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

10
11 In the Matter of:

FPPC No. 11/872

12
13 HOWARD GUSTAFSON and HOWARD
GUSTAFSON FOR MARINA COAST WATER
14 DISTRICT NOVEMBER 2, 2010

STIPULATION, DECISION, AND ORDER

15 Respondents.
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18 **STIPULATION**

19 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
20 respondents Howard Gustafson and Howard Gustafson for Marina Coast Water District November 2,
21 2010 (Respondents) hereby agree that this Stipulation will be submitted for consideration by the Fair
22 Political Practices Commission at its next regularly scheduled meeting.

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

26 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
27 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
28 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to

1 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
2 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
3 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
4 the hearing as a hearing officer, and to have the matter judicially reviewed.

5 It is further stipulated and agreed that Respondents violated the Political Reform Act by sending
6 mass mailers without proper identifying information on them in violation of Government Code section
7 84305, subdivision (a). Exhibit 1 is attached hereto and incorporated by reference as though fully set
8 forth 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 an administrative penalty in the total amount of
11 One Thousand Dollars (\$1,000). Respondents submitted with this Stipulation a cashier's check from
12 Respondents in said amount, made payable to the "General Fund of the State of California," as full
13 payment of the administrative penalty that shall be held by the State of California until the Commission
14 issues its Decision and Order regarding this matter. The parties agree that in the event the Commission
15 refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days
16 after the Commission meeting at which the Stipulation is rejected, all payments tendered by
17 Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents
18 further stipulate and agree that in the event the Commission rejects the Stipulation, and a full evidentiary
19 hearing before the Commission becomes necessary, neither any member of the Commission, nor the
20 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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22 Dated: _____
23 Gary S. Winuk, on behalf of the Enforcement Division
24 Fair Political Practices Commission

25 Dated: _____
26 Howard Gustafson, individually, and on behalf of
27 Howard Gustafson for Marina Coast Water District
28 November 2, 2010

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Howard Gustafson and Howard
3 Gustafson for Marina Coast Water District November 2, 2010” FPPC No. 11/872, including all attached
4 exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission,
5 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
10 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent Howard Gustafson (“Respondent Gustafson”) ran for director on the Marina Coast Water District (“District”) Board in 2010. Respondent Howard Gustafson for Marina Coast Water District November 2, 2010 (“Respondent Committee”) was his committee. Under the Political Reform Act (the “Act”)¹, a mass mailing sent by a candidate or committee must include the name, street address, and city of the candidate or committee. As set forth below, Respondents violated the Act by sending out three mass mailers that did not include Respondents’ street address and city.

For purposes of this Stipulation, the proposed violations of the Act are as follows:

COUNT 1: Respondents sent three mass mailers prior to the 2010 General Election that did not display the street address and city of the Respondents in violation of Section 84305, subdivision (a).

SUMMARY OF THE LAW

Mass Mailer Sender Identification Requirements

Section 84305, subdivision (a) prohibits a candidate or committee from sending a mass mailer unless the name, street address, and city of the candidate or committee are shown on the mailer. Section 82041.5 defines a “mass mailing” as 200 or more substantially similar pieces of mail. The “sender” of a mass mailer is the candidate or committee who pays for the largest portion of expenditures attributable to the design, printing, and posting of the mailer. (Regulation §18435.)

SUMMARY OF THE FACTS

In 2010, Respondent Gustafson ran for and won a director position on the District’s Board of Directors. This case resulted from a complaint from a customer of the District who received a mailer sent by Respondent Gustafson and two other candidates.

Mass Mailers

Respondent Gustafson and fellow candidates George Eads and William Lee collaborated to have printed and mailed three joint mass mailers prior to the 2010 election. The mailers encouraged voters to vote for the three men for the three available District Board director

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.

positions. A friend of Mr. Lee named Bob Drake coordinated the effort with the print shop to produce the mailers. The candidates split the total cost of each mailer evenly amongst the three of them and each candidate approved the content of the mailers. The mailers were on cardstock, with printing on both sides and sent by bulk rate U.S. Mail. They had 2,500 units printed for the first mailer, 2,681 units for the second mailer, and 2,681 units for the third mailer.

Each mailer had a picture of the three candidates, as well as their name and email address. However, the first mailer did not have the street address or city for any of the three candidates printed on it. The second and third mailers did have the street address and city for Mr. Lee printed on them but did not have the street address or city for Respondent Gustafson or Mr. Eads printed on them.

Count 1
Failure to Display Address on Mass Mailers

Respondents sent three mass mailers prior to the 2010 General Election that did not display the street address and city of the Respondents in violation of Section 84305, subdivision (a).

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of one thousand dollars (\$1,000) per count.

In determining the appropriate penalty for a particular violation of the Act, the Commission 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 Commission 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 Respondents demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

Recent similar cases decided by the Commission for mass mailer violations include:

- *In the Matter of George Eads and Committee to Elect George Eads Marina Coast Water District November 2, 2010*, FPPC No. 10/930: The respondent, George Eads, was one of the men that Respondent Gustafson collaborated with to produce the mass mailers at issue Respondent Gustafson's case. Mr. Eads's case involved the same mass mailers as are at issue in the current matter concerning Respondent Gustafson. On February 28, 2013, in a default decision, the Commission imposed a fine of \$1,000 for Mr. Eads failure to include his address and city on the three mass mailers that he, along with Respondent Gustafson and another candidate, sent out.
- *In the Matter of California Voter Guide and Gary Crummitt*, FPPC No. 12/374: Respondents produced two slate mailers that did not display their address and city. On

September 13, 2012, the Commission imposed a penalty of \$1,500 per count for two counts of violating the Act.

In the case now before the Commission, Respondents failed to provide his street address and city on the mailer. The failure to provide proper sender identification for a mass mailer deprives the public of important information regarding the sponsor of the mailing.

In mitigation, Respondent Gustafson's name, email address and picture appeared on all three of the mass mailers so there was no intent to hide his identity or deceive the public as to the source of the mailer. This violation appears to be the result of Respondents' negligence and a lack of knowledge about the law, not an intent to deceive the public or conceal information regarding the campaign. Further, Respondents had no prior history of violating the Act.

PROPOSED PENALTY

After considering the factors of Regulation 18361.5, as well as consideration of penalties in prior enforcement actions, a penalty of \$1,000 is recommended.

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