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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of) FPPC No. 10/1000
13)
14 PETER CUTHBERT) STIPULATION, DECISION and
15) ORDER
16 Respondent.)
17

18 Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission,
19 and Respondent Peter Cuthbert agree that this Stipulation will be submitted for consideration by the Fair
20 Political Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of the Respondent, pursuant to Section 83116 of the Government Code.

24 Respondent understands, and hereby knowingly and voluntarily waive, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent Peter Cuthbert violated the Political Reform
4 Act by failing to include a proper sender identification on a mass mailing in violation of Section 84305,
5 subdivision (a), of the Government Code. This count is described in Exhibit 1, which is attached hereto
6 and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary
7 of the facts in this matter.

8 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
9 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
10 of Two Thousand Five Hundred Dollars (\$2,500). A cashier's check from Respondent in said amount,
11 made payable to the "General Fund of the State of California," is submitted with this Stipulation as full
12 payment of the administrative penalty, to be held by the State of California until the Commission issues
13 its decision and order regarding this matter. The parties agree that in the event the Commission refuses
14 to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
15 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in
16 connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and
17 agree that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
18 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
19 shall be disqualified because of prior consideration of this Stipulation.

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21 Dated: _____

Roman G. Porter, Executive Director
Fair Political Practices Commission

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25 Dated: _____

Peter Cuthbert, Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Peter Cuthbert,” FPPC No. 10/1000,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

7
8 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Peter Cuthbert (“Respondent Cuthbert”) paid for and caused to be sent a mass mailer which expressly advocated the election on three candidates running for office in La Mesa, CA in the November 2, 2010 election, but failed to identify himself as the sender.

Prior to the election, Respondent paid for and cause to be sent a postcard sized mailer which endorsed Ian Shiff and Kevin Rynearson for city council and Laura Lothian for mayor. All three candidates were defeated. The mailer was delivered to approximately 15,000 households in La Mesa on or about October 28, 2010. However, the mailer did not identify the sender, in violation of the Political Reform Act (the “Act”).¹

For the purposes of this Stipulation, Respondent’s violation of the Act is stated as follows:

COUNT 1: On or about October 26, 2010, Respondent Peter Cuthbert caused to be sent a mass mailer supporting three candidates in the November 2, 2010, election, which failed to display required sender identification, in violation of Government Code Section 84305, subdivision (a).

SUMMARY OF THE LAW

Section 82013, subdivision (b) defines a “committee” as including any person or combination of persons who makes independent expenditures totaling \$1,000 or more in a calendar year. This type of committee is commonly referred to as an “independent expenditure” committee.

Section 82031 defines an “independent expenditure” as including an expenditure made by any person in connection with a communication that expressly advocates the election or defeat of a clearly identified candidate but which is not made to or at the behest of the affected candidate or committee.

Sender Identification Requirements

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

¹The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Section 82041.5 defines a “mass mailing” as over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry. Regulation 18435, subdivision (a), clarifies this section, and further defines a mass mailing as over two hundred substantially similar pieces of mail sent in a calendar month. Regulation 18435, subdivision (b), defines the term “sender,” as used in Section 84305, as the candidate or committee who pays for the largest portion of expenditures attributable to the designing, printing or posting of the mailing.

SUMMARY OF THE FACTS

This case was opened as the result of a complaint that alleged Respondent Peter Cuthbert was responsible for sending mass mailers which lacked proper sender identification information. A mass mailer which expressly advocated the election of three candidates running for office in La Mesa, CA in the November 2, 2010 election, but failed to identify the sender, was sent to voters on or about October 26, 2010.

Respondent Peter Cuthbert was the sender of the mailer. Respondent obtained biographical information from two of the candidates directly, and information about the third candidate off of the campaign web site.² Respondent spent a total of \$5,130.38 on the production and distribution of a mass mailer, advocating the election of three candidates for elected office in La Mesa. Approximately 15,000 copies of each mailer were sent to voters. Respondent was required to provide the name, street address, and city of the committee on the outside of each piece of mail in a mass mailing. The mailer did not include this information.

By failing to provide sender identification on a mass mailer, Respondent violated Section 84305, subdivision (a), of the Government Code.

CONCLUSION

This matter consists of one count, which carries a maximum possible administrative penalty of Five Thousand Dollars (\$5,000).

The public harm inherent in the type of violation, where sender identification is not disclosed on a mass mailer, is that the public is deprived of important information regarding the sponsor of the mailing.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. The Enforcement Division also considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6), which include: the seriousness

² Under Regulation 18225.7, an expenditure will not be considered a contribution to a candidate merely because: the person making the expenditure interviews the candidate on issues affecting the person making the expenditure or the person making the expenditure has obtained a photograph, biography, position paper, press release, or similar material from the candidate or the candidate’s agents.

of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the Respondent voluntarily filed amendment to provide full disclosure. Additionally, liability under the Act is governed in significant part by the provisions of Section 91001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

Other similar cases regarding a violation of Section 84305, subdivision (a) that have been recently approved by the Commission include:

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

In the Matter of Chico Democrats 08 and Michael Worley, FPPC No. 09/537. This case involved a postcard sized mailer sent to approximately 6,000 households in connection with a local election. The sender identification provided on the mailer failed to properly identify the committee responsible for the piece. A \$2,500 penalty was approved by the Commission on January 28, 2011.

In this case, Respondent's actions were similar to the cases above in that none of these cases appear to include anything more than negligent behavior. The present case does not appear to be part of a bigger disclosure issue. Respondent has no prior Enforcement history and has no prior experience with campaign reporting. Respondent has fully cooperated with Enforcement in the investigation of this matter.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the Respondent's patter of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Two Thousand Five Hundred Dollars (\$2,500) is recommended.