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8
9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

10 STATE OF CALIFORNIA

11
12 In the Matter of:

FPPC Case No. 16/19760

13 PUBLIC AND MENTAL HEALTH
14 ADVOCATES AGAINST 64,
15 SPONSORED AND MAJOR FUNDING
16 BY SAM ACTION, INC. AND
CALIFORNIA PUBLIC SAFETY
INSTITUTE, JOHN LOVELL, AND
DAVID BAUER,

STIPULATION, DECISION, AND ORDER

17 Respondents.

18
19 **INTRODUCTION**

20 Respondent Public and Mental Health Advocates Against 64, Sponsored and Major Funding by
21 SAM Action, Inc. and California Public Safety Institute (the “Committee”) is a primarily formed state
22 ballot measure committee that opposed Proposition 64 on the November 8, 2016 ballot. Respondent John
23 Lovell (“Lovell”) is the Committee’s principal officer and respondent David Bauer (“Bauer”) is the
24 Committee’s treasurer.

25 Under the Political Reform Act (the “Act”),¹ a committee supporting or opposing a ballot measure
26 must name itself in a way that clearly identifies the economic or other special interest of its major donors

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28 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.

1 of \$50,000 or more. Any advertising must also include the name of the committee’s top two donors of
2 \$50,000 or more. The committee’s broadcast or electronic media disclosures must be amended within five
3 days after a top donor qualifies as a disclosable contributor or the committee’s name changes, and print
4 media disclosures must be amended when the order is placed. The Committee, Lovell, and Bauer violated
5 the Act by failing to name the Committee in a way that clearly identified the economic or other special
6 interest of its major donors, and failing to timely identify the Committee’s major donors in broadcast,
7 electronic, and print media advertising.

8 **SUMMARY OF THE LAW**

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

10 When enacting the Political Reform Act, the people of California found and declared that previous
11 laws regulating political practices suffered from inadequate enforcement by state and local authorities.²
12 For this reason, the Act is to be construed liberally to accomplish its purposes.³

13 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in
14 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
15 practices are inhibited.⁴ Along these lines, the Act includes a comprehensive campaign reporting system.⁵
16 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be
17 “vigorously enforced.”⁶ Thus, a committee’s treasurer and principal officer are liable for the committee’s
18 campaign reporting violations.⁷

19 **Major Donor Disclosure in a Committee Name**

20 A primarily formed ballot measure committee’s name must clearly identify the economic or other
21 special interest of its major donors of \$50,000 or more.⁸ If the major donors do not have an ascertainable
22 economic interest likely to be affected by the ballot measure, the name must identify any goal or purpose
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25 ² Section 81001, subd. (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subd. (a).

28 ⁵ Sections 84200, *et seq.*

⁶ Section 81002, subd. (f).

⁷ Sections 83116.5 and 91006.

⁸ Section 84504, subd. (a) and Regulation 18450.3, subd. (a)

1 likely to be affected by the ballot measure. If the disclosable contributors do not share a goal or purpose,
2 the name must identify the various economic interests, goals, or purposes likely to be affected.⁹

3 If the committee's name must change to identify a major donor, the committee must file an
4 amendment to its Statement of Organization with the Secretary of State ("SOS") with 10 days.¹⁰

5 **Advertisement Disclosures**

6 A committee must disclose its name as part of any advertisement.¹¹ The disclosure statement must
7 identify any person whose contributions total \$50,000 or more.¹²

8 Broadcast or electronic media advertisement disclosures must be amended within five calendar
9 days after a new person qualifies as a disclosable contributor or after the committee name changes. Print
10 media, including billboards, must include accurate disclosure information every time an order to reproduce
11 the advertisement is placed.¹³

12 **SUMMARY OF THE FACTS**

13 The Committee was primarily formed to oppose Proposition 64, a measure on the November 8,
14 2016 ballot that legalized recreational marijuana use. The Committee qualified on February 8, 2016, the
15 qualification date indicated on its Statement of Organization.

