

1 GARY S. WINUK
Chief of Enforcement
2 NEAL P. BUCKNELL
Senior Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant

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8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**

10
11 In the Matter of:

12 ELECTION EDUCATION GUIDE and
13 TRACEY POMERANCE-POIRIER,

14 Respondents.

FPPC No. 10/980

STIPULATION, DECISION AND ORDER

15 **STIPULATION**

16 Complainant, the Fair Political Practices Commission, and Respondents, Election Education
17 Guide and Tracey Pomerance-Poirier, agree that this Stipulation will be submitted for consideration by
18 the Fair Political Practices Commission at its next regularly scheduled meeting.

19 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
20 matter and to reach a final disposition without the necessity of holding an additional administrative
21 hearing to determine the liability of Respondents.

22 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
23 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
24 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
25 appear personally at any administrative hearing held in this matter, to be represented by an attorney at
26 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
27 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
28 the hearing as a hearing officer, and to have the matter judicially reviewed.

1 As described in Exhibit 1, it is further stipulated and agreed that for the reporting periods ending
2 June 30 and December 31, 2010, Respondents failed to timely report subvendor information for
3 payments totaling approximately \$652,549, in violation of Government Code section 84219, subdivision
4 (h)(5) (one count).

5 Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein,
6 is a true and accurate summary of the facts in this matter.

7 Respondents agree to the issuance of the Decision and Order, which is attached hereto, and
8 Respondents agree to the Commission imposing upon them an administrative penalty in the amount of
9 \$2,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General
10 Fund of the State of California—is/are submitted with this Stipulation as full payment of the
11 administrative penalty described above, and same shall be held by the State of California until the
12 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the
13 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)
14 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered
15 by Respondents in connection with this Stipulation shall be reimbursed. Respondents further stipulate
16 and agree that in the event the Commission rejects the Stipulation and a full evidentiary hearing before
17 the Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
18 shall be disqualified because of prior consideration of this Stipulation.

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20 Dated: _____

Gary S. Winuk, Chief of Enforcement
Fair Political Practices Commission

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23 Dated: _____

Tracey Pomerance-Poirier, Individually and on
Behalf of Election Education Guide, Respondents

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26 **DECISION AND ORDER**

27 The foregoing Stipulation of the parties "In the Matter of Election Education Guide and Tracey
28 Pomerance-Poirier," FPPC No. 10/980, including all attached exhibits, is hereby accepted as the final

1 decision and order of the Fair Political Practices Commission, effective upon execution below by the
2 Chairman.

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4 IT IS SO ORDERED.

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6 Dated: _____

7 Ann Ravel, Chair
8 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent Election Education Guide (“Respondent EEG”) is a slate mailer organization. At all relevant times, Respondent Tracey Pomerance-Poirier (“Respondent Poirier”) was Respondent EEG’s treasurer.

In 2010, Respondent EEG produced and sent slate mailers supporting various candidates and ballot measures being voted on in the 2010 primary and general elections. However, on campaign statements filed for the periods ending June 30 and December 31, 2010, Respondents failed to report required information about disbursements made to subvendors as described more fully below.

For purposes of this stipulation, Respondents’ violation of the Political Reform Act (the “Act”)¹ is set forth as follows:

Count 1: For the reporting periods ending June 30 and December 31, 2010, Respondents Election Education Guide and Tracey Pomerance-Poirier failed to timely report subvendor information for payments totaling approximately \$652,549, in violation of Government Code section 84219, subdivision (h)(5).

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violation in question.

Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited. (Section 81002, subd. (a).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.” (Section 81002, subd. (f).)

¹ The 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.

Required Filing of Campaign Statements and Reports

Slate mailer organizations are required to file campaign statements and reports, including semi-annual campaign statements. (Section 84218.) For example, semi-annual campaign statements must be filed each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31. (Section 84218, subd. (a).)

Required Reporting of Disbursements, Including Subvendor Information

Section 84219, subdivisions (b) and (f), requires slate mailer organizations to disclose on each campaign statement: (1) the total amount of disbursements made during the period covered by the campaign statement; and (2) the total amount of disbursements made during the period covered by the campaign statement to persons who have received \$100 or more.

