598's (UA 598) political committee during the complaint period were improper.

- 1. JH Kelly still has not a single authorization which complies with the statute and implementing regulations. It makes no effort to argue authorizations based on a percentage of salary are legal, implicitly conceding they are not.**

JH Kelly takes issue with the assertion in the complaint that it "improperly deducted over \$40,000 from employees' wages." It contends that this calculation "assumes... every single signed authorization on file is noncompliant" and argues that "remedial measures taken to address any alleged noncompliance" should be taken into account. But the scope

of the violations and the severity of any penalties are two separate issues. The complaint does not merely “assume” that none of the deductions made from employees’ wages by JH Kelly from March-May 2019 were properly authorized; it *specifically provides* full documentation and legal authority to argue JH Kelly violates the FCPA. If these allegations are correct, which JH Kelly would surely dispute if it could, then determining appropriate penalties is the next step and the point at which consideration of any mitigating factors becomes relevant.

2. **JH Kelly’s violations of the FCPA cannot be resolved by labeling them “minor” violations. The 2019 FCPA amendments did away with “actual violations,” and therefore even if the legislature has obliquely accepted that there may be “minor” violations, WAC 390-37-061(2) remains ineffective because it defines a “minor” violation as a subset of “actual violations,” which no longer exist. In addition, the actions the PDC is required to take under RCW 42.17A.755(1) do not include any option to deal with a “minor” violation.**

JH Kelly contends its violations should be categorized as “minor violations,” which are defined by WAC 390-37-061 in the following way:

“(2) A minor violation is an *actual violation* that occurs:

- (a) When required information is not timely disclosed, but the public is not deprived of critical information; or
- (b) When incomplete information is disclosed, but a good faith effort to comply with disclosure is made, and the public is not deprived of critical information.
- (c) When any other violation of chapter 42.17A RCW has occurred that does not materially affect the public interest.” (Emphasis added)

- a. However, the FCPA no longer recognizes “actual violation” as a category of violation. The definition of the term and references to it throughout the FCPA were repealed by HB 1195 in 2019. As such, WAC 390-37-061’s definition of “minor violation” as a type of “actual violation” no longer has statutory grounding.
- b. Further, RCW 42.17A.755(1) continues to require the PDC to take one of three actions when presented with a complaint:

- “(a) Dismiss the complaint or otherwise resolve the matter in accordance with subsection (2) of this section, as appropriate under the circumstances after conducting a preliminary review;
- (b) Initiate an investigation to determine whether a violation has occurred, conduct hearings, and issue and enforce an appropriate order, in accordance with chapter 34.05 RCW and subsection (3) of this section; or
- (c) Refer the matter to the attorney general, in accordance with subsection (4) of this section.”

None of these options acknowledge “minor violations,” much less permit the PDC



to dismiss complaints of undefined “minor violations” or resolve them with a warning letter.

- c. JH Kelly contends that “a complaint alleging a minor violation may be subject to dismissal under” RCW 42.17A.755(1)(a), but this is incorrect. Actions taken under paragraph (a) must be “in accordance with subsection (2),” which governs only “complaints of remediable violations or requests for technical corrections.” The Freedom Foundation contends, and JH Kelly does not dispute, that the company’s violations do not meet the criteria to be considered remediable violations or technical corrections, so (a) is inapplicable to the present complaint.
- d. Even if, as JH Kelly contends, RCW 42.17A.755(1)(a) permits the PDC to dismiss certain complaints other than those involving remediable violations or requests for technical correction, PDC regulations do not permit the dismissal of the present complaint.

WAC 390-37-060(1)(a) only permits the PDC to dismiss a complaint if it “is obviously unfounded or frivolous, or outside of the PDC’s jurisdiction...” The PDC clearly has jurisdiction over the present complaint, having already issued a warning letter to JH Kelly for similar violations earlier this year. And the present complaint is neither unfounded nor frivolous. JH Kelly’s violations of a longstanding FCPA statute were well-documented in the complaint, largely undisputed by JH Kelly, and the PDC itself has previously found that JH Kelly’s political deductions from employees’ wages were made without proper authorization.

- e. Even if the PDC may satisfy its obligations under RCW 42.17A.755(1) by resolving a complaint as pertaining to “minor violations,” PDC regulations dictate that actions other than dismissal, including the issuance of a formal warning or assessment of a penalty, be taken in such cases.

WAC 390-37-060(1)(d) permits the PDC to resolve complaints of minor violations “by issuing a formal written warning” — an action which the PDC has already taken and JH Kelly already ignored.

Further, if an alternative response to noncompliance is deemed appropriate, WAC 390-37-062 sets forth a penalty schedule listing various types of violations “that may be agreed to by a respondent pursuant to a stipulation prior to an investigation...” While the list includes “[failure] to maintain open for public inspection, during normal business hours, documents and books of accounts showing a copy of each employee’s request for funds to be withheld for transfer to a political committee,” in violation of RCW 42.17A.495(4), it does not include withholding political contributions from employee wages in violation of RCW 42.17A.495(3).

