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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA

10  
11 In the Matter of

12 PAUL FICKAS AND DECLINE TO  
13 STATE VOTER GUIDE

14 Respondents.

FPPC No. 10/959

15  
16 STIPULATION, DECISION and  
17 ORDER

18 Complainant Roman G. Porter, Executive Director of the Fair Political Practices  
19 Commission, and Respondents Paul Fickas and Decline to State Voter Guide hereby agree that  
20 this stipulation will be submitted for consideration by the Fair Political Practices Commission at  
21 its next regularly scheduled meeting.

22 The parties agree to enter into this stipulation to resolve all factual and legal issues raised  
23 by this matter and to reach a final disposition without the necessity of holding an administrative  
24 hearing to determine the liability of Respondents.

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

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

4 It is further stipulated and agreed that Respondents Paul Fickas and Decline to State  
5 Voter Guide violated the Political Reform Act by (1) failing to include required disclosures in a  
6 slate mailer, in violation of Section 84305.5 of the Government Code (1 count), as described in  
7 Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference as though fully set forth  
8 herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

9 Respondents agree to the issuance of the decision and order, which is attached hereto.  
10 Respondents also agree to the Commission imposing upon them an administrative penalty in the  
11 amount of One Thousand Five Hundred Dollars (\$1,500). A cashier's check from Respondents  
12 in said amount, made payable to the "General Fund of the State of California," is submitted with  
13 this stipulation as full payment of the administrative penalty, and shall be held by the State of  
14 California until the Commission issues its decision and order regarding this matter. The parties  
15 agree that in the event the Commission refuses to accept this stipulation, it shall become null and  
16 void, and within fifteen (15) business days after the Commission meeting at which the stipulation  
17 is rejected, all payments tendered by Respondents in connection with this stipulation shall be  
18 reimbursed to Respondents. Respondents further stipulate and agree that in the event the  
19 Commission rejects the stipulation, and a full evidentiary hearing before the Commission  
20 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be  
21 disqualified because of prior consideration of this stipulation.

22  
23 Dated: \_\_\_\_\_

\_\_\_\_\_  
Roman G. Porter, Executive Director  
Fair Political Practices Commission

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26 Dated: \_\_\_\_\_

\_\_\_\_\_  
Paul Fickas individually and on behalf of  
Decline to State Voter Guide  
Respondents

1 **DECISION AND ORDER**

2 The foregoing stipulation of the parties “In the Matter of Paul Fickas and Decline to State  
3 Voter Guide FPPC No. 10/959,” including all attached exhibits, is hereby accepted as the final  
4 decision and order of the Fair Political Practices Commission, effective upon execution below by  
5 the Chair.

6 **IT IS SO ORDERED.**

7 Dated: \_\_\_\_\_

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9 Ann Ravel, Chair  
10 Fair Political Practices Commission  
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## EXHIBIT 1

### INTRODUCTION

Respondent Decline to State Voter Guide (“Respondent Decline”) is a slate mailer organization which was formed in or about March 2010. Respondent Paul Fickas (“Respondent Fickas”) formed Respondent Decline and directed its activity.

This matter arose out of a proactive investigation by the Fair Political Practices Commission’s (“Commission”) Enforcement Division. The investigation revealed that slate mailers sent in 2010 by Respondents did not contain required disclosures. Specifically, Respondents violated provisions of the Political Reform Act (the “Act”)<sup>1</sup> by changing the required wording of the slate mailer “Notice to Voters” and by not using asterisks to denote candidates that paid to appear in slate mailers.

For purposes of this Stipulation, Respondents’ violations of the Act are stated as follows:

**COUNT 1:** Respondents Paul Fickas and Decline to State Voter Guide failed to include in a slate mailer the complete wording of the required disclaimer “Notice to Voters” and to place asterisks following the names of candidates that paid to appear in the slate mailer, in violation of Government Code Section 84305.5 subdivisions (a)(2) and (4).

### SUMMARY OF THE LAW

An express purpose of the Act, as stated in section 81002, subdivision (a), is to ensure that contributions and expenditures affecting election campaigns are fully and truthfully disclosed to the public, so that voters will be better informed and improper practices inhibited. To that end, the Act sets forth a comprehensive campaign reporting system designed to accomplish this purpose of disclosure.

Slate mailer organizations are included among the entities subject to the Act’s campaign reporting requirements. Under the Act, a slate mailer organization is any person who directly or indirectly, does all of the following: 1) is involved in the production of one or more slate mailers

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<sup>1</sup> The 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.

and exercises control over the selection of the candidates and measures to be supported or opposed in the slate mailers; and 2) receives or is promised payments totaling five hundred dollars (\$500) or more in a calendar year for the production of one or more slate mailers. (Section 82048.4, subd. (a).)

### **Liability for Violations**

Section 83116.5 provides that any person who violates any provision of this title, who purposely or negligently causes any other person to violate any provision of this title, or who aids and abets any other person in the violation of any provision of this title, shall be liable under the provisions of this chapter. However, this section shall apply only to persons who have filing or reporting obligations under this title, or who are compensated for services involving the planning, organizing, or directing any activity regulated or required by this title.

