

**CONFORMED**

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF SAN BERNARDINO, SAN BERNARDINO COURTHOUSE**

14 PEOPLE OF THE STATE OF CALIFORNIA,  
15 Plaintiff,  
16 v.  
17 NEILAND KENNETH DERRY,  
18 Defendant.

Case No.: FSB 1101877

Judge: Hon. Michael M. Dest  
Dept.: S23

**DEFENDANT NEILAND KENNETH  
DERRY'S DEMURRER TO FELONY  
COMPLAINT**

19 TO THIS HONORABLE COURT, ALL PARTIES AND TO THEIR ATTORNEYS OF  
20 RECORD HEREIN:

21 PLEASE TAKE NOTICE that on June 9, 2010, at 8:00 a.m., or as soon thereafter as the  
22 matter may be heard, in Department S23 of the above-entitled Court, located at 351 North  
23 Arrowhead Ave., San Bernardino, CA 92415-0220, Defendant Neiland Kenneth Derry  
24 ("Defendant") will and hereby does bring on for hearing his Demurrer to the every Count of the  
25 Felony Complaint filed by the People of the State of California ("Plaintiff") pursuant to Penal  
26 Code Sections 950, 952, and 1002-1005. Defendant respectfully brings this Demurrer on the  
27 following grounds:  
28

- 1 • Plaintiff fails to state a violation of a public offense regarding its second count for  
2 Offering False or Forged Instruments for Filing because Plaintiff fails to allege an  
3 essential element of that offense: to wit, that Defendant knew the document he  
4 filed was false (or forged). (Pen. Code, §§ 952, 1004, subs. (2), (4).)
- 5 • Plaintiff fails to state facts that constitute a violation of a public offense as to  
6 Count 3 for Failure to Report a Contribution because the Complaint specifically  
7 alleges facts that actually confirms that Defendant never received a  
8 “contribution,” as that term is defined by the Political Reform Act, from Arnold  
9 (“A.H.”) Stubblefield (“Stubblefield”) and therefore, Defendant did not have to  
10 report any contribution from Stubblefield on his Recipient Committee Campaign  
11 Statement, California Form 460 (hereafter, “Statement” or “460”). (Pen. Code, §  
12 1004, subd. (4).)
- 13 • Plaintiff fails to state facts that constitutes a violation of a public offense as to  
14 Count 1 for Perjury because Plaintiff’s Count 1 is based wholly on Defendant’s  
15 filing of the 460 without reporting Stubblefield’s contribution to the Inland  
16 Empire Political Action Committee (“IEPAC”); since the Complaint and  
17 California law establishes that Defendant did not have to report such  
18 “contribution” from Stubblefield, it is impossible for him to have committed  
19 perjury by failing to make such report. (Pen. Code, § 1004, subd. (4).)
- 20 • Plaintiff fails to state facts that constitute a violation of a public offense as to  
21 Count 2 for Offering False or Forged Instruments for Filing because Plaintiff’s  
22 Count 2, like the inclusion of Count 1, is based wholly on Defendant’s filing of  
23 the Statement without reporting Stubblefield’s contribution to the Inland Empire  
24 Political Action Committee (“IEPAC”), which Defendant was not legally obliged  
25 to report. (Pen. Code, § 1004, subd. (4).)

26 Defendant’s Demurrer is based on this Notice, the Memorandum of Points and  
27 Authorities filed herewith, those matters of which the Court may take judicial notice, the  
28 records and pleadings on file, deemed to be on file, or of which notice may be taken at the time

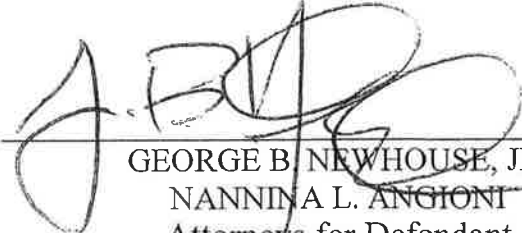
1 this Demurrer is heard, and the arguments of counsel made at the time of the hearing.

