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Enforcement Division of the Fair Political Practices Commission**

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of

FPPC No. 15/1275

MICHAEL HORNER.

DEFECTIVE DECISION AND ORDER

Respondent. (Gov. Code §11503)

Complainant, the Enforcement Division of the Fair Political Practices Commission, hereby submits this Default Decision and Order for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

Pursuant to the California Administrative Procedure Act (APA)¹ Respondent Michael Horner has been served with all of the documents necessary to conduct an administrative hearing regarding the above-captioned matter, including the following:

1. An Order Finding Probable Cause;
 2. An Accusation;
 3. A Notice of Defense (Two Copies);
 4. A Statement to Respondent; and,
 5. Copies of Sections 11506, 11507.5, 11507.6 and 11507.7 of the Government Code.

¹ The California Administrative Procedure Act, which governs administrative adjudications, is contained in sections 11370 through 11529 of the Government Code.

Government Code section 11506 provides that failure of a respondent to file a Notice of Defense within fifteen days after being served with an Accusation shall constitute a waiver of respondent's right to a hearing on the merits of the Accusation. The Statement to Respondent, served on Horner, explicitly stated that a Notice of Defense must be filed in order to request a hearing. Horner failed to file a Notice of Defense within 15 days of being served with an Accusation. Government Code Section 11520 provides that, if the respondent fails to file a Notice of Defense, the Commission may take action, by way of a default, based upon the respondent's express admissions or upon other evidence, and that affidavits may be used as evidence without any notice to the respondent.

Horner violated the Political Reform Act (Act)² as described in Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the law and evidence in this matter. This Default Decision and Order is submitted to the Commission to obtain a final disposition of this matter.

Dated:

Galena West, Chief of Enforcement Fair Political Practices Commission

DECISION AND ORDER

The Commission issues this Default Decision and Order and imposes an administrative penalty of Twenty-Five Thousand Dollars (\$25,000) upon Respondent Michael Horner, payable to the “General Fund of the State of California.”

IT IS SO ORDERED, effective upon execution below by the Chair of the Fair Political Practices Commission at Sacramento, California.

Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

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

EXHIBIT 1

INTRODUCTION

Respondent Michael Horner qualified as an independent expenditure committee in October 2014.

The Enforcement Division received a formal complaint from Jim Steele, an incumbent candidate for the Lake County Board of Supervisors, alleging that in October 2014, his opponent, John Brosnan, sent a mass mailing opposing Jim Steele that failed to disclose the proper sender identification.

Under the Political Reform Act (the “Act”)¹, mass mailings must disclose the name, street address, and city of the sender of the mass mailing, cash expenditures are prohibited, and independent expenditures must be disclosed in periodic campaign statements. The investigation in this matter revealed that Horner was the sender of the mass mailing, and he failed to disclose the proper sender identification. And Horner improperly paid in cash for the mass mailing, and he failed to file required independent expenditure campaign statements disclosing this activity.

All relevant evidence in possession of the Enforcement Division is included in the following attachments and incorporated herein by reference: Exhibit A – Certification of Records (Certification), with attached Exhibits A-1 through A-14; Exhibit B – Declaration of Angela J. Brereton; and Exhibit C – Declaration of Paul Rasey.

DEFAULT PROCEEDINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT

When the Fair Political Practices Commission (Commission) determines that there is probable cause for believing that the Act has been violated, it may hold a hearing to determine if a violation has occurred.² Notice of the hearing, and the hearing itself, must be conducted in accordance with the Administrative Procedure Act (APA).³ A hearing to determine whether the Act has been violated is initiated by the filing of an accusation.⁴

Included among the rights afforded a respondent under the APA is the right to file the Notice of Defense with the Commission within 15 days after service of the accusation, by which the respondent may (1) request a hearing, (2) object to the accusation’s form or substance or to the

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

² § 83116.

³ The California Administrative Procedure Act, which governs administrative adjudications, is contained in sections 11370 through 11529 of the Government Code.

⁴ § 11503.

adverse effects of complying with the accusation, (3) admit the accusation in whole or in part, or (4) present new matter by way of a defense.⁵

The APA provides that a respondent's failure to file a Notice of Defense within 15 days after service of an accusation constitutes a waiver of the respondent's right to a hearing.⁶ Moreover, when a respondent fails to file a Notice of Defense, the Commission may take action based on the respondent's express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the respondent.⁷

PROCEDURAL REQUIREMENTS AND HISTORY

Initiation of the Administrative Action

No administrative action alleging a violation of the Act may be commenced more than five years after the date on which the violation occurred.⁸ Service of a report in support of a finding of probable cause upon the person alleged to have violated the Act tolls the statute of limitations and initiates the administrative action.⁹

A finding of probable cause may not be made by the Commission unless the person alleged to have violated the Act is 1) notified of the violation by service of process or registered mail with return receipt requested; 2) provided with a summary of the evidence; and 3) informed of his right to be present in person and represented by counsel at any proceeding of the Commission held for the purpose of considering whether probable cause exists for believing the person violated the Act.¹⁰ The required notice to the alleged violator is deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office.¹¹

Evidence supporting the procedural history is included in the following attachments and incorporated herein by reference: Exhibit A – Certification of Records (Certification), attached Exhibits A-1 through A-9; Exhibit B – Declaration of Angela J. Brereton.

The Enforcement Division initiated the administrative action against Horner by serving him with a Report in Support of a Finding of Probable Cause (Report) by certified mail, return receipt requested,¹² on April 18, 2016.¹³ The administrative action commenced on April 18, 2016,

⁵ § 11506, subd. (a)(1)-(6).

⁶ § 11506, subd. (c).

⁷ § 11520, subd. (a).

⁸ § 91000.5.

⁹ §§ 83115.5, and 91000.5, subd. (a).

¹⁰ § 83115.5.

¹¹ *Ibid.*

¹² § 8311: Where any communication is required by law to be mailed by registered mail to or by the slate, or any officer or agency thereof, the mailing of such communication by certified mail is sufficient compliance with the requirements of the law.

¹³ Certification, Exhibit A-1 and A-2.

the date the certified mail receipt was signed, and the five-year statute of limitations was effectively tolled on this date.¹⁴

The packet served on Horner contained a cover letter and a memorandum describing Probable Cause Proceedings, advising that Horner had 21 days in which to request a probable cause conference and/or to file a written response to the Report.¹⁵ Horner neither requested a probable cause conference nor submitted a written response to the Report.

Ex Parte Request and Finding of Probable Cause

The Enforcement Division sent a copy of the Ex Parte Request for a Finding of Probable Case and an Order that an Accusation be Prepared and Served to Horner on August 15, 2016.¹⁶

On August 31, 2016, Brian Lau, Hearing Officer of the Commission, issued a Finding of Probable Cause and an Order to Prepare and Serve an Accusation on Horner.¹⁷

The Issuance and Service of the Accusation

When the Hearing Officer makes a finding of probable cause, the Enforcement Division must prepare an accusation and serve it on the persons who are the subject of the probable cause finding.¹⁸

An accusation initiates the administrative hearing process, and must be a written statement of the acts or omissions with which the respondent is charged so that the respondent can prepare his defense. The accusation must also specify the statutes and rules which the respondent is alleged to have violated.¹⁹

The agency must serve a copy of the accusation on the respondent.²⁰ The accusation must be accompanied by 1) a form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense; 2) include a statement that respondent may request a hearing by filing a Notice of Defense within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing; and 3) include copies of Sections 11507.5, 11507.6, and 11507.7.²¹ The accusation and accompanying information in Enforcement matters must usually be personally served on the named respondents.²²

¹⁴ Certification, Exhibit A-2.

¹⁵ Certification, Exhibit A-3.

¹⁶ Certification, Exhibit A-4.

¹⁷ Certification, Exhibit A-5.

¹⁸ Reg. 18361.4, subd. (e).

¹⁹ § 11503.

²⁰ § 11505, subd. (a) and (c).

²¹ § 11505, subd. (a) and (b).

²² § 11505, subd. (c).

On September 16, 2016, the Commission’s Chief of Enforcement Galena West, issued an Accusation against Horner in this matter.²³ In accordance with Section 11505, the Accusation and accompanying information, consisting of a Statement to Respondent, two copies of a Notice of Defense Form, copies of Government Code Sections 11506, 11507.5, 11507.6 and 11507.7 were personally served on Horner on September 27, 2016.²⁴

Along with the Accusation, the Enforcement Division served Horner with a “Statement to Respondent” which notified Horner that he could request a hearing on the merits and warned that, unless Notices of Defense were filed within 15 days of service of the Accusation, he would be deemed to have waived the right to a hearing.²⁵ Horner did not file a Notice of Defense within the statutory time period, which ended on October 12, 2016.²⁶

As a result, on January 3, 2017, Senior Commission Counsel Angela J. Brereton sent a letter to Horner advising that this matter would be submitted for a Default Decision and Order at the Commission’s public meeting scheduled for January 19, 2017.²⁷ A copy of the Default Decision and Order, and this accompanying Exhibit 1 with attachments, was included with the letter.

SUMMARY OF THE LAW

All legal references and discussions of law pertain to the Act’s provisions as they existed at the time of the violations in question.

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

When enacting the Political Reform Act, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.²⁸ To that end, the Act must be liberally construed to achieve its purposes.²⁹

There are many purposes of the Act. One purpose is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited.³⁰ Another is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”³¹

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²³ Certification, Exhibit A–6.

²⁴ Certification, Exhibit A–7 and A–8.

²⁵ Certification, Exhibit A–7.

²⁶ Certification, Exhibit B.

²⁷ Certification, Exhibit A–9.

²⁸ § 81001, subd. (h).

²⁹ § 81003.

³⁰ § 81002, subd. (a).

³¹ § 81002, subd. (f).

Independent Expenditure Committees

A “committee” includes any person or combination of persons who makes independent expenditures totaling \$1,000 or more in a calendar year.³² This type of committee is commonly referred to as an independent expenditure committee.

An expenditure is any payment, unless it is clear from the surrounding circumstances that it is not made for political purposes.³³ An “independent expenditure” includes any expenditure made by any person in connection with a communication that expressly advocates the election or defeat of a clearly identified candidate but which is not made to or at the behest of the affected candidate.³⁴

Reporting Independent Expenditures

An independent expenditure committee must file periodic campaign statements disclosing the expenditures it made during the statement period.³⁵ The principal officer of a committee required to disclose an independent expenditure must sign a verification form (Form 462) and email it to the Fair Political Practices Commission (Commission) stating that he/she was not reimbursed to make the independent expenditure, and the communication reported as an independent expenditure was not coordinated with the candidate who is the subject of the expenditure.³⁶

Reporting Late Independent Expenditures

A “late independent expenditure” is any independent expenditure which totals in the aggregate one thousand dollars (\$1,000) or more and is made for or against any specific candidate or measure involved in an election within 90 days before the date of the election.³⁷

When a committee makes a late independent expenditure, the committee must disclose the expenditure in a late independent expenditure report filed at each office with which the committee is required to file its next campaign statement within 24 hours of making the late independent expenditure.³⁸

Prohibited Cash Expenditures of \$100 or More

The Act prohibits making an expenditure of one hundred dollars or more in cash.³⁹

³² § 82013, subd. (b).