WAC 390-37-062(2) does permit violations not listed in the penalty schedule to

be resolved via stipulation, so long as the penalty amounts are in line with those in the penalty schedule.

**3. Even if there was something labeled as a “minor” violation in WAC 390-37-061, JH Kelly’s violations do not meet the definition’s third prong because they do materially affect the public interest.**

JH Kelly admits that its deduction of political contributions from employees’ wages without proper authorization does not meet the first or second prongs of the definition of “minor violation” provided by WAC 390-37-061(2), as these violations do not relate to the disclosure of required information.

Instead, JH Kelly argues that its actions should be considered “minor violations” under the third prong, as not materially affecting the public interest. This argument strains credulity and should be rejected.

What is now codified as RCW 42.17A.495 was first passed by 73% of Washington voters in 1992 as part of Initiative 134. The people’s intent, as expressed in the initiative, was to, in part, “Ensure that individuals and interest groups have fair and equal opportunity to influence elective and governmental processes.” RCW 42.17A.400(2)(a). Further, the FCPA’s provisions “are to be liberally construed to effectuate [its] policies and purposes...” RCW 42.17A.904.

When an interest group, such as UA 598, convinces a network of employers, such as JH Kelly, to implement a scheme to deduct political contributions illegally from the wages of thousands of employees to enrich its political war chest, it gains an *unfair* ability to “influence elective and governmental processes” that other law-abiding interest groups do not *equally* share, in contradiction of the intent of the voters expressed in RCW 42.17A.400(2)(a).

JH Kelly attempts to downplay its role in this scheme by pointing out that, since multiple employers are involved, it is only partly responsible for UA 598’s ability to unfairly influence Washington elections with illegally deducted political contributions. It also dismisses the examples of UA 598’s influence in the 2018 elections because these elections did not occur during the March-May 2019 period specifically at issue in the present complaint.

It is of course true that JH Kelly is not the only employer illegally deducting political contributions benefitting UA 598 from employees’ wages. Yet, every other employer involved in this illegal scheme could say the same. If this alone proves a sufficient defense against any penalty, no employer will face meaningful accountability for its actions and the scheme will continue unabated, as it has since the time of the PDC’s previous warning letters.

Further, JH Kelly plays a far larger role in this scheme than nearly all other employers. During the March-May 2019 period that is the subject of the complaint, UA 598’s

political committee reported receiving 2,343 contributions transmitted by 27 different employers. JH Kelly was responsible for transmittal of 584 (25%) of these contributions, second only to Waste Treatment Completion Company's 744 (32%).

It is also true, but entirely meaningless, that none of the funds withheld by JH Kelly from employees' wages illegally in March-May 2019 were used to make political expenditures in the 2018 elections cited as examples in the complaint. While elections and related expenditures are cyclical and (mercifully) not perpetual, JH Kelly's illegal deductions occur every pay period, allowing UA 598's political committee to aggregate funds that will necessarily be expended on influencing Washington elections eventually.

The 2018 elections were cited in the complaint as the most recent examples available of how the illegal scheme in which JH Kelly participates on an ongoing basis permitted UA 598 to unfairly and improperly influence Washington elections. As there are relatively few elections on the ballot in 2019, UA 598 may not end up using most or all of the funds improperly collected by employers like JH Kelly until the 2020 elections.<sup>1</sup> But that hardly means that the funds illegally collected now by JH Kelly are not still a matter of significant public concern.

- 4. JH Kelly received the Foundation's request to inspect employees' authorization forms and responded by June 28. However, it admits facts proving its response was neither timely nor responsive, because *long afterwards* its vice president and general counsel e-mailed well over 100 pages of additional documents. Moreover, review of this additional information indicates that of the 577 contributions, at most 19 were made pursuant to a signed version of the newest form. In addition, this Response admits facts proving a new, independent violation for which the PDC should impose additional penalties.**

JH Kelly claims that it "has nothing to hide" and that it was "timely and responsive in providing information in response to the Freedom Foundation's request for information." At the same time, JH Kelly effectively admits this is not true, as it "has since identified additional documents, which are pending disclosure [to the Freedom Foundation] now."

On July 30, 2019, JH Kelly's Vice President and General Counsel Craig Yabui emailed me a link to two PDF documents. *See Appendix page 2.* The documents consisted mostly of additional UA 598 dispatch forms for JH Kelly employees. *See App. 3-116.* However, the additional documents do little to improve JH Kelly's position. A review of all documents produced to the Freedom Foundation by JH Kelly leads to the following conclusions:

- From March-May 2019, JH Kelly withheld at least \$40,288.08 from its employees' wages for UA 598's PAC.
- UA 598's PAC reported receiving 584 contributions from JH Kelly employees. Typically, 1-4 contributions per person were recorded during this period.

