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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA  
10

11 In the Matter of:

12 SAVE PUBLIC PARKING, NO ON H;  
13 YES ON I AND MICHAEL POWERS,

14 Respondents.

FPPC No. 16/652

STIPULATION, DECISION, AND ORDER

15  
16 **STIPULATION**

17 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
18 respondents Save Public Parking, No on H; Yes on I and Michael Powers (Respondents) hereby agree that  
19 this Stipulation will be submitted for consideration by the Fair Political Practices Commission  
20 (Commission) at its next regularly scheduled meeting.

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

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

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

3 It is further stipulated and agreed that Respondents violated the Political Reform Act by failing to  
4 include a disclosure statement on five advertising banners and failing to include a disclosure statement of  
5 at least five percent of the height of the advertisement on 300 yard signs, in violation of Government Code  
6 Section 84504, subdivision (c), and Regulation 18450.4, subdivision (b), all as described in Exhibit 1.  
7 Exhibit 1 is attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a  
8 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 \$3,500. Respondents submitted with this Stipulation a cashier's check in said amount, made payable to  
12 the "General Fund of the State of California," as full payment of the administrative penalty that shall be  
13 held by the State of California until the Commission issues its Decision and Order regarding this matter.  
14 The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null  
15 and void, and within fifteen (15) business days after the Commission meeting at which the Stipulation is  
16 rejected, all payments tendered by Respondents in connection with this Stipulation shall be reimbursed to  
17 Respondents. Respondents further stipulate and agree that in the event the Commission rejects the  
18 Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither any member  
19 of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this  
20 Stipulation.

21 Dated: \_\_\_\_\_  
22 Galena West, Chief, on behalf of the Enforcement  
23 Division of the Fair Political Practices Commission

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25 Dated: \_\_\_\_\_  
26 Michael Powers, individually and on behalf of Save  
27 Public Parking, No on H; Yes on I  
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1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Save Public Parking, No on H; Yes on I  
3 and Michael Powers,” FPPC No. 16/652, 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 the  
5 Chair.

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7 IT IS SO ORDERED.

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9 Dated: \_\_\_\_\_

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11 Joann Remke, Chair  
12 Fair Political Practices Commission  
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## **EXHIBIT 1**

### **INTRODUCTION**

Respondent Save Public Parking, No on H; Yes on I (the “Committee”) is a committee primarily formed to oppose Measure H and support Measure I, two competing measures on the June 7, 2016 ballot in Dana Point. Respondent Michael Powers (“Powers”) is the Committee’s principal officer.

Under the Political Reform Act (the “Act”),<sup>1</sup> a primarily formed ballot measure committee must print its name on any advertisement. On yard signs and other over size print media, this disclosure statement must be at least five percent of the height of the advertisement. The Committee and Powers violated the Act by failing to include a disclosure statement on advertising banners and failing to print a disclosure statement of at least five percent of the height of 300 yard signs.

### **SUMMARY OF THE LAW**

All statutory references and discussions of law pertain to the Act’s provisions as they existed in 2016.

An express purpose of the Act is to ensure that campaign contributions and expenditures are fully and truthfully disclosed so that voters are fully informed and improper practices are discouraged.<sup>2</sup> In furtherance of this purpose, the Act requires any committee that supports or opposes a ballot measure to print its name as part of any advertisement.<sup>3</sup> Advertisements include yard signs produced in quantities of more than 200 and other over size print media, such as banners.<sup>4</sup> The disclosure on an advertisement must include “paid for by” immediately adjacent to and above or in front of the committee name.<sup>5</sup> On yard signs, the disclosure statement must constitute at least five percent of the height of the advertisement.<sup>6</sup>

### **SUMMARY OF THE FACTS**

The Committee first qualified as a primarily formed local ballot measure committee on March 25, 2016, which was the qualification date it included on its statement of organization. The Committee opposed Measure H, which required voter approval for development changes in Dana Point’s Lantern District, and supported Measure I, which ratified an existing development plan for that district. On June 7, 2016, Dana Point voters approved Measure H and defeated Measure I.

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<sup>1</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

<sup>2</sup> Section 81002, subd. (a).

<sup>3</sup> Section 84504, subd. (c).

<sup>4</sup> Regulations 18450.1, subd. (a), and 18450.4, subd. (b)(3)(D).

<sup>5</sup> Regulation 18450.4, subd. (b)(1).

<sup>6</sup> Regulation 18450.4, subd. (b)(3)(D).

On April 22, 2016, the Committee purchased two 36-inch by 72-inch PVC-coated banners that said, “No on H, Yes on I,” and included the Committee’s website. On June 6, 2016, the Committee purchased three similar vinyl banners that measured 24 inches by 30 inches. These five advertising banners did not include any disclosure statement.

The Committee purchased 300 yard signs on April 26, 2016 and May 12, 2016. These “No on H; No Vacant Lots” yard signs included the disclosure statement “Paid for by: Save Public Parking, No on H, Yes on I,” with the Committee’s ID number and address. The signs were 15 inches tall; a proper disclosure statement of five percent of the height of the advertisement would be .75 inches tall. However, the signs’ disclosure statements measured approximately .25 inches tall.

## VIOLATION

### Count 1: Failure to Comply with Advertising Disclosure Requirements

The Committee and Powers failed to include a disclosure statement on five advertising banners and failed to include a disclosure statement of at least five percent of the height of the advertisement on 300 yard signs, in violation of Section 84504, subdivision (c), and Regulation 18450.4, subdivision (b).

## CONCLUSION

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

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 conceal, deceive or mislead; whether the violation was deliberate, negligent, or inadvertent; whether the Respondents demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether the violator, upon learning of the violations, voluntarily filed amendments.

The Commission also considers penalties in prior cases involving similar violations. A recent similar case includes the following:

- *In the Matter of Southern California Taxpayers Association, Sponsored by and with Major Funding from Milan Rei IV, LLC, Barrett Garcia, and Ann Garrett.* FPPC No. 12/782. (The Commission approved a stipulated decision on November 20, 2014.) The respondents failed to include the required committee identification on yard signs the committee paid for to support a local ballot measure. The Commission imposed a penalty of \$2,500.

A central purpose of the Act is to ensure voters are fully informed about those who make contributions and expenditures during a campaign. The Committee and Powers failed to include proper disclosure statements on their advertisements and, as a result, the public was deprived of important, time-sensitive information about the source of these advertisements.

The Committee and Powers did cooperate with the Enforcement Division, providing proofs of their advertisements and invoices from the printers, and cooperating in reaching this stipulated settlement. The Committee and Powers were also unsuccessful with their efforts, as Measure H was approved and Measure I was defeated. However, a higher penalty than that approved in *Southern California Taxpayers Association* is warranted because the Committee and Powers both failed to include the required disclosure statement on banners and failed to include a properly sized disclosure statement on yard signs.

### **PROPOSED PENALTY**

After considering the factors of Regulation 18361.5, the penalties imposed in prior cases, and other relevant information, a penalty of \$3,500 is recommended.