³³ § 82025.

³⁴ § 82031.

³⁵ §§ 82046, subd. (b), 84200, subd. (b) and 84211, subd. (k).

³⁶ § 84213.

³⁷ § 82036.5.

³⁸ § 84204.

³⁹ § 84300, subd. (b).

Mass Mailing Sender Identification

Independent expenditure committees are prohibited from sending a mass mailing unless the name, street address, and city of the committee are shown on the outside of each piece of mail in the mass mailing.⁴⁰

A “mass mailing” is defined as over two hundred substantially similar pieces of mail sent in a single calendar month, but not including a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry.⁴¹ The “sender” is the committee who pays for the largest portion of expenditures attributable to the designing, printing or posting of the mailing.⁴²

Liability of Principal Officers

It is the duty of the committee’s principal officer to authorize the content of communications made by the committee, authorize expenditures made by the committee, and determine the committee’s campaign strategy.⁴³ The principal officer of a committee may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee.⁴⁴

Liability for Violations

Any person who violates any provision of the Act, who purposely or negligently causes any other person to violate any provision of the Act, or who aids and abets any other person in the violation of any provision of the Act, is liable for administrative penalties up to \$5,000 per violation.⁴⁵

Joint and Several Liability

If two or more parties are responsible for a violation of the Act, they are jointly and severally liable.⁴⁶

SUMMARY OF THE EVIDENCE

The uncontested Accusation⁴⁷ in this case states the facts supporting the violations charged. The violations are supported by the evidence included in the following attachments: Exhibit A – Certification of Records (Certification), attached Exhibits A–10 through A–14; and Exhibit C – Declaration of Paul Rasey. The evidence is summarized below.

⁴⁰ § 84305, subd. (b).

⁴¹ § 82041.5, and Reg. 18435, subd. (a).

⁴² Reg. 18435, subd. (a).

⁴³ § 82047.6, and Reg. 18402.1, subd. (b).

⁴⁴ §§ 83116.5, 84213 and 91006.

⁴⁵ §§ 83116, and 83116.5.

⁴⁶ § 91006.

⁴⁷ Certification, Exhibit A–6.

In or about October 2014, residents of Lake County received a 5x7 color printed postcard mailer on white glossy stock, expressly advocating the defeat of Jim Steele, a candidate for the Lake County Board of Supervisors in the November 4, 2014 election.⁴⁸

The evidence shows that Horner paid in total approximately \$1,392 to print and send the above mailer. Invoices and emails obtained from Horner, Melo Mail, and Santa Rosa Printing Company, Inc., show that in or about October 2014, Horner paid approximately \$902 to Melo Mail, and approximately \$490 to Santa Rosa Printing Company, Inc., to cover the costs of printing, postage and delivery for the above described mailer.⁴⁹

The mailer identified the sender as “Anyone But Jim Steele,” and did not include the street address and city of the sender.⁵⁰ Instead the mailer included a P.O. Box that the United States Postal Service identified as fictitious.⁵¹ According to a USPS Postage Statement – Standard Mail form, the mailer was delivered to approximately 3,100 households in Lake County on or about October 31, 2014.⁵² Jim Steele won the election.

Horner admitted that he acted alone in a statement dated December 15, 2015, to Special Investigator Paul Rasey:

This was an effort made solely by me, not as a member of any committee, with the support of any committee or to the knowledge of any committee or any other candidates.” and that he paid for the printing, postage and delivery of the mass mailing.

I acted alone, a private citizen of Lake County, exercising the rights afforded me by the First Amendment of the US Constitution.⁵³

At the same time, Horner also admitted that he paid for the mailer in cash: “I do not have any receipts for this mailer as I paid Melo Mail and Santa Rosa Printing in cash.”⁵⁴

Confirmation to Paul Rasey, Special Investigator, from the California Secretary of State’s office and the Lake County Registrar of Voters shows that Horner did not file any campaign statements or reports as an independent expenditure committee disclosing the expenditures for the mailer either in his name or as “Anyone But Jim Steele” with the SOS or with Lake County.⁵⁵

VIOLATIONS

Horner committed five violations of the Act, as follows:

⁴⁸ Certification, Exhibit A-10.

⁴⁹ Certification, Exhibit A-11.

⁵⁰ Certification, Exhibit A-10.

⁵¹ Certification, Exhibit C.

⁵² Certification, Exhibit A-12.

⁵³ Certification, Exhibit A-13.

⁵⁴ Certification, Exhibit A-14.

⁵⁵ Certification, Exhibit C.

Count 1: Failure to Timely File Semi-Annual Campaign Statement

Horner failed to timely file a semi-annual statement with the Lake County Auditor-Controller/County Clerk disclosing expenditures for a mass mailing expressly advocating the defeat of a candidate by February 2, 2015, for the January 1 through December 31, 2014 reporting period, violating Government Code section 84200, subdivision (b).

Count 2: Failure to Timely File Late Independent Expenditure Report

In 2014, Horner failed to timely file a late independent expenditure report with the Lake County Auditor-Controller/County Clerk disclosing expenditures totaling \$1,000 or more made within 90 days before the date of the election, for a mass mailing expressly advocating the defeat of a candidate, within 24 hours of making the late independent expenditure, violating Government Code section 84204.

Count 3: Failure to Timely File Independent Expenditure Verification Form

In 2014, Horner failed to timely file an independent expenditure verification form with the Commission by email within 10 days after the date Horner made his first independent expenditure, violating Government Code section 84213.

Count 4: Prohibited Cash Expenditures of \$100 or More

In 2014, Horner made cash expenditures of \$100 or more, totaling approximately \$1,392, violating Government Code section 84300, subdivision (b).

Count 5: Failure to Disclose Required Sender Information on a Mass Mailing

In or about October 2014, Horner paid for and caused to be sent a mass mailing expressly advocating the defeat of a candidate which failed to display required sender identification, violating Government Code section 84305, subdivision (a).

CONCLUSION

This matter consists of five counts of violating the Act, which carries a maximum administrative penalty of \$5,000 per count, for a total of \$25,000.

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) 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, upon learning of the violation, the violator voluntarily provided amendments to provide full disclosure.

The Commission also considers penalties in prior cases involving similar violations. Recent cases for similar violations include:

Failure to Timely File Semi-Annual Campaign Statement

- *In the Matter of Gregory Kelly Meagher*; FPPC No. 14/032. At different times in 2011 and 2012, Meagher qualified as a major donor committee and an independent expenditure committee, and made contributions and expenditures totaling in excess of \$80,000, most in connection with local ballot measure issues in Chico and Butte County. As an independent expenditure committee, Meagher failed to file a semiannual campaign statement, in violation of Government Code Section 84200, subdivision (b) (1 count). In May 2016, the Commission imposed a penalty of \$1,500 for this violation.

Failure to Timely File Late Independent Expenditure Report

- *In the Matter of Phillips 66*; FPPC No. 16/111. Phillips 66 is a corporation based in Houston, Texas. Phillips 66 owned and operated an oil and gas terminal in the City of Rialto. Phillips 66 failed to timely disclose late independent expenditures, in violation of Government Code Section 84204, subdivision (a) (1 count). In March 2016, the Commission imposed a penalty of \$3,500 for this violation.

Failure to Timely File Independent Expenditure Verification Form

There are no prior cases for violations of Section 84213, subdivision (b), failure to timely file independent expenditure verification form (Form 462). But Verification of Independent Expenditures Form 462 pursuant to Section 84213 are one of the Act's "10-day reports," which includes reports pursuant to Section 85309, subdivisions (c) and (d) for receipt of contributions totaling \$5,000 or more outside of the 90-day election cycle, as well as Paid Spokesperson Reports (Section 84511). So violations for failure to timely file independent expenditure verification form involve similar public harm to violations involving failure to timely file reports of contributions received totaling \$5,000 or more outside of the 90-day election cycle, which frequently render lower range penalties.

Prohibited Cash Expenditures of \$100 or More

- *In the Matter of Monica Cooper and Friends to Elect Monica Cooper Treasurer of Carson 2015*; FPPC No. 15/200. Monica Cooper was a successful candidate for City Treasurer for the City of Carson in the March 3, 2015 election. Friends to Elect Monica Cooper Treasurer of Carson 2015 (the Committee), was Cooper's candidate controlled committee and Cooper was the Committee's treasurer. Cooper and the Committee made cash expenditures of \$100 or more, totaling approximately \$4,010, in violation of Government Code Section 84300, subdivision (b) (1 count). In April 2016, the Commission imposed a penalty of \$1,500 for this violation.

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Failure to Disclose Required Sender Information on a Mass Mailing

- *In the Matter of Phillips 66*; FPPC No. 16/111. Phillips 66 is a corporation based in Houston, Texas. Phillips 66 owned and operated an oil and gas terminal in the City of Rialto. Prior to the 2012 General Election in Rialto, Phillips 66 paid for and caused to be sent a mass mailing opposing Measure V, a proposed tax increase on oil companies operating in Rialto, which failed to display required sender identification and instead identified a general purpose committee, Californians for Good Schools and Good Jobs, as the sender, in violation of Government Code Section 84305, subdivision (a), and California Code of Regulations, title 2, section 18435, subdivision (d) (2 counts). In March 2016, the Commission imposed a penalty of \$4,500 for each of these violations.

Failure to include the proper sender identification on a mass mailing is a serious violation of the Act as it deprives the public of important information regarding the sponsor of the mailing. Here, the sender identification provided on Horner's mass mailing was misleading because it identified a committee that did not exist instead of Horner, the true sender.

Horner has not filed any campaign statements or reports as an independent expenditure committee disclosing the expenditures for the mailer either in his name or as "Anyone But Jim Steele." And since Horner paid in cash, the full timing, nature and extent of the campaign activity cannot be verified with the available records. The false sender ID, Horner's lack of disclosure and Horner's cash payments prevented the public from tracing the mass mailing back to him. Horner's conduct in this matter showed an intent to conceal his identity as the true sender of the mass mailing.

In mitigation, Horner has no history of violating the Act, he admitted to sending the mass mailing, and he cooperated with the investigation. But Horner has not filed any of the required campaign statements, and he failed to participate in the administrative proceedings of this matter.