<sup>1</sup> UA 598's political committee has made at least one political contribution since the March-May 2019 period in the complaint. On June 14, 2019, the committee made a \$2,000 contribution to James Millbauer's campaign for Kennewick City Council. <https://web.pdc.wa.gov/rptimg/default.aspx?batchnumber=100915710>

- Of these, 577 contributions (99%) came from an employee for whom JH Kelly produced a dispatch form. The remaining seven contributions (1%) came from employees for whom JH Kelly was unable to produce a dispatch form (Edwin Bradshaw) or for whom JH Kelly produced a document other than a dispatch form that made no mention of authorizing political deductions and/or was unsigned by the employee (Sean Reid, Kenneth Wiest, Peter Wilkinson, Aric Isom, and Samuel Abramov).
- Of the 577 contributions from employees for whom JH Kelly produced a dispatch form:
  - 162 (28%) were made pursuant to version one forms the PDC has already determined to be invalid. Of these, 75 contributions (46%) were made pursuant to version one forms that lacked an employee signature.
  - 390 (68%) were made pursuant to version two forms the PDC has already determined to be invalid. Of these, 315 contributions (81%) were made pursuant to version two forms that lacked an employee signature.
  - 25 (4%) were made pursuant to version three forms. Of these, six (24%) were made pursuant to version three forms that lacked an employee signature.

*See App. 117-134.*

In short, as originally alleged in the complaint, none of the deductions processed by JH Kelly from employees' wages in March-May 2019 were made pursuant to signed authorization forms that complied with the FCPA.

JH Kelly admits it received the Foundation's request to inspect employees' authorization forms and, although JH Kelly provided some documents by the requested date of June 28, it did not produce many additional documents until a month later. It's failure to produce all of the PAC deduction authorization forms originally requested by the Freedom Foundation until *after* the filing of a formal complaint with the PDC violates the public inspection requirements of RCW 42.17A.495(4).

Though this allegation was not raised in the original complaint, as the Freedom Foundation had no reason to believe at the time that JH Kelly's disclosure was incomplete, it is willing to file an additional complaint on this point if necessary. However, the PDC also has authority under RCW 42.17A.755(1) to initiate a complaint on its own, which would seem appropriate in situations such as this in which an investigation of a complaint uncovers additional violations.

**5. Even the newest form violates PDC regulations, because it does not designate specific dollar amounts to be contributed, but percentages. This may seriously mislead employees by minimizing the size of the contributions.**

In its response, JH Kelly claims that, "on information and belief, authorization forms used by UA 598 with respect to JH Kelly employees after [February 14, 2019] met PDC requirements." Presumably, JH Kelly is referring to the version three dispatch forms.

It is worth reiterating, however, that the version three forms developed by UA 598 inappropriately restrict employees' ability to determine how much to contribute to the political committee, instead fixing the deduction rate at 0.7% of wages.<sup>2</sup>

The template authorization form set forth in WAC 390-17-100, however, permits the employee to designate the specific dollar amount they wish to contribute. WAC 390-17-100(2)(d) further indicates that PAC deduction authorizations must allow the employee to designate the dollar amount of the contribution by clarifying that, if the form authorizes contributions to multiple candidates or political committees, the form must specify "*the total dollar amount per pay period (or per week, month or year) to be withheld for each...*" (emphasis added).

JH Kelly may contend that WAC 390-17-100(2)(d) only applies to situations in which the authorization involves contributions to two or more recipients and that a percentage-based deduction is permissible when only one recipient benefits from the deduction. But if the PDC permits deductions based on a percentage of wages when only one recipient is involved, it would make no sense to require deductions for multiple recipients to be designated in dollar amounts. In other words, if an employee can designate 0.7% of their wages be withheld for a single recipient, there is no reason an employee could not specify 0.5% of their wages be withheld for one recipient and 0.2% be withheld for another. Either percentage-based deductions are permissible in all circumstances, or they are permissible in none.

However, the only proper way to understand WAC 390-17-100 is that employee authorizations must permit the designation of a specific dollar amount(s) to be withheld for any and all recipients.

The default position, as indicated by the PDC's template authorization form, is that the authorization must designate a specific dollar amount to be withheld, and WAC 390-17-100(2)(d) merely clarifies that, when multiple recipients benefits from the deductions, the employee's authorization must designate the specific dollar amount to be withheld "for each," which is also reflected in the template form. Deducting political contributions based on a percentage of employee wages simply is not sanctioned by the FCPA and PDC regulations.