16 On June 29, 2016, the Committee received a \$18,150 contribution from SAM Action, Inc., which
17 brought SAM Action, Inc.'s total contributions over the \$50,000 major donor threshold to \$64,150. Thus,
18 the Committee was required to amend its name to clearly identify SAM Action, Inc.'s economic or other
19 special interest by July 9, 2016. All of the Committee's broadcast and electronic media advertisements
20 after July 4, 2016 were required to disclose SAM Action, Inc. as a major donor.

21 On September 27, 2016, the Committee amended its Statement of Organization so that its name
22 was "No on Prop. 64, Sponsored by California Public Safety Institute and SAM Action, Inc." This name
23 did not clearly identify SAM Action, Inc.'s economic or other special interests. SAM Action, Inc.'s special
24 interests were not identified in the Committee's name until October 24, 2016, when it amended its
25 Statement of Organization to identify the "Public and Mental Health Advocates" who comprise SAM

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27 ⁹ Regulation 18450.3, subd. (b)

¹⁰ Section 84103, subd. (a).

¹¹ Section 84504, subd. (b).

¹² Section 84503, subd. (a).

¹³ Regulation 18450.5.

1 Action, Inc. This name change was made 107 days after the deadline.

2 On or about October 14, 2016, the Committee broadcast advertisements on Pandora that said the
3 advertisement was “Paid for by No on Prop. 64, Sponsored by California Public Safety Institute and SAM
4 Action, Inc.,” but failed to identify SAM Action, Inc.’s economic or other special interests and failed to
5 identify SAM Action, Inc. as a major donor. Also on October 14, 2016, the Committee tweeted a photo of
6 one of its billboards, which included the same disclosure statement as the Pandora advertisement. At this
7 time, the Committee’s social media accounts and YouTube videos did not to identify SAM Action, Inc.’s
8 economic or other special interests or identify SAM Action, Inc. as a major donor.

9 On or about October 18, 2016, the Committee broadcast Spanish language advertisements on
10 Telemundo and Univision that failed to identify SAM Action, Inc.’s economic or other special interests
11 and failed to identify SAM Action, Inc. as a major donor. These advertisements were also posted to
12 YouTube without the proper disclosures.

13 The Committee amended the disclosure statements on broadcast and electronic media between
14 October 21, 2016 and October 26, 2016, after Enforcement Division contact.

15 VIOLATIONS

16 Count 1: Failure to Timely Amend the Committee Name and Advertising Disclosures

17 The Committee, Lovell, and Bauer failed to timely amend the Committee’s name to identify the
18 economic or other special interest of its major donor, and failed to timely amend the Committee’s
19 advertising disclosures to identify its major donor, in violation of Sections 84101, 84503, and 84504, and
20 Regulation 18450.5.

21 PROPOSED PENALTY

22 This matter consists of one count. Traditionally, the maximum penalty that may be imposed is
23 \$5,000 per count.¹⁴ However, this violation includes remedies up to three times the cost of the
24 advertisements in addition to the \$5,000 penalty.¹⁵

25 In determining the appropriate penalty for a particular violation of the Act, the Commission
26 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission
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28 ¹⁴ Section 83116, subd. (c).

¹⁵ Section 84510, subd. (a).

1 considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention
2 to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d)
3 whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were
4 filed to provide full disclosure; and (f) whether the violator has a prior record of violations.¹⁶ Additionally,
5 the Commission considers penalties in prior cases with comparable violations.

6 A recent similar case includes the following:

7 *In the Matter of Yes on Prop 61, Californians for Lower Drug Prices, With Major Funding by AIDS*
8 *Healthcare Foundation and California Nurses Association PAC*, FPPC No. 16/19686. (The Commission
9 approved a stipulated decision on January 19, 2017.) The respondents timely changed the committee's
10 name to reflect that it received major funding from the California Nurses Association PAC, but failed to
11 timely change the disclosure statement in two YouTube videos. The respondents cured the violation prior
12 to the election by changing the disclosure after Enforcement Division contact. The Commission imposed
13 a penalty of \$2,500.