RECOMMENDED PENALTY

After consideration of the factors of Regulation 18361.5, it is respectfully requested that the Commission impose the following penalty upon Horner:

Count	Description	Penalty per count
1	Failure to Timely File Semi-Annual Campaign Statement	\$5,000
2	Failure to Timely File Late Independent Expenditure Report	\$5,000
3	Failure to Timely File Independent Expenditure Verification Form	\$5,000
4	Prohibited Cash Expenditures of \$100 or More	\$5,000
5	Failure to Disclose Required Sender Information on a Mass Mailing	\$5,000
Total Recommended Penalty		\$25,000

* * * * *



**DECLARATION OF CUSTODIAN OF RECORDS
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
Enforcement Division**

CERTIFICATION OF RECORDS

The undersigned declares and certifies as follows:

1. I am employed as a Staff Services Analyst by the California Fair Political Practices Commission (Commission). My business address is: California Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, CA 95814.
2. I am a duly authorized custodian of the records maintained by the Commission in the Enforcement Division. As such, I am authorized to certify copies of those records as being true and correct copies of the original business records which are in the custody of the Commission.
3. I have reviewed documents maintained in *FPPC Case No. 15/1275, Michael Horner*, and have caused copies to be made of documents contained therein. I certify that the copies attached hereto are true and correct copies of the documents prepared in the normal course of business and which are contained in files maintained by the Commission. The attached documents are as follows:

EXHIBIT A-1: Copy of Report in Support of a Finding of Probable Cause.

EXHIBIT A-2: Copy of Proof of Service for the Report in Support of a Finding of Probable Cause, return receipt, and confirmation of delivery by USPS.

EXHIBIT A-3: Copy of cover letter regarding the Report in Support of a Finding of Probable Cause, memorandum describing Probable Cause Proceedings, and applicable statutes and regulations.

EXHIBIT A-4: Copy of Ex Parte Request for a Finding of Probable Cause and cover letter.

EXHIBIT A-5: Copy of Finding of Probable Cause and Order to Prepare and Serve an Accusation and Proof of Service.

- EXHIBIT A-6: Copy of Accusation.
- EXHIBIT A-7: Copy of Statement to the Respondent, Notices of Defense, applicable statutes, and Proof of Service for Accusation and accompanying documents.
- EXHIBIT A-8: Copy of Proof of Service for Accusation and accompanying documents from process server.
- EXHIBIT A-9: Copy of Notice of Intent to Enter into Default Decision and Order.
- EXHIBIT A-10: Copy of a 5x7 color printed postcard mailer on white glossy stock, expressly advocating the defeat of Jim Steele.
- EXHIBIT A-11: Copy of email dated 12/15/2015 from Michael Horner to Paul Rasey; copy of forwarded email thread between orders@melomail.com and Michael Horner dated 10/30/2014; copy of forwarded email from Ivan Astudillo to Michael Horner dated 10/30/2014; copy of email from orders@melomail.com to Michael Horner dated 10/30/2014; copy of Estimate #5924 dated 09/25/2014 from Melo Mail to Michael Horner totaling \$922.88; copy of Estimate #6023 dated 09/25/2014 from Melo Mail to Anyone but Jim Steele totaling \$902.46; copy of Invoice #1006621 dated 09/25/2014 from Melo Mail to Anyone but Jim Steele totaling \$902.46, paid in cash; copy of email from Michael Horner to orders@melomail.com dated 10/30/2014.
- EXHIBIT A-12: Copy of USPS verification of mailing dated 10/31/2014 for permit holder Melo Mail showing postage totaling \$680.63.
- EXHIBIT A-13: Copy of email dated 12/15/2015 from Michael Horner to Paul Rasey.
- EXHIBIT A-14: Copy of signed Declaration of Custodian of Records dated 12/15/2015 by Michael Horner.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on _____, at Sacramento, California.

Kathryn Trumbly
Staff Services Analyst, Enforcement Division
Fair Political Practices Commission

EXHIBIT A-1

1 GALENA WEST
2 Chief of Enforcement
2 ANGELA J. BRERETON
3 Senior Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
4 428 J Street, Suite 620
4 Sacramento, CA 95814
5 Telephone: (916) 322-5771
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant
Enforcement Division of the Fair Political Practices Commission

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of

) FPPC No. 15/1275

MICHAEL HORNER,

**) REPORT IN SUPPORT OF A FINDING OF
PROBABLE CAUSE**

Respondent.

) Conference Date: TBA
) Conference Time: TBA
) Conference Location: Commission Offices
) 428 J Street, Suite 620
) Sacramento, CA 95814

INTRODUCTION

Respondent Michael Horner qualified as an independent expenditure committee in October 2014.

The Enforcement Division received a formal complaint from Jim Steele, an incumbent candidate for the Lake County Board of Supervisors, alleging that in October 2014, his opponent, John Brosnan, sent a mass mailing opposing Jim Steele that failed to disclose the proper sender identification.

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Under the Political Reform Act (the “Act”)¹, mass mailings must disclose the name, street address, and city of the sender of the mass mailing. And independent expenditure committees must file semi-annual campaign statements disclosing all independent expenditures. The evidence in this matter shows that Horner sent a mass mailing advocating the defeat of a candidate without the proper sender identification. The evidence also shows that Horner qualified as an independent expenditure committee and failed to file the required campaign statements disclosing his independent expenditures regarding the mass mailing.

SUMMARY OF THE LAW

9 All legal references and discussions of law pertain to the Act's provisions as they existed at the
10 time of the applicable violations.

11 | Jurisdiction

12 The Fair Political Practices Commission (the “Commission”) has administrative jurisdiction to
13 enforce the provisions of the Act.²

Probable Cause Proceedings

15 Prior to the Enforcement Division commencing an administrative action, the General Counsel
16 of the Commission or her designee (the “hearing officer”), must make a finding that there is probable
17 cause to believe the respondent has violated the Act.³ After a finding of probable cause, the
18 Commission may hold a noticed hearing in accordance with the Administrative Procedure Act⁴ to
19 determine whether violations occurred, and levy an administrative penalty of up to \$5,000 for each
20 violation.⁵

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

2 § 83116.

³ § 83115.5, and Reg. 18361 and 18361.4.

⁴ § 11500, et seq.

⁵ § 83116, and Reg. 18361.4, subd. (e).

1 Standard for Finding Probable Cause

2 To make a finding of probable cause, the hearing officer must be presented with sufficient
3 evidence to lead a person of ordinary caution and prudence to believe, or entertain a strong suspicion,
4 that a respondent committed or caused a violation.⁶

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

6 When enacting the Political Reform Act, the people of the state of California found and
7 declared that previous laws regulating political practices suffered from inadequate enforcement by
8 state and local authorities.⁷ To that end, the Act must be liberally construed to achieve its purposes.⁸

9 There are many purposes of the Act. One purpose is to ensure that receipts and expenditures in
10 election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and
11 improper practices may be inhibited.⁹ Another is to provide adequate enforcement mechanisms so that
12 the Act will be "vigorously enforced."¹⁰

13 Independent Expenditure Committees

14 A "committee" includes any person or combination of persons who makes independent
15 expenditures totaling \$1,000 or more in a calendar year.¹¹ This type of committee is commonly
16 referred to as an independent expenditure committee.

17 An expenditure is any payment, unless it is clear from the surrounding circumstances that it is
18 not made for political purposes.¹² An "independent expenditure" includes any expenditure made by
19 any person in connection with a communication that expressly advocates the election or defeat of a
20 clearly identified candidate but which is not made to or at the behest of the affected candidate.¹³

21 ///

22 ⁶ Reg. 18361.4, subd. (e).

23 ⁷ § 81001, subd. (h).

24 ⁸ § 81003.

25 ⁹ § 81002, subd. (a).

26 ¹⁰ § 81002, subd. (f).

27 ¹¹ § 82013, subd. (b).

28 ¹² § 82025.

¹³ § 82031.

1 | Reporting Independent Expenditures

An independent expenditure committee must file periodic campaign statements disclosing the expenditures it made during the statement period.¹⁴ The principal officer of a committee required to disclose an independent expenditure must sign a verification form (Form 462) and email it to the Fair Political Practices Commission (Commission) stating that he/she was not reimbursed to make the independent expenditure, and the communication reported as an independent expenditure was not coordinated with the candidate who is the subject of the expenditure.¹⁵

8 Reporting Late Independent Expenditures

A “late independent expenditure” is any independent expenditure which totals in the aggregate one thousand dollars (\$1,000) or more and is made for or against any specific candidate or measure involved in an election within 90 days before the date of the election.¹⁶

When a committee makes a late independent expenditure, the committee must disclose the expenditure in a late independent expenditure report filed at each office with which the committee is required to file its next campaign statement within 24 hours of making the late independent expenditure.¹⁷

Prohibited Cash Expenditures of \$100 or More

¹⁷ The Act prohibits making an expenditure of one hundred dollars or more in cash.¹⁸

18 Mass Mailing Sender Identification

Independent expenditure committees are prohibited from sending a mass mailing unless the name, street address, and city of the committee are shown on the outside of each piece of mail in the mass mailing.¹⁹

22 A "mass mailing" is defined as over two hundred substantially similar pieces of mail sent in a
23 single calendar month, but not including a form letter or other mail which is sent in response to an

¹⁴ §§ 82046, subd. (b), 84200, subd. (b) and 84211, subd. (k).

15 884213.

¹⁶ \$ 82036.5.

§ 84204.

¹⁸ § 84300, subd. (b).

¹⁹ § 84305, subd. (b).

1 unsolicited request, letter or other inquiry.²⁰ The “sender” is the committee who pays for the largest
2 portion of expenditures attributable to the designing, printing or posting of the mailing.²¹

3 Liability of Principal Officers

4 It is the duty of the committee’s principal officer to authorize the content of communications
5 made by the committee, authorize expenditures made by the committee, and determine the
6 committee’s campaign strategy.²² The principal officer of a committee may be held jointly and
7 severally liable, along with the committee, for any reporting violations committed by the committee.²³

8 **SUMMARY OF THE EVIDENCE**

9 In or about October 2014, Horner paid approximately \$490 in cash to Santa Rosa Printing
10 Company, Inc., and approximately \$902 in cash to Melo Mail, to cover the costs of printing, postage
11 and delivery for a mailer expressly advocating the defeat of Jim Steele, a candidate for the Lake
12 County Board of Supervisors in the November 4, 2014 election. Horner paid in total approximately
13 \$1,392 to print and send the mailer.

14 The mailer identified the sender as “Anyone But Jim Steele,” and did not include the street
15 address and city of the sender. Instead the mailer included a P.O. Box that the United States Postal
16 Service identified as fictitious. The mailer was delivered to approximately 3,300 households in Lake
17 County on or about October 31, 2014. Jim Steele won the election.

18 During the investigation, Horner admitted that he acted alone and that he paid for the printing,
19 postage and delivery of the mass mailing. Horner did not file any campaign statements or reports as an
20 independent expenditure committee disclosing the expenditures for the mailer either in his name or as
21 “Anyone But Jim Steele” with the Lake County Auditor-Controller/County Clerk or with the SOS.

22 Horner contends that he sent the mass mailing “as a private citizen of Lake County, exercising
23 the rights afforded [him] by the First Amendment of the US Constitution.” Horner also contends that
24

25
26 ²⁰ § 82041.5, and Reg. 18435, subd. (a).

27 ²¹ Reg. 18435, subd. (a).