2 Respectfully submitted,

3 DATED: June 8, 2011

4 BROWN WHITE & NEWHOUSE LLP

5  
6 By



7 GEORGE B. NEWHOUSE, JR.  
8 NANNINA L. ANGIONI  
9 Attorneys for Defendant  
10 NEILAND KENNETH DERRY



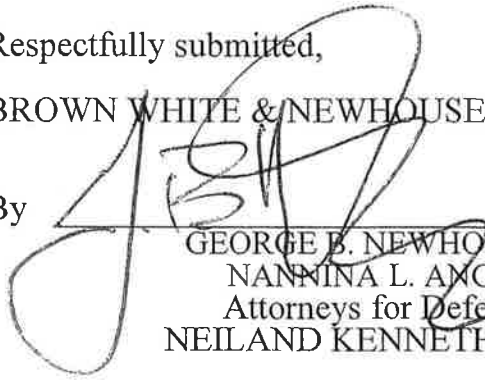
1 contribution to the Inland Empire Political Action Committee ("IEPAC"), which Defendant did  
2 not have to report. (Pen. Code, § 1004, subd. (4).)

3 DATED: June 8, 2011

Respectfully submitted,

BROWN WHITE & NEWHOUSE LLP

By



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GEORGE B. NEWHOUSE, JR.  
NANNINA L. ANGIONI  
Attorneys for Defendant  
NEILAND KENNETH DERRY

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION AND FACTUAL SUMMARY**

4 Defendant Neiland Kenneth Derry (“Defendant” or “Mr. Derry”) brings this Demurrer  
5 (“Demurrer”) to the Felony Complaint (“Complaint”) brought by the People of the State of  
6 California (“Plaintiff”) as a result of Plaintiff’s futile and inadequate attempt to single out one  
7 politician for entirely legal conduct. The facts pleaded in the Complaint and the supporting  
8 Declaration of Shannon Williams of the California Department of Justice (the “Declaration”)  
9 demonstrate that Defendant has not committed a cognizable public offense. Because the facts  
10 in the Complaint and the Declaration confirm, beyond reasonable dispute, that Defendant’s  
11 conduct was entirely proper and within the scope of the law, Plaintiff should not be permitted to  
12 amend the Complaint to allege that Defendant committed any offense related to the transactions  
13 in question. Accordingly, Defendant respectfully requests that this Court sustain Defendant’s  
14 Demurrer and dismiss the Complaint in its entirety without leave to amend.

15 Defendant is the duly elected 3<sup>rd</sup> District Supervisor for the County of San Bernardino.  
16 (Declaration at 2:18.) During his campaign in 2007, Defendant contacted A.H. Stubblefield  
17 (“Stubblefield”), a local property owner and developer, in the hopes of soliciting a contribution  
18 to his campaign for County Supervisor. (*Id.* at 2:19, 3:1-2.) Stubblefield was informed that he  
19 could make a campaign contribution to the Inland Empire Political Action Committee  
20 (“IEPAC”) because “it was [Defendant’s] understanding that the [IEPAC] was ‘probably’  
21 going to support his campaign.” (*Id.* at 2:4-5.) Use of the word “probably” is critical here.  
22 There is no allegation of an agreement, promise or assurance that such contributions to the PAC  
23 would, in fact, be provided, dollar for dollar, to Mr. Derry’s campaign.

24 On May 31, 2007, Stubblefield made a \$5,000 contribution to the IEPAC. (*Id.* at 2:19-  
25 21.) At the time Stubblefield made his contribution, the IEPAC was controlled by County  
26 Assessor and former chairman of the Board of Supervisors, William Postmus (“Postmus”). (*Id.*  
27 at 2:21-23.) The IEPAC deposited Stubblefield’s contribution on June 25, 2007. (*Id.* at 3:22-  
28 25.) On June 28, 2007, Postmus directed the IEPAC treasurer to make a \$10,000 contribution

1 to Defendant’s campaign. (*Id.* at 3:24-25.) Defendant deposited this contribution into his  
 2 campaign account on July 8, 2007. (*Id.* at 3:27-28.) As he was required to do, Defendant  
 3 reported the \$10,000 contribution from the IEPAC on the Recipient Committee Campaign  
 4 Statement, or California Form 460 (the “Statement” or “460”) he filed on July 25, 2007 with  
 5 the San Bernardino County Registrar of Voters. (*Id.* at 4:1-5.)

6 On April 25, 2011, the California Attorney General filed the Complaint against  
 7 Defendant. The Complaint, citing the above facts, alleges that Defendant committed the crimes  
 8 of Perjury (Count 1; Pen. Code, § 118), Offering False or Forged Instruments for Filing  
 9 (County 2; Pen. Code, § 115), and Failure to Report a Contribution (Count 3; Gov. Code, §  
 10 84302).