This requirement protects employees from being manipulated into contributing amounts larger than they otherwise would. UA 598's dispatch forms, for example, intentionally attempt to make the deduction amount appear insignificant, describing it as "0.70% (0.0070)." In reality, the deductions often amount to \$100 or more per employee per month, hardly an insignificant sum and likely more than many employees would agree to contribute if they were permitted to designate the amount of the deduction.

In conclusion, JH Kelly's response does nothing to change the fact that its violations of the FCPA have been ongoing and extensive, despite warnings from the PDC. Accordingly, we

<sup>2</sup> See Exhibit A of JH Kelly's response to the complaint.

respectfully request that the PDC initiate enforcement proceedings sufficient, at minimum, to ensure future compliance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Maxford Nelsen', with a long horizontal flourish extending to the right.

Maxford Nelsen  
Director of Labor Policy  
Freedom Foundation  
P.O. Box 552, Olympia, WA 98507  
(360) 956-3482  
mnelsen@freedomfoundation.com



November 9, 2020

Vanessa Soriano Power  
600 University Street, Suite 3600  
Seattle, WA 98101  
D. 206.386.7553  
vanessa.power@stoel.com

**VIA EMAIL PDC@PDC.WA.GOV**

Phil Stutzman  
Public Disclosure Commission  
711 Capitol Way Rm. 206  
Olympia, WA 98504-0908

**Re: PDC Case No. 54324**  
**Respondent: JH Kelly, LLC**

Dear Mr. Stutzman:

On behalf of JH Kelly, LLC ("JH Kelly") thank you for the opportunity to respond to questions raised by the Public Disclosure Commission ("PDC") regarding PDC Case No. 54324. This letter addresses your questions in turn.

1. *In your response, you stated, "JH Kelly has taken corrective action and initiated remedial measures, in conjunction with UA 598, when noncompliance was brought to its attention." Please describe the corrective action and remedial measures taken since noncompliance was brought to JH Kelly's attention, and the dates the actions were taken.*

The corrective and remedial actions taken include the following, both before and after JH Kelly's response letter:

- May 2019 – Present (Ongoing): Communications with UA 598 regarding revisions to authorization forms and annual notice requirements.
- June -July 2019: Review of authorization forms on file and communications with UA 598 to confirm, on a going forward basis, authorization form approved by PDC will be used for JH Kelly dispatches.
- July 2019: Communications with UA 598 to address and confirm: (a) employees who opted out of contributions (one confirmed); (b) employees who were with JH Kelly less than a year
- July 2020: Confirmation that UA 598 provided annual notice to members, on behalf of JH Kelly, regarding authorization of contributions.
- July 2020: Processing of opt out notice from one JH Kelly employee and review of employees working January – June 2020 to confirm status of dispatches.

2. *On June 27, 2019, Craig Yabui responded to the Freedom Foundation's request by supplying a link to 155 pages of dispatch/authorization forms. For the 584 contributions identified by Mr. Nelsen, JH Kelly produced 410 authorization forms, but was unable to produce authorizations for the remaining 174 contributions. After Mr. Nelsen submitted the Freedom Foundation's complaint on July 8, 2019, Mr. Yabui supplemented his production to Mr. Nelsen on July 30, 2019 by producing over 100 pages of dispatch/authorization forms. With this production, for the 584 contributions identified by Mr. Nelsen, JH Kelly produced 577 authorization forms, and was unable to produce authorizations for the remaining seven contributions.*

*Why did JH Kelly not produce all 577 authorization forms on June 27, 2019 with its initial production to Mr. Nelsen?*

JH Kelly's initial disclosure on June 27, 2019 was intended to be complete, but as of the date of the disclosure on June 27, 2019, JH Kelly was still in the process of reviewing records to determine whether further responsive documents existed. After the disclosure was made on June 27, 2019, JH Kelly did, in good faith, continue to review records and ultimately did identify additional responsive documents. Those documents were then collected and a supplemental disclosure was made on July 30, 2019. The timing of JH Kelly's supplemental disclosure, which occurred after Mr. Nelson's complaint on behalf of the Freedom Foundation, was not in any way intended to interfere with or impair Freedom Foundation's request to inspect forms or Freedom Foundation's complaint filed with the PDC.

3. *Why were contributions withheld from the wages of seven employees without an authorization form?*

This appears to have been an error, which JH Kelly regrets. JH Kelly recognizes that without the missing authorization forms to confirm agreement to contributions, we are unable to state with certainty whether the individuals did, indeed, consent to the contributions. The action was not intentional on JH Kelly's part, and stemmed from errors or omissions involving an authorization form prepared by UA 598, not JH Kelly directly. JH Kelly recognizes its role as employer and the need for better coordination with UA 598 to ensure compliance, and has engaged further with UA 598 to that end.