Also, pursuant to Section 84219, subdivision (h), for each person to whom a disbursement of \$100 or more has been made during the period covered by the campaign statement, the following information must be disclosed on the campaign statement: (1) the recipient's full name; (2) the recipient's street address; (3) the amount of each disbursement; and (4) the description of the consideration for which each disbursement was made. Additionally, this same information must be reported for each person, if different from the payee, who has provided consideration for a disbursement of \$500 or more during the period covered by the campaign statement. Such persons commonly are referred to as "subvendors" and the information pertaining to them commonly is referred to as "subvendor information."

Joint and Several Liability of Treasurer

The treasurer of a slate mailer organization is charged with the duty to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that campaign statements are properly filed, and to otherwise comply with the provisions of the Act. (See Sections 81004, 84100, 84104, and 84108, subd. (a).) The treasurer may be held jointly and severally liable, along with the slate mailer organization, for reporting violations. (Sections 83116.5 and 91006.)

SUMMARY OF THE FACTS

As stated above, Respondent EEG is a slate mailer organization. At all relevant times, Respondent Tracey Pomerance-Poirier was Respondent's EEG's treasurer.

In 2010, Respondent EEG produced and sent slate mailers supporting various candidates and ballot measures being voted on in the 2010 primary and general elections.

Count 1

In 2010, Respondent EEG paid Lakeside Communications to produce slate mailers. In turn, Lakeside paid Advanced Image Direct to print and deliver the mailers to the post office. During the reporting period ending June 30, 2010, the amount paid to Advanced Image Direct on behalf of Respondent EEG totaled approximately \$168,670. During the reporting period ending December 31, 2010, the amount paid to Advanced Image Direct on behalf of Respondent EEG totaled approximately \$483,879. (The approximate total for the two reporting periods was \$652,549, which is approximately 25% of all reported payments made by Respondent EEG in 2010.) Although Respondents filed the required campaign statements for these reporting periods, and although Respondents reported making payments to Lakeside Communications (the vendor), Respondents failed to report the payments made to Advanced Image Direct (the subvendor).

In acting as described above, Respondents committed one violation of Section 84219, subdivision (h)(5).

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of \$5,000. (Section 83116, subd. (c).)

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 the context of the following factors set forth in Regulation 18361.5, subdivision (d)(1) through (6):

- (1) The seriousness of the violation;
- (2) The presence or absence of any intention to conceal, deceive or mislead;
- (3) Whether the violation was deliberate, negligent or inadvertent;
- (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);
- (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
- (6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Regarding Count 1, there are no recent stipulations involving a violation of Section 84219, subdivision (h)(5). However, this sort of violation is very similar to the failure of a candidate or committee to report subvendor information, and a few of the more recent stipulations involving such a violation show that the penalty has been in the mid-range. (See *In the Matter of Stuart Waldman, Friends of Stuart Waldman, and Kinde Durkee*, FPPC No. 10/643, approved Sep. 22, 2011 [\$2,500 penalty imposed for failure to report subvendor information by California State Assembly candidate, committee and treasurer]; *In the Matter of Bryan Batey, Committee to Elect Bryan Batey, and Lisa King*, FPPC No. 10/53, approved Jun. 10, 2010 [\$2,500 penalty per count imposed for two counts of failure to report subvendor information by school board candidate, committee and treasurer]; and *In the Matter of Mary Ann Andreas, Andreas for Assembly, Marta Baca, and Phyllis Nelson*, FPPC No. 06/77, approved Jun. 10, 2010 [\$2,250 - \$2,750 penalty per count imposed for multiple counts of failure to report subvendor information].)

The public harm inherent in campaign reporting violations is that the public is deprived of important information such as the amounts expended, the identities of the recipients of such payments, and the reasons for such payments. In this case, the amount in question was significant, comprising approximately 25% of reported disbursements for that year. Also, Respondent Poirier admitted that she was aware of the subvendor reporting requirement.

Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$2,000 is justified. A higher penalty is not being sought because Respondents cooperated with the Enforcement Division of the Fair Political Practices Commission by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held. Also, the failure to report the subvendor information appears to have been unintentional. Respondent Poirier maintains that she was not aware that the vendor made payments to a subvendor at the time of reporting. It appears that there was no intention to withhold information from the public, and the public was informed as to the payments to the vendor (Lakeside Communications)—albeit not as to the payments to the subvendor (Advanced Image Direct). Also, there is no history of prior violations of the Act by Respondents.