11 Each count in the Complaint filed by Plaintiff is legally defective, and the Complaint  
 12 must be dismissed for the following reasons:

- 13 • **Count 2 for Offering False or Forged Instruments for Filing fails because**  
 14 **Plaintiff failed to plead a required element of the offense—that Defendant**  
 15 **knew the Statement was false or forged at the time of filing.** (Pen. Code, §§  
 16 952, 1004, subs. (2), (4).) The offense requires that the Defendant “*knowingly*  
 17 procure[] or offer[] any false or forged instrument to be . . . recorded.” (Pen  
 18 Code, § 115, subd. (a) [emphasis added].) Plaintiff simply failed to allege that  
 19 Defendant knew that the Statement which his campaign filed with the FPPC was  
 20 false or forged, a necessary element of the offense. To sufficiently plead a count  
 21 for a violation of Penal Code Section 115, Plaintiff must plead that knew that the  
 22 Statement was false or forged. (*People v. Butler* (1917) 35 Cal.App.357, 369.)  
 23 Plaintiff simply did not do so. Accordingly, Count 2 must be dismissed.
- 24 • **Count 3 for Failure to Report a Contribution fails because the facts alleged**  
 25 **in the Complaint and the supporting Declaration affirm that Defendant did**  
 26 **not commit any public offense.** (Pen. Code, § 1004, subd. (4).) A violation of  
 27 Government Code Section 84302 requires that the alleged offender fail to report a  
 28 “contribution” as that word is defined in the statute. Defendant reported the

1 \$10,000 contribution which he received from the IEPAC in his Form 460. (*Id.* at  
2 4:1-5.) Count 3 is wholly based on Defendant’s failure to report a contribution  
3 *from Stubblefield to Defendant*. However, Defendant did not receive a  
4 “contribution” from Stubblefield, and there is no factual basis alleged in the  
5 Complaint as to which the Court might conclude that IEPAC was acting as an  
6 “intermediary” under FPPC Reg. section 18432.5. Mr. Derry cannot fail to report  
7 a “contribution” that he did not receive. Accordingly, Count 3 must be dismissed  
8 because the facts stated in the Complaint and the Declaration affirm that  
9 Defendant reported the only “contribution” at issue—the \$10,000 contribution  
10 from the IEPAC. No crime was committed.

- 11 • **Finally, Count 1 for Perjury and Count 2 for Offering False or Forged**  
12 **Instruments for Filing fail because Plaintiff did not commit Count 3—he did**  
13 **not knowingly fail to report a “contribution.”** (Pen. Code, § 1004, subd. (4).)  
14 Plaintiff bases Counts 1 and 2 on the fact that Defendant filed the Statement  
15 under penalty of perjury and failed to report a “contribution.” As noted above,  
16 Defendant reported every “contribution” actually received by his campaign.  
17 Therefore, Defendant’s Statement was not false or forged and Defendant did not  
18 commit perjury by filing it. Accordingly, Counts 1 and 2 must be dismissed.

19 For these reasons, Defendant respectfully requests that this Court grant his Demurrer and  
20 dismiss the Complaint in its entirety without leave to amend.

21 **II.**  
22 **ARGUMENT**

23 “[R]easonable doubts in determining the identity of the offense charged are to be  
24 resolved in the defendant's favor.” (*People v. Schueren* (1973) 10 Cal.3d 553, 558.) A  
25 defendant may demur to a complaint *inter alia* when it appears on the face of the complaint  
26 that: (1) the complaint does not substantially conform to the provisions of Penal Code Section  
27 952, or (2) the facts stated do not constitute a violation of a public offense. (Pen. Code, § 1004,  
28 subds. (2), (4).) Penal Code Section 952 provides that “each count [in a complaint] shall

1 contain, and shall be sufficient if it contains in substance, a statement that the accused has  
2 committed some public offense therein.”

3 California courts have consistently held that the accusatory pleading must identify each  
4 essential element of the charged offense. (*People v. Swinney* (1975) 46 Cal.App.3d 332, 443  
5 [Accusatory pleadings must “give the accused notice of the essential elements of the  
6 prosecution's case”]; *People v. Holt* (1949) 93 Cal.App.2d 473, 476 [An accusatory pleading  
7 “an indictment or information need only charge the essential elements of the statutory  
8 offense”]; *People v. Morales* (1926) 77 Cal.App. 483, 488 “[E]ach of the essential ingredients  
9 of a public offense, as such offense is defined by law, should be set forth in an information or  
10 indictment in clear and understandable language.”]) Each of the Counts alleged in the  
11 Complaint fails because Plaintiff fails to plead essential elements of the charged offenses and  
12 alleges facts that do not constitute a violation of a public offense.