28 ²² § 82047.6, and Reg. 18402.1, subd. (b).

29 ²³ §§ 83116.5, 84213 and 91006.

1 he was unaware that spending \$1,000 or more qualified him as a committee under the Act, and that he
2 was unaware of the Act's sender identification requirements for mass mailings.

VIOLATIONS

4 Count 1: Failure to Timely File Semi-Annual Campaign Statement

Horner failed to timely file a semi-annual statement with the Lake County Auditor-Controller/County Clerk disclosing expenditures for a mass mailing expressly advocating the defeat of a candidate by February 2, 2015, for the January 1 through December 31, 2014 reporting period, violating Government Code section 84200, subdivision (b).

9 Count 2: Failure to Timely File Late Independent Expenditure Report

In 2014, Horner failed to timely file a late independent expenditure report with the Lake County Auditor-Controller/County Clerk disclosing expenditures totaling \$1,000 or more made within 90 days before the date of the election, for a mass mailing expressly advocating the defeat of a candidate, within 24 hours of making the late independent expenditure, violating Government Code section 84204.

15 | Count 3: Failure to Timely File Independent Expenditure Verification Form

In 2014, Horner failed to timely file an independent expenditure verification form with the Commission by email within 10 days after the date Horner made his first independent expenditure, violating Government Code section 84213.

19 | Count 4: Prohibited Cash Expenditures of \$100 or More

In 2014, Horner made cash expenditures of \$100 or more, totaling approximately \$1,392, violating Government Code section 84300, subdivision (b).

Count 5: Failure to Disclose Required Sender Information on a Mass Mailing

23 In or about October 2014, Horner paid for and caused to be sent a mass mailing expressly
24 advocating the defeat of a candidate which failed to display required sender identification, violating
25 Government Code section 84305, subdivision (a).

1

OTHER RELEVANT MATERIAL AND ARGUMENTS

Failure to include the proper sender identification on a mass mailing is a serious violation of the Act as it deprives the public of important information regarding the sponsor of the mailing. Here, the sender identification provided on Horner's mass mailing was misleading because it identified a committee that did not exist instead of Horner, the true sender.

Horner did not file any campaign statements or reports as an independent expenditure committee disclosing the expenditures for the mailer either in his name or as "Anyone But Jim Steele." And since Horner paid in cash, the full timing, nature and extent of the campaign activity cannot be verified with the available records. The false sender ID, Horner's lack of disclosure and Horner's cash payments prevented the public from tracing the mass mailing back to him. Horner's conduct in this matter showed an intent to conceal his identity as the true sender of the mass mailing.

EXCULPATORY AND MITIGATING INFORMATION

In mitigation, Horner has no history of violating the Act, and cooperated with the investigation.

CONCLUSION

Probable cause exists to believe that Respondent Michael Horner committed four violations of the Act, as set forth above. The Enforcement Division respectfully requests an order finding probable cause pursuant to Section 83115.5 and Regulation 18361.4.

Dated: April 14, 2016

Respectfully Submitted,

FAIR POLITICAL PRACTICES COMMISSION

By: Galena West
Chief of Enforcement

Angela J. Brereton
Senior Commission Counsel
Enforcement Division

EXHIBIT A-2

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. My business address is Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814. On April 14, 2016, I served the following document(s):

1. Letter dated April 14, 2016 from Angela J. Brereton;
2. FPPC Case No. 15/1275: Report in Support of a Finding of Probable Cause;
3. Fact Sheet regarding Probable Cause Proceedings with selected Sections of the California Government Code and selected Regulations of the Fair Political Practices Commission regarding Probable Cause Proceedings for the Fair Political Practices Commission.

By United States Postal Service. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the addresses listed below and placed the envelope or package for collection and mailing by certified mail, return receipt requested, following my company's ordinary business practices. I am readily familiar with this business' practice for collection and processing correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail in Sacramento County, California.

SERVICE LIST

Certified Mail, Return Receipt Requested

Michael Horner


I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 14, 2016.



Kathryn Trumbly



U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance)

For delivery information visit our website at www.usps.com

OFFICE

Postage \$ [REDACTED]

Certified F [REDACTED]

Return Receipt Requested
(Endorsement) [REDACTED]

Restriction
(Encl.) [REDACTED]

To [REDACTED]

Sent To [REDACTED]

Street, Apt. No.
or PO Box No. [REDACTED]

City, State, ZIP+4 [REDACTED]

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

Michael Horner

[REDACTED]

[REDACTED]



9590 9403 0234 5146 5237 98

2. Article Number (Transfer from service label)

7012 3460 0000 2695 7350

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Agent
 Addressee

B. Received by (Printed Name)

Michael Horner

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery



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Tracking Number: 70123460000026957350

Product & Tracking Information

Postal Product: **Certified Mail™**

DATE & TIME	STATUS OF ITEM	LOCATION
April 18, 2016 , 2:29 pm	Delivered	[REDACTED]

Your item was delivered at 2:29 pm on April 18, 2016 in MEDFORD, OR 97504.

April 18, 2016 , 5:43 am	Departed USPS Facility	[REDACTED]
April 18, 2016 , 4:22 am	Arrived at USPS Facility	[REDACTED]
April 16, 2016 , 11:08 am	Arrived at USPS Facility	[REDACTED]
April 14, 2016 , 11:21 pm	Departed USPS Facility	WEST SACRAMENTO, CA 95799
April 14, 2016 , 8:07 pm	Arrived at USPS Facility	WEST SACRAMENTO, CA 95799

Available Actions

Track Another Package

Tracking (or receipt) number

Track It

Manage Incoming Packages

Track all your packages from a dashboard.
No tracking numbers necessary.

[Sign up for My USPS >](#)



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EXHIBIT A-3



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

April 14, 2016

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Michael Horner
[REDACTED]

**Re: In the Matter of Michael Horner,
FPPC Case No. 15/1275**

Dear Mr. Homer:

The Enforcement Division of the Fair Political Practices Commission (the “Commission”) is proceeding with an administrative action against you for your failure to comply with mass mailing provisions of the Political Reform Act (the “Act”), as described in our previous correspondence dated February 5, 2016 and February 12, 2016. The enclosed Report in Support of a Finding of Probable Cause (the “Report”) contains a summary of the alleged violations and the relevant law and evidence.

You have the right to file a written response to the Report. That response may contain any information you think is relevant and that you wish to bring to the attention of the Commission’s General Counsel (the “Hearing Officer”). In your response, please indicate whether you would like the Hearing Officer to make a determination of probable cause based on the written materials alone (the Report and your response) or request a conference, during which you may orally present your case to the Hearing Officer. Probable cause conferences are held in our office which is located at 428 J Street, Ste. 620, Sacramento, CA 95814. You may appear at the conference in person or by telephone and you are entitled to be represented by counsel. *If you wish to submit a written response or request a probable cause conference, it must be filed with the Commission Assistant, Sheva Tabatabainejad, at the address listed above within 21 days from the date of service of this letter.* You can reach Ms. Tabatabainejad at (916) 327-8269.

Please note that probable cause conferences are not settlement conferences. The sole purpose of a probable cause conference is to determine whether there is probable cause to believe that the Act was violated. However, settlement discussions are encouraged by the Commission and may take place at any time except during a probable cause conference. *If you are interested in*

reaching a settlement in this matter, please contact Angela Brereton at (916) 322-5771 or abrereton@fppc.ca.gov.

Finally, you have the right to request discovery of the evidence in possession of, and relied upon by, the Enforcement Division. *This request must also be filed with Ms. Tabatabainejad within 21 days from the date of service of this letter.* Should you request discovery, the Enforcement Division will provide the evidence by service of process or certified mail. From the date you are served with the evidence, you would have an additional 21 days to file a written response to the Report, just as described above.

Should you take no action within 21 days from the date of service of this letter, your rights to respond and to request a conference are automatically waived and the Enforcement Division will independently pursue the issuance of an accusation.

For your convenience, I have enclosed a fact sheet on probable cause proceedings and copies of the most relevant statutes and regulations.

Sincerely,

Angela J. Brereton
Senior Commission Counsel
Enforcement Division

Enclosures

PROBABLE CAUSE FACT SHEET

INTRODUCTION

The Fair Political Practices Commission is required by law to determine whether probable cause exists to believe that the Political Reform Act (the "Act") was violated before a public administrative accusation may be issued.

The probable cause proceedings before the Fair Political Practices Commission are unique, and most respondents and their attorneys are unfamiliar with them. Therefore, we have prepared this summary to acquaint you with the process.

THE LAW

Government Code sections 83115.5 and 83116 set forth the basic requirement that a finding of probable cause be made in a "private" proceeding before a public accusation is issued and a public hearing conducted in accordance with the Administrative Procedure Act.

The Commission has promulgated regulations further defining the probable cause procedure and delegating to the General Counsel (the "Hearing Officer" for purposes of these proceedings) the authority to preside over such proceedings and decide probable cause. A copy of these statutes and regulations are attached for your convenience.

In summary, the statutes and regulations entitle you to the following:

- a) A written probable cause report containing a summary of the law alleged to have been violated, and a summary of the evidence, including any exculpatory and mitigating information and any other relevant material and arguments;
- b) The opportunity to request discovery, respond in writing, and to request a probable cause conference within 21 days of service of the probable cause report;
- c) If the Commission met to consider whether a civil lawsuit should be filed in this matter, a copy of any staff memoranda submitted to the Commission and a transcript of staff discussions with the Commission at any such meeting; and
- d) If a timely request was made, a non-public conference with the General Counsel and the Enforcement Division staff to consider whether or not probable cause exists to believe the Act was violated.

THE PROCEDURE

Probable Cause Report

Administrative enforcement proceedings are commenced with the service, by registered or certified mail or in person, of a probable cause report. The report will contain a summary of the law and the evidence, including any exculpatory and mitigating information of which the staff has knowledge and any other relevant material and arguments. It is filed with the Hearing Officer.

Discovery

Within 21 calendar days following the service of the probable cause report, you may request discovery of the evidence in the possession of the Enforcement Division. This is not a right to full discovery of the Enforcement Division file, but to the evidence relied upon by the Division along with any exculpatory or mitigating evidence¹.

This request must be sent by registered or certified mail to the Commission Assistant.

Response to Probable Cause Report

Within 21 calendar days following the service of the probable cause report (or, if you timely requested discovery, within 21 calendar days from the service of the evidence) you may submit a response to the Report. By regulation, the written response may contain, "... a summary of evidence, legal arguments, and any mitigating or exculpatory information." (Cal. Code Regs., tit. 2, § 18361.4, subd. (c).)

You must file your response with the Commission Assistant and provide a copy, by service of process or registered or certified mail with return receipt requested, to all other proposed respondents listed in the probable cause report.

Staff Reply

Within 10 calendar days following the date the response was filed with the Commission Assistant, Commission staff may submit any evidence or argument in rebuttal. You will be served with a copy of any such reply.