### **Duty to Include Disclaimers in Slate Mailers**

Section 84305.5 requires a slate mailer organization to include certain disclosures in its mailers. Subdivision (a)(2) requires the following disclaimer to be included in a slate mailer:

#### *NOTICE TO VOTERS*

*THIS DOCUMENT WAS PREPARED BY (name of slate mailer organization or committee primarily formed to support or oppose one or more ballot measures), NOT AN OFFICIAL POLITICAL PARTY ORGANIZATION. Appearance in this mailer does not necessarily imply endorsement of others appearing in this mailer, nor does it imply endorsement of, or opposition to, any issues set forth in this mailer. Appearance is paid for and authorized by each candidate and ballot measure which is designated by an \*.*

In addition, subdivision (a)(4) requires “[e]ach candidate and each ballot measure that has paid to appear in the slate mailer is designated by an \*. Any candidate or ballot measure that has not paid to appear in the slate mailer is not designated by an \*. The \* required by this subdivision shall be of the same type size, type style, color or contrast, and legibility as is used for the name of the candidate or the ballot measure name or number and position advocated to which the \* designation applies except that in no case shall the \* be required to be larger than 10-point boldface type. The designation shall immediately follow the name of the candidate, or the name or number and position advocated on the ballot measure where the designation appears in the slate of candidates and measures. If there is no slate listing, the designation shall appear at least once in at least 8-point boldface type, immediately following the name of the candidate, or the name or number and position advocated on the ballot measure.”

## SUMMARY OF THE FACTS

Respondent Decline is a slate mailer organization formed by Respondent Fickas in or about March 2010. In connection with the 2010 general election, Respondents Decline and Fickas produced and sent slate mailers to voters who had declined to state a political party affiliation.

In a version of the general election slate mailer sent to Sacramento residents, four candidates appeared in the slate mailer. Three of these candidates paid to appear in the mailer; however, the required asterisks were not placed following their names. Further, the wording of the required “Notice to Voters” in the slate mailer was changed to remove wording concerning the use of asterisks. The required wording for the “Notice to Voters” regarding the use of asterisks is:

“Appearance is paid for and authorized by each candidate and ballot measure which is designated by an \*.”

The wording used by Respondents in the slate mailer was:

“Appearance is paid for and authorized by each candidate and ballot measure.”

In addition, Respondents changed the wording of the “Notice to Voters” regarding implied endorsements. The required wording is:

“Appearance in this mailer does not necessarily imply endorsement of others appearing in this mailer, nor does it imply endorsement of, or opposition to, any issues set forth in this mailer.”

The wording used by Respondents in the slate mailer was:

“Appearance in this mailer does not necessarily imply endorsement of other candidates or ballot measures in this mailer.”

By failing to include in a slate mailer the required wording of the “Notice to Voters” and to place asterisks following the names of the candidates that paid to appear, Respondents violated Section 84305.5 subdivisions (a)(2) and (4).

## CONCLUSION

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

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. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness 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; and whether there was a pattern of violations.

The failure to include the required disclaimers in slate mailers is a serious violation of the Act as it deprives the public of important information. In this matter, the public would not have been able to tell which candidates featured in the slate mailer actually paid to appear.

The Commission has not previously assessed a penalty for a violation of section 84305.5. Though section 84305.5 has not been charged, the Commission has recently approved other cases involving the failure to make disclosures in mass mail and advertisements. *“In the Matter of Friends of Cuesta College Committee and Edralin Maduli, FPPC Nos. 06/465 & 06/848”*, a \$2,000 penalty per count was assessed for the failure to make required disclosures of persons contributing \$50,000 or more in newspaper advertisements pursuant to section 84503. *“In the Matter of Protect Burlingame and Kevin Osborne, FPPC No. 09/804”*, a \$2,500 penalty was assessed for the failure to provide sender identification in mass mail pursuant to section 84305.

In both of the above matters, substantially all of the information required by the applicable sections was not disclosed. In this matter, Respondents did attempt to notify readers of the slate mailers as to which candidates paid to appear in the mailers by including a modified “Notice to Voters” which stated that all candidates appearing in the slate mailer paid. However, in the aforementioned version of the slate mailer sent to Sacramento voters, the disclaimer indicated all four candidates paid to appear when only three actually did.

Respondents had no previous experience in producing slate mailers and did not take steps to ensure that they were in compliance with the Act’s requirements for slate mailer disclosures such as consulting with the staff of the Commission prior to sending slate mailers. Further, Respondents demonstrated a pattern of violating the Act by sending slate mailers for both the 2010 primary and general elections which did not contain required disclaimers. Respondents did cooperate fully during the investigation and have no prior enforcement history with the

Commission. In addition, no evidence was found to show Respondents intentionally attempted to deceive the voting public regarding who paid to appear in the slate mailer and the name used for the slate mailer “*Decline to State Voter Guide*” does not suggest an affiliation with any organization or special interest group.

**PROPOSED PENALTY**

After consideration of the factors of Regulation 18361.5, the imposition of a penalty of One Thousand Five Hundred Dollars (\$1,500) is recommended.