4. *Based on the July 30, 2019 production to Mr. Nelsen, of the 577 authorization forms for the 584 contributions withheld during March, April, and May 2019, 162 were noncompliant version one forms, 390 were noncompliant version two forms, and 25 were compliant version three forms. Why were there only 25 compliant, version three authorization forms used during the period March, April, and May 2019?*

JH Kelly relied on UA 598 to bring authorization forms into compliance. The July 30, 2019 production to Mr. Nelson reflected authorization forms for contributions during the March, April, and May 2019 time period, during which time, on information and belief,



UA 598 was still in progress to confirm full use of authorization forms that met PDC requirements.

It is also JH Kelly's understanding that between March and May 2019, there was still a determination being made as to whether versions one and two of the authorization form were in compliance with PDC requirements if supplemented by the annual notice that UA 598 agreed to provide. That understanding is based on a communication from UA 598 at the end of May 2019, which is the same time at which JH Kelly became aware of the complaints regarding the authorization forms.

5. *Do these three versions of the authorization form represent changes made to the form by Local 598 on behalf of JH Kelly, in response to the first and second complaints and their disposition, without input from JH Kelly or an awareness by JH Kelly of why the changes were being made? (i.e. Was JH Kelly the passive recipient of whatever authorization form Local 598 provided as part of its dispatch form?)*

JH Kelly was the passive recipient of authorization forms provided by UA 598. The versions of the authorization represent changes that were made to the form by UA 598 on behalf of JH Kelly, but without input from JH Kelly.

In fact, JH Kelly was not aware of the Freedom Foundation's first complaint (Case No. 43692) or the PDC's closure of the case and related written warning letters dated February 14 and 15, 2019, until on or about May 24, 2019, when JH Kelly's General Counsel received notice of the Freedom Foundation's *second* complaint. That is because the email address that, on information and believe, was provided to the PDC by the Freedom Foundation was not a proper email address for legal notices because it is not routinely monitored.

6. *Of the 577 authorizations produced in the July 30, 2019 production to Mr. Nelsen, 552 were noncompliant version one or version two authorizations and 25 were compliant version three authorizations. In addition, no authorizations were produced for seven employees.*

*In your July 24, 2019 response letter, page 4, you stated, in response to the PDC's February 14, 2019 warning letter Local 598 began using compliant authorization forms after that date for union members being dispatched to JH Kelly. Thus, it appears compliant authorization forms were used for new employees being dispatched after February 14, 2019. Has JH Kelly obtained compliant authorization forms for all existing employees who were dispatched prior to February 14, 2019?*

JH Kelly has not affirmatively obtained new authorization forms for employees dispatched before February 14, 2019, but for all *existing* employees who are dispatched via UA 598, compliant, version three authorizations have been used since the version three forms were finalized by UA 598 in late Spring 2019. That includes any JH Kelly

employees whose prior authorization forms were previously deemed insufficient. For context, JH Kelly has not had a steady workforce in the area since July 2019 and, as a result, has had few workers dispatched. As an example, only one JH Kelly employee was dispatched in June – July 2019. JH Kelly has confirmed that a valid authorization form was on file for that employee (see attached – Cowan). Since that time, the employee opted out of contributions, and that opt-out has been processed (see attached).

7. *To resolve this matter, all employees who have made PAC contributions since March 2019 through a payroll deduction must sign a compliant authorization form if they have not already done so. Please note, an employee signing an annual notice, to show receipt of the notice required by WAC 390-17-110, will not be considered receipt of an acceptable substitute for a compliant, signed and dated authorization form, as required by WAC 390-17-100. The compliant authorization forms needed to resolve this matter include the seven employees for whom no authorizations were obtained and the 552 employees for whom noncompliant authorizations were obtained, for the period March, April, and May 2019, and all additional individuals employed since May 2019 from whom contributions have been withheld, if compliant authorizations have not already been obtained. If additional compliant authorization forms need to be signed and dated as described above, by what date can this be accomplished?*

JH Kelly will confirm, via coordination with UA 598, that all employees who have made PAC contributions since March 2019 through a JH Kelly payroll deduction have signed a compliant authorization form if they have not already done so. JH Kelly will confirm that this includes the seven individuals for whom no authorization form was previously identified.

JH Kelly's process is underway and JH Kelly anticipates that it will be able to confirm compliance by November 30, 2020.

8. *Did JH Kelly, or Local 598 on behalf of JH Kelly, provide the annual notice required by WAC 390-17-110, by June 30, 2019 and June 30, 2020, to employees from whom funds are being withheld for contributions to Local 598 PAC? On what date was the notice provided in 2019 and 2020? Please provide a copy of the notice sent in 2019 and 2020. Does JH Kelly, or Local 598 on behalf of JH Kelly, have in its possession a copy of the annual notice and a list of employees notified, and will they maintain this information for a period of no less than five years?*

Annual notice required by WAC 390-17-110 was provided in 2019 and 2020 to employees from whom funds are being withheld for contributions to the Local 598 PAC. Attached are the notices provided in 2019 (dated March 4, 2019) and 2020 (dated July 14, 2020).