Probable Cause Conference

Probable cause conferences are held at the offices of the Fair Political Practices Commission, which is located at 428 J Street, Ste. 620, Sacramento, CA 95814. You may appear at the conference in person or by telephone. The proceedings are not public unless all proposed respondents agree to open the conference to the public. Otherwise, the probable cause report, any written responses, and the probable cause conference itself are confidential.

Unless the probable cause conference is public, the only persons who may attend are the staff of the Commission, any proposed respondent and his or her attorney or representative, and, at the discretion of the Hearing Officer, witnesses.

The Hearing Officer may, but need not, permit testimony from witnesses. Probable cause conferences are less formal than court proceedings. The rules of evidence do not apply. The conferences will be recorded and a copy of the recording will be provided upon request.

Since it has the burden of proof, the Enforcement Division is permitted to open and close the conference presentations. The Hearing Officer may also hold the record open to receive additional evidence or arguments.

Probable cause conferences are not settlement conferences. The sole purpose of a probable cause conference is to determine whether or not there is probable cause to believe that the

¹ But see Title 2, California Code of Regulations, Section 18362, which states that the Commission provides access to complaints, responses to complaints, and investigative files and information in accordance with the requirements of the Public Records Act. (Govt. Code § 6250, et seq.)

Political Reform Act was violated. Anyone who wishes to discuss settlement with the Enforcement Division may do so before or after the probable cause conference but not during the conference.

Pursuant to Title 2, California Code of Regulations, Section 18361.4, subdivision (e), the Hearing Officer will find probable cause “if the evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a proposed respondent committed or caused a violation.”

Ordinarily, probable cause determinations are made based upon the written probable cause report, any written response by the respondent, any written reply by the Enforcement Division, and the oral arguments presented at the conference. Timely written presentations are strongly recommended.

Probable Cause Order and Accusation

Once the matter is submitted to the Hearing Officer, the probable cause decision will normally be made within ten days. If the Hearing Officer finds probable cause, he will issue a Finding of Probable Cause, which will be publicly announced at the next Commission Meeting. An accusation will be issued soon after the Finding of Probable Cause is publicly announced.

Continuances

Every reasonable effort is made to accommodate the schedules of parties and counsel. However, once a date has been set it is assumed to be firm and will not be continued except upon the order of the Hearing Officer after a showing of good cause. Settlement negotiations will be considered good cause only if the Hearing Officer is presented with a fully executed settlement, or is convinced that settlement is imminent.

Settlements

Settlement discussions may take place at any time except during the probable cause conference. In order to open settlement discussions, a proposed respondent or his or her counsel or representative should present a written offer to settle stating, where appropriate, the violations to be admitted, and the monetary penalty or other remedy to be tendered.

The Enforcement Division attorney assigned to the case will negotiate any potential settlement on behalf of the Fair Political Practices Commission, and will draft the language of the settlement agreement. The Hearing Officer will not directly participate in the negotiations, but will be represented by Enforcement Division attorneys. Staff attorneys will present settlement offers to the Hearing Officer for his/her approval.

CONCLUSION

This fact sheet was intended to give you a brief summary of the probable cause process at the Fair Political Practices Commission. Such a summary cannot answer every question that might arise in such proceedings. Therefore, if you have any questions that are not addressed by this fact sheet or the copies of the law and regulations we have attached, feel free to contact the attorney whose name appears on the probable cause report.

Attachments: Relevant Sections of (1) California Government Code , and (2) Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations.

CALIFORNIA GOVERNMENT CODE

Probable Cause Statutes

§ 83115.5. Probable cause; violation of title; notice of violation; summary of evidence; notice of rights; private proceedings

No finding of probable cause to believe this title has been violated shall be made by the commission unless, at least 21 days prior to the commission's consideration of the alleged violation, the person alleged to have violated this title is notified of the violation by service of process or registered mail with return receipt requested, provided with a summary of the evidence, and informed of his right to be present in person and represented by counsel at any proceeding of the commission held for the purpose of considering whether probable cause exists for believing the person violated this title. Notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office. A proceeding held for the purpose of considering probable cause shall be private unless the alleged violator files with the commission a written request that the proceeding be public.

§ 83116. Violation of title; probable cause; hearing; order

When the Commission determines there is probable cause for believing this title has been violated, it may hold a hearing to determine if a violation has occurred. Notice shall be given and the hearing conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, Government Code). The Commission shall have all the powers granted by that chapter. When the Commission determines on the basis of the hearing that a violation has occurred, it shall issue an order that may require the violator to do all or any of the following:

- (a) Cease and desist violation of this title.
- (b) File any reports, statements, or other documents or information required by this title.
- (c) Pay a monetary penalty of up to five thousand dollars (\$5,000) per violation to the General Fund of the state. When the Commission determines that no violation has occurred, it shall publish a declaration so stating.

**REGULATIONS OF THE FAIR POLITICAL PRACTICES COMMISSION
TITLE 2, DIVISION 6 OF THE CALIFORNIA CODE OF REGULATIONS**

Probable Cause Regulations

§ 18361 (b). Delegation by the Executive Director Pertaining to Enforcement Proceedings and Authority to Hear Probable Cause Proceedings.

Probable cause proceedings under Regulation 18361.4 shall be heard by the General Counsel or an attorney from the Legal Division. The General Counsel may delegate the authority to hear probable cause proceedings, in writing, to an administrative law judge.

§ 18361.4. Probable Cause Proceedings

(a) Probable Cause Report. If the Chief of the Enforcement Division decides to commence probable cause proceedings pursuant to Sections 83115.5 and 83116, he or she shall direct the Enforcement Division staff to prepare a written report, hereafter referred to as "the probable cause report." The probable cause report shall contain a summary of the law and evidence gathered in connection with the investigation, including any exculpatory and mitigating information of which the staff has knowledge and any other relevant material and arguments. The evidence recited in the probable cause report may include hearsay, including declarations of investigators or others relating the statements of witnesses or concerning the examination of physical evidence.

(b) No probable cause hearing will take place until at least 21 calendar days after the Enforcement Division staff provides the following, by service of process or registered or certified mail with return receipt requested, to all proposed respondents:

- (1) A copy of the probable cause report;
- (2) Notification that the proposed respondents have the right to respond in writing to the probable cause report and to request a probable cause conference at which the proposed respondent may be present in person and represented by counsel, and;
- (3) If the Commission met in executive session on this matter pursuant to Regulation 18361.2, a copy of any staff memoranda submitted to the Commission at that time along with the recording of any discussion between the Commission and the staff at the executive session as required in subdivision (b) of Regulation 18361.2.

(c) Response to Probable Cause Report.

- (1) Each proposed respondent may submit a written response to the probable cause report. The response may contain a summary of evidence, legal arguments, and any mitigating or exculpatory information. A proposed respondent who submits a response must file it with the Commission Assistant who will forward the response to the General Counsel or an attorney in the Legal Division (the "hearing officer") and provide a copy, by service of process or registered or certified mail with return receipt requested, to all other proposed respondents listed in the probable cause report not later than 21 days following service of the probable cause report.
- (2) Within 21 calendar days following the service of the probable cause report, a proposed

respondent may request discovery of evidence in the possession of the Enforcement Division. This request must be sent by registered or certified mail to the Commission Assistant. Upon receipt of the request, the Enforcement Division shall provide discovery of evidence relied upon by the Enforcement Division sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a proposed respondent committed or caused a violation, along with any exculpatory or mitigating evidence. This is not a right to full discovery of the Enforcement Division file. The Enforcement Division shall provide access to documents for copying by the Respondent, or upon agreement among the parties, the Enforcement Division will provide copies of the requested documents upon payment of a fee for direct costs of duplication. The Enforcement Division shall provide such evidence by service of process or registered or certified mail with return receipt requested to all respondents, with a copy to the Commission Assistant. A respondent may submit a written response to the probable cause report described in subsection (1) no later than 21 calendar days after service of discovery.

- (3) The Commission staff may submit any evidence or argument in rebuttal to the response. When the Commission staff submits evidence or argument in rebuttal to the response, it shall provide a copy, by service of process or registered or certified mail with return receipt requested, to all proposed respondents listed in the probable cause report not later than 10 calendar days following the date the response was filed with the Commission Assistant. The hearing officer may extend the time limitations in this section for good cause. At any time prior to a determination of probable cause, the hearing officer may allow additional material to be submitted as part of the initial response or rebuttal.

(d) Probable Cause Conference. Any proposed respondent may request a probable cause conference. The request shall be served upon the Commission Assistant and all other proposed respondents not later than 21 days after service of the probable cause report unless the hearing officer extends the time for good cause. The Commission Assistant shall fix a time for the probable cause conference and the hearing officer shall conduct the conference informally. The conference shall be closed to the public unless a proposed respondent requests and all other proposed respondents agree to a public conference. If the conference is not public, only members of the Commission staff, any proposed respondent and his or her legal counsel or representative shall have the right to be present and participate. The hearing officer may allow witnesses to attend and participate in part or all of the probable cause conference. In making this determination, the hearing officer shall consider the relevancy of the witness' proposed testimony, whether the witness has a substantial interest in the proceedings, and whether fairness requires that the witness be allowed to participate. Representatives of any civil or criminal prosecutor with jurisdiction may attend the conference at the discretion of the hearing officer if they agree to respect the confidential nature of the proceedings. If the conference is not open to the public and none of the parties and the presiding officer object, the conference may be conducted in whole or in part by telephone. The probable cause conference shall be recorded. The hearing officer may determine whether there is probable cause based solely on the probable cause report, any responses or rebuttals filed and any arguments presented at the probable cause conference by the interested parties. If the hearing officer requires additional information before determining whether there is probable cause, he or she may permit any party to submit additional evidence at the probable cause conference.

(e) Finding of Probable Cause. The hearing officer may find there is probable cause to believe a violation has occurred if the evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a proposed respondent committed or caused a violation. A finding of probable cause by the hearing officer does not constitute a finding that a violation has actually occurred. The hearing officer shall not make a finding of probable cause if he or she is presented with clear and convincing evidence that, at a time prior to the alleged violation, the violator consulted with the staff of the Commission in good faith, disclosed truthfully all the material facts, and committed the acts complained of either in reliance on the advice of the staff or because of the staff's failure to provide advice. If the hearing officer makes a finding of probable cause, the Enforcement Division shall prepare an Accusation pursuant to Section 11503 and have it served upon the person or persons who are subjects of the probable cause finding. The hearing officer shall publicly announce the finding of probable cause. The announcement shall contain a summary of the allegations and a cautionary statement that the respondent is presumed to be innocent of any violation of the Act unless a violation is proved in a subsequent proceeding. The Chief of the Enforcement Division shall be responsible for the presentation of the case in support of the Accusation at an administrative hearing held pursuant to Section 83116.

§ 18362. Access to Complaint Files

(a) Access to complaints, responses thereto, and investigative files and information shall be granted in accordance with the requirements of the Public Records Act (Government Code Section 6250, et seq.).