13 **A. PLAINTIFF’S SECOND COUNT FOR OFFERING A FALSE INSTRUMENT**  
14 **FOR FILING FAILS BECAUSE THE COMPLAINT FAILS TO ALLEGE THAT**  
15 **DEFENDANT ‘KNOWINGLY’ COMMITTED THE OFFENSE**

16 Count 2 which charges a violation of Offering a False Instrument for Filing here fails  
17 because Plaintiff failed to plead a necessary element of the charged offense—that Defendant  
18 knew that the Statement was false or forged. Penal Code Section 115, subdivision (a), provides  
19 that it is a felony to “*knowingly* procure[] or offer[] any false or forged instrument to be . . .  
20 recorded in any public office within this state.” (Emphasis added.) The applicable jury  
21 instruction also clarifies that the prosecution must prove as an essential element of the offense  
22 that “[w]hen the defendant did that act, [he] knew that the document was (false/[or]forged.”  
(Judicial Council of California Criminal Jury Instructions, Instruction No. 1945.)

23 Plaintiff failed to allege that Defendant knew that the Statement was false or forged at  
24 the time of filing. In *People v. Butler, supra*, 35 Cal.App.357, the defendant was prosecuted for  
25 submitting a fraudulent claim to a county. The appellate court affirmed the trial court  
26 sustaining a demurrer to the entire action based on Penal Code Section 952 because the district  
27 attorney did not adequately plead that the defendant knew of the claim’s falsity. (*Id.* at 368.)  
28 Citing the defendant’s brief, the court held that “in order to constitute fraud there must be both

1 an intent to defraud and a knowledge of the false and fraudulent character of the act or  
2 statement, and the allegation of one will not supply the other . . . . [T]he presence of the ‘intent  
3 to defraud’ [is] not sufficient, and [] *the facts constituting [knowledge of] the false and*  
4 *fraudulent character of the act charged must be alleged.*” (*Id.* at 369 [emphasis added])

5 Plaintiff only alleges:

6 “On or about July 31, 2007, in the County of San Bernardino, State of  
7 California, [Defendant] did unlawfully and knowingly offer a false or  
8 forged instrument for filing , registration, or recordation in a public  
9 office within the State of California, which instrument, if genuine, was  
10 entitled to be filed, registered, or recorded under the law of the State of  
11 California, to wit: the [Statement], Fair Political Practices Commission  
12 Form 460, for Neil Derry for Supervisor, in violation of Penal Code  
13 section 115, a Felony.”

14 Plaintiff does not allege that Defendant knew the Statement was false or forged at the time of  
15 filing. Accordingly, Count 2 must be dismissed because Plaintiff failed to plead a necessary  
16 element of that offense.

17 **B. PLAINTIFF’S THIRD COUNT FOR FAILURE TO REPORT A**  
18 **CONTRIBUTION FAILS BECAUSE PLAINTIFF REPORTED ALL**  
19 **“CONTRIBUTIONS” AT ISSUE**

20 Count 3 for Failing to Report a Contribution fails because the facts alleged in the  
21 Complaint and the supporting Declaration affirm that Defendant did not fail to report a  
22 contribution from Mr. Stubblefield to Mr. Derry’s campaign. (Pen. Code, § 1004, subd. (4).)  
23 The Political Reform Act provides that, “[t]he recipient of [a] contribution shall include in his  
24 campaign statement the full name and street address, occupation, and the name of the employer,  
25 if any, or the principal place of business if self-employed, of both the intermediary and the  
26 contributor.” (Gov. Code, § 84302 [emphasis added].) No facts are alleged from which the  
27 Court could conclude that the IEPAC was here acting as an intermediary. The Government  
28 Code makes this clear: **“A contribution made . . . to a committee not controlled by the**  
**behesting candidate is not a contribution to the behesting candidate.”** (Gov. Code, § 82015,



1 subd. (b)(2)(D) (emphasis added).) “Made at the behest of” means made under the control or  
2 at the direction of, in cooperation, consultation, coordination, or concert with, at the request or  
3 suggestion of, or with the express, prior consent of.” (Admin. Code tit. 2, § 18225.7, subd.  
4 (a).)