Phil Stutzman  
November 9, 2020  
Page 5

This confirms that JH Kelly has a copy of the 2020 annual notice and that UA 598, on behalf of JH Kelly, has a list of employees notified, and that JH Kelly and UA 598 will maintain that information for a period of no less than five years.

Very truly yours,



Vanessa Soriano Power

cc: Craig Yabui, JH Kelly, LLC

1328 Road 28  
Pasco, WA 99301

## U.A. LOCAL 598 DISPATCH FORM

Phone : (509) 545-1446  
Fax : (509) 547-2139

Contractor : J H Kelly  
Site Name : Project Trident - Lamb Weston  
Site Address : 78153 Westland Road  
Hermiston, OR 97838  
Job Steward : Josh Atkinson 503-807-4969  
Assigned To : Cowan, W. James D xxx-xx-5969  
Comments : DRUG TEST ON SITE. 5-8'S. CBN

Report Date : 07/16/19  
Report Time : 07:00 AM

Pay Rate : \$50.47  
Job Desc : Welder  
Job Type : List Call  
Hiring List : Book A - Welder

Site Notes:

### PAC Authorization

So that the common interest of Local 598 members to secure jobs, fair wages, and safe working conditions can be heard by state and federal candidates for office, I voluntarily authorize and direct the above-named employer and any signatory to the Collective Bargaining Agreement for whom I work to deduct the suggested 0.70% (0.0070) as ratified by the Local 598 Membership, each week from my pay for transfer to the Local 598 Political Action Committee, where funds will be used for federal or state races as deemed necessary by PAC leadership. I understand that I have a right to refuse to so contribute without any reprisal. Furthermore, I recognize that the contribution guideline is just that, and that I may contribute any amount or not at all to the Political Action Committee - although only the suggested amount is supported by the paycheck deduction process. Contributing an alternative amount will require contacting the Local's staff. Note: No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (i) the failure to contribute to, (ii) the failure in any way to support or oppose, or (iii) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee. Furthermore, I understand that to comply with the Federal law, the PAC must use its best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 per calendar year. I understand that my contribution is not tax-deductible. I understand that I may revoke my authorization at any time in writing.

Signature : James D Cowan

Date : 7-15-19

### Work Assessment Check-Off Authorization

I authorize the Employer to withhold and to pay working dues on my behalf at the current rate of 3% and IAP at 2.25% of gross pay to Local Union 598. This authorization shall be valid for the period of one year or the balance of the term of the current agreement, whichever is sooner, and shall automatically renew itself for successive one-year periods. This authorization is subject to cancellation by written notice to the Employer and Local 598 given within the 60-day period preceding an automatic renewal date.

Signature : James D Cowan

Date : 7-15-19

Employer Copy 3

26437

**PAC DEDUCTION WITHDRAWAL NOTIFICATION**

I, W. James David Cowan effective  
(date) 7-23-2020, elect to no longer authorize the PAC  
deduction from my pay while I am employed with  
JH Kelly and in 598 Local

Date: 7-23-2020  
Signature: James Cowan  
Printed Name: James Cowan  
Card No.: 2715986

.....  
Local 598  
.....

Received on: RECEIVED JUL 28 2020  
Forwarded to: 1-360-423-8896  
Date Forwarded: FAXED JUL 28 2020



## UNITED ASSOCIATION

of Journeymen and Apprentices of the  
Plumbing and Pipe Fitting Industry of  
the United States and Canada

Founded 1889

Letters should  
be confined to  
one subject

UA Local Union:

598 1328 Road 28, Pasco, Washington 99301

Subject:

### WASHINGTON STATE PUBLIC DISCLOSURE REVIEW

Mark McManus  
General President

Patrick H. Kellett  
General Secretary-Treasurer

Michael A. Pleasant  
Assistant General President

March 4, 2019

To All Signatory Contractors:

The Washington State Public Disclosure Commission (WA PDC) has completed its review of the complaint filed on November 19, 2019 in reference to all Local Union 598 signatory contractors and Plumbers & Steamfitters Local 598 PAC (598 PAC). Included in this communication you will find an overview and breakdown of the actions required by the WA PDC. To ensure compliance with these WA PDC recommendations and Washington State law, we ask that all signatory contractors read the information below carefully and implement immediately.

#### Signatory Contractor Actions Required:

Attachment #1 of this communication includes the updated "Annual Notification Concerning Withholding Funds For 598 PAC". Pursuant to the requirements of the WA PDC, we ask that all signatory contractors distribute this form to all current employees dispatched by Local Union 598 and remit a copy of the signed form to the business office of Local 598 (contact below). We ask that this form be remitted by all employees regardless of their current voluntary 598 PAC contribution status. *Please return all forms by March 31. In the future we will collect these notices during the month of January.*

Attachment #2 of this communication shows the current voluntary 598 PAC contribution authorization that is submitted by members at the time of dispatch. Employers must ensure that this authorization is approved via signature on the dispatch form before deducting 598 PAC contributions from the member's payroll.