(b) When release of material is requested pursuant to subdivision (a), the Executive Director, or his or her designee, shall review the material prior to its release or prior to a claim of exemption to determine that the requirements of the Public Records Act have been satisfied.

(c) Any person requesting copies of material pursuant to subdivision (a) shall reimburse the Commission \$0.10 per page for each page copied or supply copying equipment and make copies in the offices of the Commission. Documents may not be removed from the offices of the Commission. If the request is for copies totaling ten pages or less, the copies shall be provided without charge for copying since the administrative costs do not warrant collection of \$1.00 or less. If the request is for copies totaling more than ten pages, reimbursements of copying costs shall include the cost for the first ten pages. Charges imposed pursuant to this subdivision are for the purpose of recovering the cost of copying.

(d) Requests for access and copies pursuant to subdivision (a) shall be made in writing and shall specifically identify the documents sought.

§ 18361.2. Memorandum Respecting Civil Litigation.

(a) If the Executive Director concludes civil litigation should be initiated, he or she shall submit to the Commission a written memorandum, which shall be first reviewed by the General Counsel, or an attorney from the Legal Division, summarizing the facts and the applicable law of the case and recommending the initiation of a lawsuit. The memorandum shall include all exculpatory and mitigating information known to the staff.

(b) The Commission shall review the memorandum at an executive session. The General Counsel, or an attorney from the Legal Division, and the Commission Assistant shall be in attendance. No other member of the staff may be present unless the Commission meets with a member of the staff for that person to answer questions. The Commission may not resume its deliberations until the person is no longer present. Any communication between the Commission and the person during the executive session shall be recorded. After review of the memorandum, the Commission may direct the Executive Director to do any of the following:

- (1) Initiate civil litigation.
- (2) Decide whether probable cause proceedings should be commenced pursuant to 2 Cal. Code of Regulations Section 18361.4.
- (3) Return the matter to the staff for further investigation.
- (4) Take no further action on the matter or take any other action it deems appropriate.

(c) If the Commission decides to initiate civil litigation, the Commission may then permit other members of the staff to attend the executive session.

(d) If the Executive Director deems it necessary, he or she may call a special meeting of the Commission to review a staff memorandum recommending the initiation of civil litigation.

(e) It is the intent of the Commission in adopting this section to preserve for the members of the Commission the authority to decide whether alleged violations should be adjudicated in administrative hearings or in civil litigation, while at the same time avoiding the possibility that discussions with members of the staff might cause members of the Commission to prejudge a case that might be heard by the Commission under Government Code Section 83116.

EXHIBIT A-4

EXHIBIT 1 IN SUPPORT OF DEFAULT DECISION AND ORDER
FPPC NO. 15/1275



FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

August 15, 2016

Sent via First Class U.S. Mail and Email michaelhorner707@yahoo.com

Michael Horner
[REDACTED]
[REDACTED]

**Re: FPPC No. 15/1275
In the Matter of Michael Horner**

Dear Mr. Horner:

Enclosed please find the following document: Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation Be Prepared and Served.

Please either refer to the materials previously sent to you regarding probable cause proceedings, or contact me at 916-322-5771, if you have any questions or concerns regarding this matter.

Sincerely,

[REDACTED]
Angela JVBrereton
Senior Commission Counsel
Enforcement Division

Enclosures

1 GALENA WEST
2 Chief of Enforcement
3 ANGELA J. BRERETON
4 Senior Commission Counsel
5 **FAIR POLITICAL PRACTICES COMMISSION**
6 428 J Street, Suite 620
7 Sacramento, CA 95814
8 Telephone: (916) 322-5771
9 Facsimile: (916) 322-1932

10
11 Attorneys for Complainant
12 Enforcement Division of the Fair Political Practices Commission
13
14

15 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

16 STATE OF CALIFORNIA

17 In the Matter of) FPPC No. 15/1275
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28)
MICHAEL HORMER,) EX PARTE REQUEST FOR A FINDING OF
Respondent.) PROBABLE CAUSE AND AN ORDER THAT
) AN ACCUSATION BE PREPARED AND
) SERVED
)
) Gov. Code § 83115.5
)
)

TO THE HEARING OFFICER OF THE FAIR POLITICAL PRACTICES COMMISSION:

Pursuant to Section 83115.5 of the Political Reform Act (the "Act")¹ and Regulation 18361.4, Respondent Michael Horner was served with a copy of a Report in Support of a Finding of Probable Cause (the Report) in the above-entitled matter. The Report, attached as "Exhibit A," was part of a packet of materials, including a cover letter and a memorandum describing Probable Cause Proceedings, which was served on Horner by certified mail on April 18, 2016. The proof of service for the Report is attached as "Exhibit B."

In the cover letter dated April 14, 2016, and the attached materials, Homer was advised that he could respond in writing to the Report, and orally present the case to the Hearing Officer at a probable cause conference to be held in Sacramento. Homer was further advised that in order to have a probable

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

1 cause conference, he needed to make a written request for one, on or before 21 days of the date he received
2 the Report. Additionally, Horner was advised that if he did not request a probable cause conference, such
3 a conference would not be held, and probable cause would be determined based solely on the Report and
4 any written response that Horner submitted within 21 days of the date Horner was served with the Report.
5 Horner did not submit a written response, nor did he request a probable cause conference.

6 WHEREFORE, based on the attached Report, the Enforcement Division requests a finding by the
7 Hearing Officer that probable cause exists to believe that Horner committed five violations of the Act,
8 stated as follows:

9 Count 1: Failure to Timely File Semi-Annual Campaign Statement

10 Horner failed to timely file a semi-annual statement with the Lake County Auditor-
11 Controller/County Clerk disclosing expenditures for a mass mailing expressly advocating the defeat of a
12 candidate by February 2, 2015, for the January 1 through December 31, 2014 reporting period, violating
13 Government Code section 84200, subdivision (b).

14 Count 2: Failure to Timely File Late Independent Expenditure Report

15 In 2014, Horner failed to timely file a late independent expenditure report with the Lake County
16 Auditor-Controller/County Clerk disclosing expenditures totaling \$1,000 or more made within 90 days
17 before the date of the election, for a mass mailing expressly advocating the defeat of a candidate, within
18 24 hours of making the late independent expenditure, violating Government Code section 84204.

19 Count 3: Failure to Timely File Independent Expenditure Verification Form

20 In 2014, Horner failed to timely file an independent expenditure verification form with the
21 Commission by email within 10 days after the date Horner made his first independent expenditure,
22 violating Government Code section 84213.

23 Count 4: Prohibited Cash Expenditures of \$100 or More

24 In 2014, Horner made cash expenditures of \$100 or more, totaling approximately \$1,392,
25 violating Government Code section 84300, subdivision (b).

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27

28 ///

1 Count 5: Failure to Disclose Required Sender Information on a Mass Mailing

2 In or about October 2014, Horner paid for and caused to be sent a mass mailing expressly
3 advocating the defeat of a candidate which failed to display required sender identification, violating
4 Government Code section 84305, subdivision (a).

5 Additionally, after finding probable cause exists, the Enforcement Division requests an Order by
6 the Hearing Officer that an Accusation be prepared against Horner, and immediately served upon him.²

7 A copy of this Request was mailed via U.S. Mail to Horner on August 15, 2016, at his last known
8 address, and a courtesy copy via email, as follows:

9 Michael Horner
10 [REDACTED]
11

12 Dated: August 15, 2016

Respectfully Submitted,

13 **FAIR POLITICAL PRACTICES COMMISSION**
14 By: Galena West
15 Chief of Enforcement
16 [REDACTED]

17 Angela J. Brereton
18 Senior Commission Counsel
19
20
21
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24
25
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27
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² Section 11503.

EXHIBIT A-5

FPPC No. 15/1275, In the matter of Michael Horner

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. My business address is Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, CA 95814. On the date below, I served the following document:

FINDING OF PROBABLE CAUSE AND ORDER TO PREPARE AND SERVE AN ACCUSATION

MANNER OF SERVICE

(U.S. Mail) By causing a true copy thereof to be served on the parties in this action through the U.S. Mail and addressed as listed below. I am familiar with the procedure of the Fair Political Practices Commission for collection and processing of correspondence for mailing with the United States Postal Service, and the fact that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

SERVICE LIST

Mr. Michael Horner
[REDACTED]
[REDACTED]

(By Personal Service) On Wednesday, August 31, 2016, at approximately 2:15 p.m., I personally served:

Galena West, Chief of Enforcement, at 428 J Street, Suite 700, Sacramento, CA 95814.
Angela Brereton, Senior Commission Counsel, at 428 J Street, Suite 700, Sacramento, CA 95814.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this document is executed at Sacramento, California, on August 31, 2016.

[REDACTED]
Sheva Tabatabainejad

1 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
2 STATE OF CALIFORNIA

3 In the Matter of) FPPC No. 15/1275
4)
5 MICHAEL HORNER,) FINDING OF PROBABLE CAUSE AND
6) ORDER TO PREPARE AND SERVE AN
7) ACCUSATION
8 Respondent.)
) Gov. Code § 83115.5
)
)

9 By means of an Ex Parte Request for an Order Finding Probable Cause and an Order that an
10 Accusation be Prepared and Served, dated August 15, 2016, the Enforcement Division submitted the
11 above-entitled matter to the Hearing Officer for a determination of Probable Cause. As set forth in the Ex
12 Parte Request, the Enforcement Division served a Report in Support of a Finding of Probable Cause (the
13 Report) to Respondent Horner, concerning this matter on April 18, 2016. Service was made by certified
14 mail. Accompanying the Report was a packet of materials that informed Horner of his right to file a written
15 response to the Report within 21 days following service of the Report, and to request a probable cause
16 conference. During the 21 days that followed service of the Report, Horner did not file a response to the
17 Report or request a probable cause conference. Pursuant to California Code of Regulations Title 2, Section
18 18361.4, determination of probable cause may be made solely on papers submitted when the respondent
19 does not request that a probable cause conference be held.¹

20 In making a probable cause determination, it is the duty of the Hearing Officer of the Fair Political
21 Practices Commission to determine whether probable cause exists for believing that a respondent has
22 violated the Political Reform Act as alleged by the Enforcement Division in the probable cause report
23 served on the respondent.

24 ///
25
26
27

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

Probable cause to believe a violation has occurred can be found to exist when "the evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that the proposed respondent(s) committed or caused a violation."²

The Probable Cause Report served on Horner and the subsequent Ex Parte Request for an Order Finding Probable Cause and an Order that an Accusation be Prepared and Served in this matter allege five violations of the Political Reform Act were committed, as follows:

Count 1: Failure to Timely File Semi-Annual Campaign Statement

Horner failed to timely file a semi-annual statement with the Lake County Auditor-Controller/County Clerk disclosing expenditures for a mass mailing expressly advocating the defeat of a candidate by February 2, 2015, for the January 1 through December 31, 2014 reporting period, violating Government Code section 84200, subdivision (b).

