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3 **FAIR POLITICAL PRACTICES COMMISSION**
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
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12 In the Matter of) FPPC No. 13/107
13)
14 ELECTION DIGEST-A PROJECT OF THE)
COALITION FOR LITERACY and TRACEY) STIPULATION, DECISION and
15 POMERANCE-POIRIER, TREASURER) ORDER
16)
17 Respondents.)

18 Complainant, the Fair Political Practices Commission, and Respondents Election Digest-A
19 Project of The Coalition for Literacy and Tracey Pomerance-Poirier, Treasurer agree that this Stipulation
20 will be submitted for consideration by the Fair Political Practices Commission at its next regularly
21 scheduled meeting.

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

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

1 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the
2 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
3 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondents Election Digest-A Project of The Coalition
5 for Literacy and Tracey Pomerance-Poirier, Treasurer, violated the Political Reform Act by (1) failing to
6 include in a slate mailer the required disclaimer "Notice to Voters" in a color or print which contrasts
7 with the background so as to be easily legible, in violation of Government Code Section 84305.5
8 subdivision (a)(2) (1 count). This count is described in Exhibit 1, which is attached hereto and
9 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of
10 the facts in this matter.

11 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
12 Respondent also agrees to the Commission imposing upon them an administrative penalty in the amount
13 of Three Thousand Dollars (\$3,000). A cashier's check from Respondents in said amount, made
14 payable to the "General Fund of the State of California," is submitted with this Stipulation as full
15 payment of the administrative penalty, to be held by the State of California until the Commission issues
16 its decision and order regarding this matter. The parties agree that in the event the Commission refuses
17 to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
18 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in
19 connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and
20 agree that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
21 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
22 shall be disqualified because of prior consideration of this Stipulation.

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25 Dated: _____

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

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Dated: _____

Respondents Tracey Pomerance-Poirier,
Individually and on behalf of Election
Digest-A Project of The Coalition for Literacy

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Election Digest-A Project of The
3 Coalition for Literacy and Tracey Pomerance-Poirier, Treasurer” FPPC No. 13/107, including all
4 attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices
5 Commission, effective upon execution below by the Chair.

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7 IT IS SO ORDERED.

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9 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Election Digest-A Project of The Coalition for Literacy (“Respondent Election Digest”) is a slate mailer organization which was formed in or about March 2010. Respondent Tracey Pomerance-Poirier (“Respondent Pomerance-Poirier”) formed Respondent Election Digest 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 prior to the November 6, 2012 general election by Respondents did not comply with disclosure provisions. Specifically, Respondents violated provisions of the Political Reform Act (the “Act”)¹ by failing to print the required wording of the slate mailer “Notice to Voters” in a color or print which contrasts with the background so as to be easily legible.

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

COUNT 1: Respondents Tracey Pomerance-Poirier and Election Digest-A Project of The Coalition for Literacy failed to include in a slate mailer the required disclaimer “Notice to Voters” in a color or print which contrasts with the background so as to be easily legible, in violation of Government Code Section 84305.5 subdivision (a)(2).

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act, therefore, establishes a 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 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).)

¹ 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.

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 that at the top or bottom of the front side or surface of at least one insert or at the top or bottom of one side or surface of a postcard or other self-mailer, there is a notice in at least 8-point roman boldface type, which shall be in a color or print which contrasts with the background so as to be easily legible, and in a printed or drawn box and set apart from any other printed matter. The notice shall consist of the following statement:

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 *.*

SUMMARY OF THE FACTS

Respondent Election Digest is a slate mailer organization formed by Respondent Pomerance-Poirier in or about February 2012. In connection with the November 6, 2012 general election, Respondents Election Digest and Pomerance-Poirier produced and sent slate mailers to voters throughout California.

The mailer features a photograph of a Bald Eagle, over which is printed the “Notice to Voters” that must be included on slate mailers. However, the font color is white, and approximately half of the text is printed over the white portion of the eagle’s feathers; so that it is not “in a color or print which contrasts with the background so as to be easily legible,” as required under the Act.

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum possible 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. 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 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.

The failure to include, in a contrasting color so as to be easily legible, 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 and measures featured in the slate mailer actually paid to appear.

The Commission has previously assessed a penalty for a violation of section 84305.5 in one other instance; *In the Matter of Paul Fickas and Decline to State Voter Guide*, FPPC No. 10/959. Respondent Decline to State Voter Guide was a slate mailer organization formed and controlled by Respondent Paul Fickas. Respondents failed to include required wording in the slate mailer disclaimer "Notice to Voters" and to place asterisks following the names of the candidates that paid to appear in slate mailers sent in connection with the November 2, 2010. The Commission approved settlement of this case, with a \$1,500 penalty for this violation, on September 22, 2011.

The public harm inherent in this type of violation, where pertinent information is not made easily legible, is that the public is deprived of information concerning the candidates and committees that paid for inclusion on the slate mailer. Respondents' violations of the Act were deliberate at worst and negligent at best.

Respondent Pomerance-Poirier has experience with the production of slate mailers, and a prior Enforcement history. This includes *In the Matter of Women's Voter Guide and Tracey Pomerance-Poirier*, FPPC No. 10/1023, where Respondents produced and sent slate mailers supporting various candidates and ballot measures being voted on in the general election. Respondents failed to disclose that some of these candidates and ballot measures did not pay for the support of the slate mailers on a campaign statement filed for the period ending December 31, 2010. The Commission approved a \$2,000 penalty at the May 17, 2012 meeting.

This history also includes *In the Matter of Voter Information Guide and Tracey Pomerance-Poirier*, FPPC No. 10/978, where Respondents failed to report subvendor information for payments totaling approximately \$407,400. The Commission approved a \$2,000 penalty at the March 15, 2012 meeting.

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 pattern of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Three Thousand Dollars (\$3,000) is recommended.

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