Please send completed forms, along with any questions to my Government Affairs Director and Office Manager:

Nickolas A Bumpaous  
Government Affairs Director  
UA Plumbers & Steamfitters Local 598  
[Nick@UA598.org](mailto:Nick@UA598.org)  
(509) 539-7917

Alana Jones  
Office Manager  
UA Plumbers & Steamfitters Local 598  
[Alana@UA598.org](mailto:Alana@UA598.org)  
(509) 545-1446

Sincerely,

*Randy Walli*

Randy Walli  
Business Manager

RW/aj  
opeiu #11  
afl-cio  
Enclosures





## ATTACHMENT #1

### ANNUAL NOTIFICATION CONCERNING WITHHOLDING FUNDS FOR 598 PAC

As required by the State of Washington administrative code, WAC 390-17-110 please be advised that neither UA Local 598, nor any signatory contractor, may or will discriminate against you in the terms or conditions of your employment for (1) failing to contribute to the PAC, (2) failing to support (or oppose) the PAC, or (3) in any way supporting or opposing a candidate, ballot measure, political party or political committee.

If you have voluntarily authorized PAC contributions, you may rescind that authorization at this, or any, time. As you are aware, so that the common interests of Local 598 members to secure jobs, fair wages, and safe working conditions can be heard by state and federal candidates for office, you have previously voluntarily authorized your employer to deduct 0.70% (0.0070) of your weekly gross pay to be contributed to the PAC.

Should you wish to discontinue this voluntary contribution to the PAC via payroll deduction, at any time, you may contact your employer or, UA Local 598 in writing at 1328 Rd 28, Pasco, WA 99301.

I acknowledge receipt of the above notice to ensure my local union and employer are in compliance with Washington State law:

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Note: A copy of this form shall be retained by Local 598 and your employer for at least five years.

# Attachment 2

1328 Road 28  
Pasco, WA 99301

## U.A. LOCAL 598 DISPATCH FORM

Phone : (509) 545-1446

Fax : (509) 547-2139

Contractor : Apollo Mechanical Contractors

Site Name : PDX Data Center

Site Address : 82792 Beach Access Rd.  
Umatilla, OR 97882

Report Date : 11/24/18

Report Time : 06:00 AM

Job Steward :

Assigned To :

Comments :

Pay Rate : \$37.88

Job Desc : Appr - 7th Period (75%)

Job Type :

Hiring List : Book A - Plumber Appr

Site Notes:

### PAC Authorization

So that the common interest of Local 598 members to secure jobs, fair wages, and safe working conditions can be heard by state and federal candidates for office, I voluntarily authorize and direct the above-named employer and any signatory to the Collective Bargaining Agreement for whom I work to deduct the suggested 0.70% (0.0070) as ratified by the Local 598 Membership, each week from my pay for transfer to the Local 598 Political Action Committee, where funds will be used for federal or state races as deemed necessary by PAC leadership. I understand that I have a right to refuse to so contribute without any reprisal. Furthermore, I recognize that the contribution guideline is just that, and that I may contribute any amount or not at all to the Political Action Committee - although only the suggested amount is supported by the paycheck deduction process. Contributing an alternative amount will require contacting the Local's staff. Note: No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (i) the failure to contribute to, (ii) the failure in any way to support or oppose, or (iii) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee. Furthermore, I understand that to comply with the Federal law, the PAC must use its best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 per calendar year. I understand that my contribution is not tax-deductible. I understand that I may revoke my authorization at any time in writing.

Signature : \_\_\_\_\_

Date : \_\_\_\_\_

### Work Assessment Check-Off Authorization

I authorize the Employer to withhold and to pay working dues on my behalf at the current rate of 3% and IAP at 2.25% of gross pay to Local Union 598. This authorization shall be valid for the period of one year or the balance of the term of the current agreement, whichever is sooner, and shall automatically renew itself for successive one-year periods. This authorization is subject to cancellation by written notice to the Employer and Local 598 given within the 60-day period preceding an automatic renewal date.