Count 2: Failure to Timely File Late Independent Expenditure Report

In 2014, Horner failed to timely file a late independent expenditure report with the Lake County Auditor-Controller/County Clerk disclosing expenditures totaling \$1,000 or more made within 90 days before the date of the election, for a mass mailing expressly advocating the defeat of a candidate, within 24 hours of making the late independent expenditure, violating Government Code section 84204.

Count 3: Failure to Timely File Independent Expenditure Verification Form

In 2014, Horner failed to timely file an independent expenditure verification form with the Commission by email within 10 days after the date Horner made his first independent expenditure, violating Government Code section 84213.

Count 4: Prohibited Cash Expenditures of \$100 or More

In 2014, Horner made cash expenditures of \$100 or more, totaling approximately \$1,392, violating Government Code section 84300, subdivision (b).

Count 5: Failure to Disclose Required Sender Information on a Mass Mailing

In or about October 2014, Horner paid for and caused to be sent a mass mailing expressly advocating the defeat of a candidate which failed to display required sender identification, violating Government Code section 84305, subdivision (a).

² Reg. 18361.4, subd. (e).

1 Based on the Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation
2 be Prepared and Served given to me, I find that notice has been given to Horner.³ I further find, based on
3 the Report in Support of a Finding of Probable Cause and the Ex Parte Request for a Finding of Probable
4 Cause and an Order that an Accusation be Prepared and Served, that there is probable cause to believe
5 Horner violated the Political Reform Act as alleged in Counts 1 through 5, above.

I therefore direct that the Enforcement Division issue an Accusation against Horner in accordance with this Finding.

8 IT IS SO ORDERED.

9 | Dated: 8/25/16

Brian Lau, Hearing Officer
Fair Political Practices Commission

³ § 83115.5 and Reg. 18361.4, subd. (b)

EXHIBIT A-6

1 GALENA WEST
Chief of Enforcement
2 ANGELA J. BRERETON
Senior Commission Counsel
3 FAIR POLITICAL PRACTICES COMMISSION
4 428 J Street, Suite 620
Sacramento, CA 95814
Telephone: (916) 322-5771
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant
Enforcement Division of the Fair Political Practices Commission

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of) FPPC No. 15/1275
MICHAEL HORNER,)
Respondent.) ACCUSATION
) (Gov. Code §11503)
)

Complainant, the Enforcement Division of the Fair Political Practices Commission, after a finding of probable cause pursuant to Government Code Section 83115.5, alleges the following:

JURISDICTION

1. Complainant is the Enforcement Division of the Fair Political Practices Commission and makes this Accusation pursuant to the Political Reform Act (the "Act"),¹ in its official capacity and in the public interest.²

11

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

² §§ 83111, 83116, and 91000.5; Reg. 18361 and 18361.4, subd. (e).

1 2. In 1974, California voters found and declared that previous laws regulating political
2 practices had suffered from inadequate enforcement, and they intended that the Act be vigorously
3 enforced.³ To that end, the Act must be liberally construed to achieve its purposes.⁴

4 3. The Act is intended to ensure that receipts and expenditures in election campaigns are fully
5 and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited.⁵

RESPONDENT

7 4. Respondent Michael Horner qualified as an independent expenditure committee in
8 October 2014.

9 5. The actions of Horner – sending a mass mailing without the proper sender identification,
10 and failing to file required independent expenditure committee campaign statements – are in violation of
11 the law and public policies of the State of California.

APPLICABLE LAW

13 6. All applicable law in this Accusation is the law as it existed at the time of the applicable
14 violations.

Independent Expenditure Committees

6 7. A “committee” includes any person or combination of persons who makes independent
7 expenditures totaling \$1,000 or more in a calendar year.⁶ This type of committee is commonly referred to
8 as an independent expenditure committee.

9 8. An expenditure is any payment, unless it is clear from the surrounding circumstances that
10 it is not made for political purposes.⁷ An “independent expenditure” includes any expenditure made by
11 any person in connection with a communication that expressly advocates the election or defeat of a clearly
12 identified candidate but which is not made to or at the behest of the affected candidate.⁸

1

³ §§ 81001, subd. (h), and 81002, subd. (f).

4 881003.

⁵ § 81002, subd. (a).

⁶ § 82013, subd. (b).

§ 82025.

8 82031.

1 Reporting Independent Expenditures

2 9. An independent expenditure committee must file periodic campaign statements disclosing
3 the expenditures it made during the statement period.⁹ The principal officer of a committee required to
4 disclose an independent expenditure must sign a verification form (Form 462) and email it to the Fair
5 Political Practices Commission (Commission) stating that he/she was not reimbursed to make the
6 independent expenditure, and the communication reported as an independent expenditure was not
7 coordinated with the candidate who is the subject of the expenditure.¹⁰

8 Reporting Late Independent Expenditures

9 10. A “late independent expenditure” is any independent expenditure which totals in the
10 aggregate one thousand dollars (\$1,000) or more and is made for or against any specific candidate or
11 measure involved in an election within 90 days before the date of the election.¹¹

12 11. When a committee makes a late independent expenditure, the committee must disclose the
13 expenditure in a late independent expenditure report filed at each office with which the committee is
14 required to file its next campaign statement within 24 hours of making the late independent expenditure.¹²

15 Prohibited Cash Expenditures of \$100 or More

16 12. The Act prohibits making an expenditure of one hundred dollars or more in cash.¹³

17 Mass Mailing Sender Identification

18 13. Independent expenditure committees are prohibited from sending a mass mailing unless
19 the name, street address, and city of the committee are shown on the outside of each piece of mail in the
20 mass mailing.¹⁴

21 14. A “mass mailing” is defined as over two hundred substantially similar pieces of mail sent
22 in a single calendar month, but not including a form letter or other mail which is sent in response to an
23
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26 ⁹ §§ 82046, subd. (b), 84200, subd. (b) and 84211, subd. (k).

27 ¹⁰ § 84213.

28 ¹¹ § 82036.5.

29 ¹² § 84204.

30 ¹³ § 84300, subd. (b).

31 ¹⁴ § 84305, subd. (b).

¹⁵ unsolicited request, letter or other inquiry.¹⁵ The “sender” is the committee who pays for the largest portion of expenditures attributable to the designing, printing or posting of the mailing.¹⁶

3 | Liability of Principal Officers

4 15. It is the duty of the committee's principal officer to authorize the content of
5 communications made by the committee, authorize expenditures made by the committee, and determine
6 the committee's campaign strategy.¹⁷ The principal officer of a committee may be held jointly and
7 severally liable, along with the committee, for any reporting violations committed by the committee.¹⁸

GENERAL FACTS

9 16. Complainant incorporates paragraph 4 of this Accusation, as though completely set forth
10 herein.

11 17. In or about October 2014, residents of Lake County received a 5x7 color printed postcard
12 mailer on white glossy stock, expressly advocating the defeat of Jim Steele, a candidate for the Lake
13 County Board of Supervisors in the November 4, 2014 election.

14 18. The evidence shows that Horner paid in total approximately \$1,392 to print and send the
15 above mailer. Invoices and emails obtained from Horner, Melo Mail, and Santa Rosa Printing Company,
16 Inc., show that in or about October 2014, Horner paid approximately \$902 to Melo Mail, and
17 approximately \$490 to Santa Rosa Printing Company, Inc., to cover the costs of printing, postage and
18 delivery for the above described mailer.

19 19. The mailer identified the sender as "Anyone But Jim Steele," and did not include the street
20 address and city of the sender. Instead the mailer included a P.O. Box that the United States Postal Service
21 identified as fictitious. According to a USPS Postage Statement – Standard Mail form, the mailer was
22 delivered to approximately 3,100 households in Lake County on or about October 31, 2014. Jim Steele
23 won the election.

11

¹⁵ § 82041.5, and Reg. 18435, subd. (a).

¹⁶ Reg. 18435, subd. (a).

¹⁷ § 82047.6, and Reg. 18402.1, subd. (b).

¹⁸ §§ 83116.5, 84213 and 91006.

1 20. Horner admitted that he acted alone in a statement dated December 15, 2015, to Special
2 Investigator Paul Rasey:

3 This was an effort made solely by me, not as a member of any committee,
4 with the support of any committee or to the knowledge of any committee or
any other candidates." and that he paid for the printing, postage and delivery
5 of the mass mailing.

6 I acted alone, a private citizen of Lake County, exercising the rights
7 afforded me by the First Amendment of the US Constitution.

8 21. At the same time, Horner also admitted that he paid for the mailer in cash: "I do not have
9 any receipts for this mailer as I paid Melo Mail and Santa Rosa Printing in cash."

10 22. Confirmation to Paul Rasey, Special Investigator, from the California Secretary of State's
11 office and the Lake County Registrar of Voters shows that Horner did not file any campaign statements
12 or reports as an independent expenditure committee disclosing the expenditures for the mailer either in
13 his name or as "Anyone But Jim Steele" with the SOS or with Lake County.

PROCEDURAL HISTORY

14 23. The Enforcement Division initiated the administrative action against Horner in this matter
15 by serving him with a packet containing a cover letter, a Report in Support of a Finding of Probable Cause
16 (Report), a fact sheet regarding probable cause proceedings, selected sections of the California
17 Government Code regarding probable cause proceedings for the Fair Political Practices Commission, and
18 selected regulations of the Fair Political Practices Commission regarding probable cause proceedings.¹⁹

19 24. Horner was served on April 18, 2016 by certified mail, return receipt requested.²⁰ So the
20 administrative action commenced on April 18, 2016, the date the certified mail receipt was signed, and
21 the five year statute of limitations was effectively tolled on that date.

22 25. The information contained in the packet advised Horner that he had 21 days in which to
23 request a probable cause conference and/or to file a written response to the Report.

24 26. Horner did not submit a written response, nor did he request a probable cause conference.

25 ///

26

¹⁹ §§ 83115.5 and 91000.5. See attached Exhibit A.

²⁰ §§ 8311(Mailing by Certified Mail) and 83115.5. See attached Exhibit B.

1 27. The Hearing Officer issued an Order re: Probable Cause, which was served on
2 August 31, 2016, finding that probable cause exists to believe Horner violated the Act as stated in the
3 Report.²¹

VIOLATIONS

5 28. Complainant incorporates paragraphs 1 – 27 of this Accusation, as though completely set
6 forth herein.

7 29. Horner committed five violations of the Act, as follows:

8 Count 1: Failure to Timely File Semi-Annual Campaign Statement

9 30. Horner failed to timely file a semi-annual statement with the Lake County Auditor-
10 Controller/County Clerk disclosing expenditures for a mass mailing expressly advocating the defeat of a
11 candidate by February 2, 2015, for the January 1 through December 31, 2014 reporting period, violating
12 Government Code section 84200, subdivision (b).

13 | Count 2: Failure to Timely File Late Independent Expenditure Report

31. In 2014, Horner failed to timely file a late independent expenditure report with the Lake
County Auditor-Controller/County Clerk disclosing expenditures totaling \$1,000 or more made within 90
days before the date of the election, for a mass mailing expressly advocating the defeat of a candidate,
within 24 hours of making the late independent expenditure, violating Government Code section 84204.