14 A central purpose of the Act is to ensure receipts and expenditures in election campaigns are fully
15 and truthfully disclosed.¹⁷ In this case, the Committee failed to timely disclose SAM Action, Inc.'s
16 involvement as a major donor to the committee. SAM Action, Inc.'s special interests were not identified
17 in the Committee name until 15 days before the election, which was 107 days after the deadline to identify
18 these economic or other special interests. Further, SAM Action, Inc. was not identified as a major donor
19 in the Committee's broadcast advertising until 18 days before the election, and billboards that incorrectly
20 named SAM Action, Inc. as a sponsor and not a major donor could not be amended. Unlike *Yes on Prop*
21 *61*, the Committee name was not timely changed, and the Committee paid to place advertisements without
22 the proper disclosure on broadcast television and Internet radio.

23 In mitigation, the Committee named SAM Action, Inc. as a Committee sponsor in its name one
24 month prior to identifying SAM Action, Inc.'s special interest. SAM Action, Inc.'s name appeared on the
25 Committee's advertising disclosures as a sponsor, so there is no evidence the Committee attempted to
26 conceal SAM Action, Inc.'s involvement. Further, the Committee fully cooperated with the Enforcement
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28 ¹⁶ Regulation 18361.5, subd. (d).

¹⁷ Section 81002, subd. (a).

1 Division and amended the Committee name and its broadcast and electronic advertising disclosures upon
2 request.

3 For the foregoing reasons, a penalty of \$3,500 for Count 1 is recommended, for a total
4 administrative penalty in the amount of \$3,500.

5 **CONCLUSION**

6 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
7 respondents Public and Mental Health Advocates Against 64, Sponsored and Major Funding by SAM
8 Action, Inc. and California Public Safety Institute, John Lovell, and David Bauer (Respondents) hereby
9 agree as follows:

10 1. Respondents violated the Act as described in the foregoing pages, which are a true and
11 accurate summary of the facts in this matter.

12 2. This stipulation will be submitted for consideration by the Fair Political Practices
13 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

14 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
15 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
16 liability of Respondents pursuant to Section 83116.

17 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all
18 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
19 This includes, but is not limited to the right to appear personally at any administrative hearing held in this
20 matter, to be represented by an attorney at Respondents' own expense, to confront and cross-examine all
21 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
22 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
23 reviewed.

24 5. Respondents agree to the issuance of the decision and order set forth below. Also,
25 Respondents agree to the Commission imposing against it an administrative penalty in the amount of
26 \$3,500. One or more cashier's checks or money orders totaling said amount—to be paid to the General
27 Fund of the State of California—is/are submitted with this stipulation as full payment of the administrative
28 penalty described above, and same shall be held by the State of California until the Commission issues its

1 decision and order regarding this matter.

2 6. If the Commission refuses to approve this stipulation—then this stipulation shall become
3 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
4 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to
5 Respondent. If this stipulation is not approved by the Commission, and if a full evidentiary hearing before
6 the Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
7 shall be disqualified because of prior consideration of this Stipulation.

8 7. The parties to this agreement may execute their respective signature pages separately. A
9 copy of any party’s executed signature page including a hardcopy of a signature page transmitted via fax
10 or as a PDF email attachment is as effective and binding as the original.

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12 Dated: _____
13 Galena West, Chief of Enforcement
14 Fair Political Practices Commission

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16 Dated: _____
17 John Lovell, individually and on behalf of Public and
18 Mental Health Advocates Against 64, Sponsored and
19 Major Funding by SAM Action, Inc. and California
20 Public Safety Institute

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22 Dated: _____
23 David Bauer, individually

1 The foregoing stipulation of the parties “In the Matter of Public and Mental Health Advocates Against 64,
2 Sponsored and Major Funding by SAM Action, Inc. and California Public Safety Institute, John Lovell,
3 and David Bauer,” FPPC No. 16/19760, is hereby accepted as the final decision and order of the Fair
4 Political Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

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10 Joann Remke, Chair
11 Fair Political Practices Commission
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