Signature : \_\_\_\_\_

Date : \_\_\_\_\_

Employer Copy

SAMPLE





## UNITED ASSOCIATION

of Journeymen and Apprentices of the  
Plumbing and Pipe Fitting Industry of  
the United States and Canada

Founded 1889

Letters should  
be confined to  
one subject

UA Local Union:

**598**

1328 Road 28, Pasco, Washington 99301

Subject:

**LOCAL 598 PAC ANNUAL NOTIFICATION**

Mark McManus  
General President

Patrick H. Kellett  
General Secretary-Treasurer

Michael A. Pleasant  
Assistant General President

July 14, 2020

To All Signatory Contractors:

Signatory Contractor Actions Required:

Attachment #1 of this communication is the updated 2020 "Annual Notification Concerning Withholding Funds For 598 PAC". Pursuant to the requirements of the WA PDC, we ask that all signatory contractors distribute this form to all current employees dispatched by Local Union 598 and remit a copy of the signed form to the business office of Local 598 (contact below). We ask that this form be remitted by all employees regardless of their current voluntary 598 PAC contribution status. *Please return all forms by September 1, 2020. In the future we will collect these notices during the beginning of each year.*

Please send completed forms, along with any questions to my Government Affairs Director and/or Office Manager:

Nickolas A Bumpaous  
Government Affairs Director  
UA Plumbers & Steamfitters Local 598  
[Nick@UA598.org](mailto:Nick@UA598.org)  
(509) 539-7917

Alana Jones  
Office Manager  
UA Plumbers & Steamfitters Local 598  
[Alana@UA598.org](mailto:Alana@UA598.org)  
(509) 545-1446

Sincerely,

Randy Walli  
Business Manager

RW/aj  
opeiu #11  
afl-cio



2020

ANNUAL NOTIFICATION CONCERNING  
WITHHOLDING FUNDS FOR 598 PAC

As required by the State of Washington administrative code, WAC 390-17-110 please be advised that neither UA Local 598, nor any signatory contractor, may or will discriminate against you in the terms or conditions of your employment for (1) failing to contribute to the PAC, (2) failing to support (or oppose) the PAC, or (3) in any way supporting or opposing a candidate, ballot measure, political party or political committee.

If you have voluntarily authorized PAC contributions, you may rescind that authorization at this, or any, time. As you are aware, so that the common interests of Local 598 members to secure jobs, fair wages, and safe working conditions can be heard by state and federal candidates for office, you have previously voluntarily authorized your employer to deduct 0.70% (0.0070) of your weekly gross pay to be contributed to the PAC.

Should you wish to discontinue this voluntary contribution to the PAC via payroll deduction, at any time, you may contact your employer or, UA Local 598 in writing at 1328 Rd 28, Pasco, WA 99301.

I acknowledge receipt of the above notice to ensure my local union and employer are in compliance with Washington State law:

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Note: A copy of this form shall be retained by Local 598 and your employer for at least five years.

Employer Name: \_\_\_\_\_

1328 Road 28  
Pasco, WA 99301

## U.A. LOCAL 598 DISPATCH FORM

Phone : (509) 545-1446  
Fax : (509) 547-2139

Contractor : J H Kelly

Site Name : JH Kelly

Site Address : 8248 Randolph Rd NE  
Moses Lake, WA 98837

Job Steward : Wade 509-989-1016

Assigned To : Gjerdevig, Cale D xxx-xx-7921

Comments : DRUG TEST @ LOURDES. 4-10'S W/OT, \$50/DAY. SAFETY BOOTS.  
COVID-19 REQ: TEMP & MASK.

Report Date : 07/20/20

Report Time : 06:00 AM

Pay Rate : \$52.20

Job Desc : Welder

Job Type : List Call

Hiring List : Book A - Welder

Site Notes:

### PAC Authorization

So that the common interest of Local 598 members to secure jobs, fair wages, and safe working conditions can be heard by state and federal candidates for office, I voluntarily authorize and direct the above-named employer and any signatory to the Collective Bargaining Agreement for whom I work to deduct the suggested 0.70% (0.0070) as ratified by the Local 598 Membership, each week from my pay for transfer to the Local 598 Political Action Committee, where funds will be used for federal or state races as deemed necessary by PAC leadership. I understand that I have a right to refuse to so contribute without any reprisal. Furthermore, I recognize that the contribution guideline is just that, and that I may contribute any amount or not at all to the Political Action Committee - although only the suggested amount is supported by the paycheck deduction process. Contributing an alternative amount will require contacting the Local's staff. Note: No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (i) the failure to contribute to, (ii) the failure in any way to support or oppose, or (iii) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee. Furthermore, I understand that to comply with the Federal law, the PAC must use its best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 per calendar year. I understand that my contribution is not tax-deductible. I understand that I may revoke my authorization at any time in writing.

Signature : 

Date : 7/14/2020

### Work Assessment Check-Off Authorization

I authorize the Employer to withhold and to pay working dues on my behalf at the current rate of 3% and IAP at 2.25% of gross pay to Local Union 598. This authorization shall be valid for the period of one year or the balance of the term of the current agreement, whichever is sooner, and shall automatically renew itself for successive one-year periods. This authorization is subject to cancellation by written notice to the Employer and Local 598 given within the 60-day period preceding an automatic renewal date.

Signature : 

Date : 7/14/2020

Employer Copy