5 Stubblefield’s contribution to IEPAC was not a contribution to Defendant’s campaign  
6 and Defendant was not required to report it. At the time Stubblefield made his contribution,  
7 IEPAC was controlled by William Postmus, not Defendant. (*Id.* at 2:19-23.) The Political  
8 Reform Act clearly provides that Stubblefield’s \$5,000 contribution to IEPAC, even if made in  
9 “consultation, coordination, or concert with” Defendant, “is not a contribution to” Defendant.  
10 (Gov. Code, § 82015, subd. (b)(2)(D).) Rather, Stubblefield made a contribution to IEPAC,  
11 and not Defendant, for purposes of Government Code Section 84302. Defendant reported the  
12 only contribution to his campaign that Plaintiff identifies—the later \$10,000 contribution from  
13 the IEPAC. (*Id.* at 4:1-5.) Accordingly, Count 3 must be dismissed because the facts stated in  
14 the Complaint affirmatively establish that Defendant did not violate any law by not reporting  
15 Stubblefield’s contribution to IEPAC.

16 C. **PLAINTIFF’S FIRST AND SECOND COUNTS FAIL BECAUSE PLAINTIFF**  
17 **REPORTED ALL “CONTRIBUTIONS” AND THE STATEMENT WAS NOT**  
18 **PERJURIOUS, FALSE, OR FORGED**

19 Finally, Counts 1 and 2 must be dismissed because they are premised on the legally  
20 deficient assumption that Defendant improperly failed to disclose Stubblefield’s contribution to  
21 IEPAC. Count 1 for Perjury requires a false statement. (Pen. Code, § 118.) Count 2 for  
22 Offering a False or Forged Instrument for Filing requires the offering of false or forged  
23 document. (Pen. Code, § 115, subd. (a).) Here, the alleged false statement and false 460 Filing  
24 are the same—Mr. Derry’s Form 460 in which he disclosed receipt of a \$10,000 from IEPAC.  
25 (Complaint at 2:4-8; 2:15-16.) Plaintiff alleges the Statement is false or forged because  
26 Defendant did not report Stubblefield’s contribution to the IEPAC. (*Id.*)

27 As noted in Section II.B. above, however, the Form 460 filing did not contain a false  
28 statement (by omission) and is not a false or forged document because **Stubblefield never**  
**made a contribution to Defendant** and Defendant was not required to report Stubblefield’s

1 contribution to the IEPAC on his Statement. Plaintiff bases Counts 1 and 2 purely on  
2 Plaintiff's incorrect assumption that the Statement includes a false assertion. However, the  
3 facts offered by Plaintiff only establish that, under the Political Reform Act, Stubblefield made  
4 a contribution to IEPAC, not to Defendant. Defendant did not have to include Stubblefield's  
5 contribution to IEPAC on his Statement. Therefore, the Statement—which included the  
6 \$10,000 from IEPAC to Defendant—was not a false or forged document and cannot form the  
7 basis for Counts 1 and 2. Accordingly, Defendant respectfully requests that the Court dismiss  
8 Counts 1 and 2 without providing Plaintiff leave to amend.

9 III.

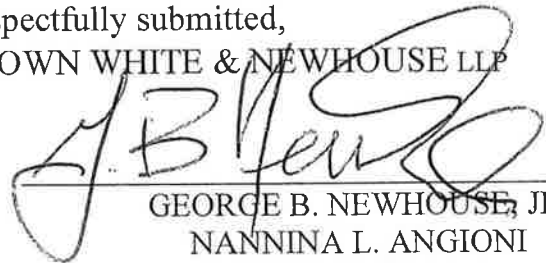
10 CONCLUSION

11 For the foregoing reasons, Defendant Neiland Kenneth Derry respectfully requests that  
12 the Court sustain his Demurrer as to Counts 1, 2, and 3 in Plaintiff's Felony Complaint without  
13 leave to amend.

14 DATED: June 8, 2011

Respectfully submitted,  
BROWN WHITE & NEWHOUSE LLP

15  
16 By



17 GEORGE B. NEWHOUSE, JR.  
18 NANNINA L. ANGIONI  
Attorneys for Defendant  
19 NEILAND KENNETH DERRY



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**SERVICE LIST**

*People of the State of California v. Neiland Kenneth Derry*  
Case No. FSB 1101877

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