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

12 In the Matter of) FPPC No. 14/055
13)
14 TONY BUSHALA,)
15) STIPULATION, DECISION and
16) ORDER
17)

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
19 Respondent Tony Bushala 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 Bushala understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections
26 18361.1 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not
27 limited to, the right to personally appear at any administrative hearing held in this matter, to be
28 represented by an attorney at Bushala's own expense, to confront and cross-examine all witnesses

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

4 It is further stipulated and agreed that Bushala violated the Political Reform Act by causing to
5 be sent a mass mailer, on or about October 31, 2012, opposing Jan Flory and supporting Jane Rands
6 and Barry Levinson for Fullerton City Council in the November 6, 2012 election, which failed to
7 display required sender identification, in violation of Government Code Section 84305, subdivision (a)
8 (1 count). This count is described in Exhibit 1, which is attached hereto and incorporated by reference
9 as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

10 Bushala agrees to the issuance of the Decision and Order, which is attached hereto. Bushala also
11 agrees to the Commission imposing upon him an administrative penalty in the amount of \$2,000. A
12 cashier's check from Bushala, in said amount, made payable to the "General Fund of the State of
13 California," is submitted with this Stipulation as full payment of the administrative penalty, to be held
14 by the State of California until the Commission issues its decision and order regarding this matter. The
15 parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null
16 and void, and within fifteen (15) business days after the Commission meeting at which the Stipulation
17 is rejected, all payments tendered by Bushala in connection with this Stipulation shall be reimbursed to
18 him. Bushala further stipulates and agrees that in the event the Commission rejects the Stipulation, and
19 a full evidentiary hearing before the Commission becomes necessary, neither any member of the
20 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this
21 Stipulation.

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23 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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27 Dated: _____

Tony Bushala, Respondent

EXHIBIT 1

INTRODUCTION

Prior to the 2012 election, Respondent Tony Bushala paid for and caused to be sent a mass mailer opposing Jan Flory and supporting Jane Rands and Barry Levinson for Fullerton City Council in the November 6, 2012 election.

The mailer failed to include a disclosure stating that it was paid for by Bushala. The Political Reform Act (the “Act”)¹ requires accurate sender identification on all mass mailers.

SUMMARY OF THE LAW

A “committee” includes any person who makes independent expenditures totaling \$1,000 or more in a calendar year.² This type of committee is commonly referred to as an independent expenditure committee.

Sender Identification Requirements

The Act requires candidates and committees to properly identify themselves when sending a mass mailing.³ 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.

A “mass mailing” is defined by of the Act 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.⁴ A mass mailing as over two hundred substantially similar pieces of mail sent in a calendar month.⁵ The term “sender,” as used in Section 84305, is defined as the candidate or committee who pays for the largest portion of expenditures attributable to the designing, printing or posting of the mailing.⁶

SUMMARY OF THE FACTS

This matter arose from a referral from the Fullerton City Clerk. On November 1, 2012, Bushala filed a statement of organization (Form 410) with the Fullerton City Clerk. Then, on November 5, 2012, Bushala submitted a From 410 to the Secretary of State’s Office (“SOS”), but it was returned the following day because the name of the Committee failed to include the

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations.

³ Section 82013, subdivision (b).

³ Section 84305, subdivision (a).

⁴ Section 82041.5.

⁵ Regulation 18435, subdivision (a).

⁶ Regulation 18435, subdivision (b).

names of the candidates, offices sought, year of the election, and whether the Committee supported or opposed the candidates. A statement of organization must also be filed with SOS in order for the committee to receive an identification number and become active. Since a completed Form 410 was not filed with SOS, Bushala never opened the primarily formed committee he intended to create.

Records obtained from the printer establish that on or about October 31, 2012, Bushala paid \$5,644.16 to produce and send the mailer, of which approximately 10,788 copies were delivered to Fullerton residents in the days prior to the November 6, 2012 election. As the sender of the mailer, Bushala qualified as an independent expenditure committee.

As an independent expenditure committee, Bushala was required to provide his name, street address, and city on the outside of each piece of mail in the mass mailing. However, the mailer included sender identification that stated "Paid for by Citizens for Open Space," and included a Fullerton address, along with the phrase "ID# pending." Citizens for Open Space was not the proper sender identification for the mailer, since no committee with that name had registered with SOS.

VIOLATION

On or about October 31, 2012, Bushala caused to be sent a mass mailer opposing Jan Flory and supporting Jane Rands and Barry Levinson for Fullerton City Council in the November 6, 2012 election, which failed to display required sender identification, in violation of Government Code Section 84305, subdivision (a).

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 Fair Political Practices Commission ("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 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): 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether the Respondent, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

The Commission also considers penalties in prior cases involving similar violations. A recent penalty for sending a mass mailing without proper sender identification includes:

In the Matter of Christian Voters for a More Transparent Government in East County and Bonnie Burns Price, FPPC No. 12/799. This case involved a mailer opposing the reelection

of three candidates for El Cajon City Council, which failed to include proper sender identification. The mailer included the phrase “Paid for by Christian Voters for a More Transparent Government in East County;” however, no committee by that name was ever registered with either the El Cajon City Clerk, the San Diego County Registrar of Voters, or the California Secretary of State. A \$2,000 penalty was approved by the Commission on April 17, 2014.

The public harm inherent in this type of violation, where pertinent information is not disclosed on a campaign mailer, is that the public is deprived of a means to discover the identity of sender. This case is similar to the *Christian Voters for a More Transparent Government in East County*, as the mailers in both cases contained incorrect sender identification, using the name of a “committee” that had not been registered with the Secretary of State. It appears that Bushala attempted to create the committee to disclose contributions that he anticipated receiving from others but that he never received and not to conceal his own involvement with the mailers. Bushala filed timely late contribution and late independent expenditure reports with the Fullerton City Clerk’s Office in an attempt to disclose the expenditures. By sending the mailer he qualified as an independent expenditure committee with sender identification requirements, which existed regardless of the type of committee responsible for the mailer.

PROPOSED PENALTY

After consideration of the factors listed above, the imposition of a penalty of Two Thousand Dollars (\$2,000) is recommended.