18 | Count 3: Failure to Timely File Independent Expenditure Verification Form

19 32. In 2014, Horner failed to timely file an independent expenditure verification form with the
20 Commission by email within 10 days after the date Horner made his first independent expenditure,
21 violating Government Code section 84213.

22 | Count 4: Prohibited Cash Expenditures of \$100 or More

23 33. In 2014, Horner made cash expenditures of \$100 or more, totaling approximately \$1,392,
24 violating Government Code section 84300, subdivision (b).

25

26

27 //

²¹ See attached Exhibit C.

Count 5: Failure to Disclose Required Sender Information on a Mass Mailing

34. In or about October 2014, Horner paid for and caused to be sent a mass mailing expressly advocating the defeat of a candidate which failed to display required sender identification, violating Government Code section 84305, subdivision (a).

EXONERATING AND MITIGATING INFORMATION

35. Complainant incorporates paragraphs 1 – 34 of this Accusation, as though completely set forth herein.

36. In mitigation, Horner has no history of violating the Act, and cooperated with the investigation.

AGGRAVATING FACTORS AND OTHER RELEVANT MATERIALS

37. Complainant incorporates paragraphs 1 – 36 of this Accusation, as though completely set forth herein.

38. Failure to include the proper sender identification on a mass mailing is a serious violation of the Act as it deprives the public of important information regarding the sponsor of the mailing. Here, the sender identification provided on Horner's mass mailing was misleading because it identified a committee that did not exist instead of Horner, the true sender.

39. Horner did not file any campaign statements or reports as an independent expenditure committee disclosing the expenditures for the mailer either in his name or as "Anyone But Jim Steele." And since Horner paid in cash, the full timing, nature and extent of the campaign activity cannot be verified with the available records. The false sender ID, Horner's lack of disclosure and Horner's cash payments prevented the public from tracing the mass mailing back to him. Horner's conduct in this matter showed an intent to conceal his identity as the true sender of the mass mailing.

PRAYER

WHEREFORE, Complainant prays as follows:

40. That the Fair Political Practices Commission hold a hearing pursuant to Government Code Section 83116 and Title 2, California Code of Regulations, Section 18361.5, and at such hearing find that Horner violated the Act as alleged herein;

1 41. That the Commission, pursuant to Government Code Section 83116, subdivision (c), order
2 Horner to pay a monetary penalty of at least Two Thousand Five Hundred Dollars (\$2,500) and at most
3 Five Thousand Dollars (\$5,000) per count for the violations of the Political Reform Act alleged herein in
4 Counts 1 – 5;

5 42. That the Commission, pursuant to Title 2, California Code of Regulations,
6 Section 18361.5, subdivision (d), consider the following factors in framing a proposed order following a
7 finding of a violation pursuant to Government Code Section 83116: (1) the seriousness of the violation;
8 (2) the presence or absence of any intention to conceal, deceive or mislead; (3) whether the violation was
9 deliberate, negligent or inadvertent; (4) whether the violator demonstrated good faith by consulting the
10 Commission staff or any other government agency in a manner not constituting a complete defense under
11 Government Code Section 83114(b); (5) whether the violation was isolated or part of a pattern and whether
12 the violator has a prior record of violations of the Political Reform Act or similar laws; and (6) whether
13 the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full
14 disclosure.

15 43. That the Commission grant such other and further relief as it deems just and proper.

17 Dated: 16 Sept 16

Galena West
Chief of Enforcement
Fair Political Practices Commission

EXHIBIT A

1 GALENA WEST
Chief of Enforcement
2 ANGELA J. BRERETON
Senior Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
4 428 J Street, Suite 620
Sacramento, CA 95814
Telephone: (916) 322-5771
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant
Enforcement Division of the Fair Political Practices Commission

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

INTRODUCTION

19 Respondent Michael Horner qualified as an independent expenditure committee in October
20 2014.

The Enforcement Division received a formal complaint from Jim Steele, an incumbent candidate for the Lake County Board of Supervisors, alleging that in October 2014, his opponent, John Brosnan, sent a mass mailing opposing Jim Steele that failed to disclose the proper sender identification.

27 //

Under the Political Reform Act (the “Act”)¹, mass mailings must disclose the name, street address, and city of the sender of the mass mailing. And independent expenditure committees must file semi-annual campaign statements disclosing all independent expenditures. The evidence in this matter shows that Horner sent a mass mailing advocating the defeat of a candidate without the proper sender identification. The evidence also shows that Horner qualified as an independent expenditure committee and failed to file the required campaign statements disclosing his independent expenditures regarding the mass mailing.

SUMMARY OF THE LAW

9 All legal references and discussions of law pertain to the Act's provisions as they existed at the
10 time of the applicable violations.

11 | Jurisdiction

12 The Fair Political Practices Commission (the “Commission”) has administrative jurisdiction to
13 enforce the provisions of the Act.²

14 | Probable Cause Proceedings

Prior to the Enforcement Division commencing an administrative action, the General Counsel of the Commission or her designee (the “hearing officer”), must make a finding that there is probable cause to believe the respondent has violated the Act.³ After a finding of probable cause, the Commission may hold a noticed hearing in accordance with the Administrative Procedure Act⁴ to determine whether violations occurred, and levy an administrative penalty of up to \$5,000 for each violation.⁵

23 | //

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

2 § 83116.

³ § 83115.5, and Reg. 18361 and 18361.4.

⁴ See 11500, et seq.

⁵ § 83116, and Reg. 18361.4, subd. (e).

1 Standard for Finding Probable Cause

2 To make a finding of probable cause, the hearing officer must be presented with sufficient
3 evidence to lead a person of ordinary caution and prudence to believe, or entertain a strong suspicion,
4 that a respondent committed or caused a violation.⁶

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

6 When enacting the Political Reform Act, the people of the state of California found and
7 declared that previous laws regulating political practices suffered from inadequate enforcement by
8 state and local authorities.⁷ To that end, the Act must be liberally construed to achieve its purposes.⁸

9 There are many purposes of the Act. One purpose is to ensure that receipts and expenditures in
10 election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and
11 improper practices may be inhibited.⁹ Another is to provide adequate enforcement mechanisms so that
12 the Act will be “vigorously enforced.”¹⁰

13 Independent Expenditure Committees

14 A “committee” includes any person or combination of persons who makes independent
15 expenditures totaling \$1,000 or more in a calendar year.¹¹ This type of committee is commonly
16 referred to as an independent expenditure committee.

17 An expenditure is any payment, unless it is clear from the surrounding circumstances that it is
18 not made for political purposes.¹² An “independent expenditure” includes any expenditure made by
19 any person in connection with a communication that expressly advocates the election or defeat of a
20 clearly identified candidate but which is not made to or at the behest of the affected candidate.¹³

21 ///

24 ⁶ Reg. 18361.4, subd. (e).

25 ⁷ § 81001, subd. (h).

26 ⁸ § 81003.

27 ⁹ § 81002, subd. (a).

28 ¹⁰ § 81002, subd. (f).

29 ¹¹ § 82013, subd. (b).

30 ¹² § 82025.

31 ¹³ § 82031.

1 Reporting Independent Expenditures

2 An independent expenditure committee must file periodic campaign statements disclosing the
3 expenditures it made during the statement period.¹⁴ The principal officer of a committee required to
4 disclose an independent expenditure must sign a verification form (Form 462) and email it to the Fair
5 Political Practices Commission (Commission) stating that he/she was not reimbursed to make the
6 independent expenditure, and the communication reported as an independent expenditure was not
7 coordinated with the candidate who is the subject of the expenditure.¹⁵

8 Reporting Late Independent Expenditures

9 A “late independent expenditure” is any independent expenditure which totals in the aggregate
10 one thousand dollars (\$1,000) or more and is made for or against any specific candidate or measure
11 involved in an election within 90 days before the date of the election.¹⁶

12 When a committee makes a late independent expenditure, the committee must disclose the
13 expenditure in a late independent expenditure report filed at each office with which the committee is
14 required to file its next campaign statement within 24 hours of making the late independent
15 expenditure.¹⁷

16 Prohibited Cash Expenditures of \$100 or More

17 The Act prohibits making an expenditure of one hundred dollars or more in cash.¹⁸

18 Mass Mailing Sender Identification

19 Independent expenditure committees are prohibited from sending a mass mailing unless the
20 name, street address, and city of the committee are shown on the outside of each piece of mail in the
21 mass mailing.¹⁹

22 A “mass mailing” is defined as over two hundred substantially similar pieces of mail sent in a
23 single calendar month, but not including a form letter or other mail which is sent in response to an

25 ¹⁴ §§ 82046, subd. (b), 84200, subd. (b) and 84211, subd. (k).

26 ¹⁵ § 84213.

27 ¹⁶ § 82036.5.

28 ¹⁷ § 84204.

25 ¹⁸ § 84300, subd. (b).

26 ¹⁹ § 84305, subd. (b).

1 unsolicited request, letter or other inquiry.²⁰ The “sender” is the committee who pays for the largest
2 portion of expenditures attributable to the designing, printing or posting of the mailing.²¹

3 Liability of Principal Officers

4 It is the duty of the committee’s principal officer to authorize the content of communications
5 made by the committee, authorize expenditures made by the committee, and determine the
6 committee’s campaign strategy.²² The principal officer of a committee may be held jointly and
7 severally liable, along with the committee, for any reporting violations committed by the committee.²³

8 **SUMMARY OF THE EVIDENCE**

9 In or about October 2014, Homer paid approximately \$490 in cash to Santa Rosa Printing
10 Company, Inc., and approximately \$902 in cash to Melo Mail, to cover the costs of printing, postage
11 and delivery for a mailer expressly advocating the defeat of Jim Steele, a candidate for the Lake
12 County Board of Supervisors in the November 4, 2014 election. Homer paid in total approximately
13 \$1,392 to print and send the mailer.

14 The mailer identified the sender as “Anyone But Jim Steele,” and did not include the street
15 address and city of the sender. Instead the mailer included a P.O. Box that the United States Postal
16 Service identified as fictitious. The mailer was delivered to approximately 3,300 households in Lake
17 County on or about October 31, 2014. Jim Steele won the election.

18 During the investigation, Homer admitted that he acted alone and that he paid for the printing,
19 postage and delivery of the mass mailing. Homer did not file any campaign statements or reports as an
20 independent expenditure committee disclosing the expenditures for the mailer either in his name or as
21 “Anyone But Jim Steele” with the Lake County Auditor-Controller/County Clerk or with the SOS.

22 Homer contends that he sent the mass mailing “as a private citizen of Lake County, exercising
23 the rights afforded [him] by the First Amendment of the US Constitution.” Homer also contends that
24

25
26 ²⁰ § 82041.5, and Reg. 18435, subd. (a).

²¹ Reg. 18435, subd. (a).

²² § 82047.6, and Reg. 18402.1, subd. (b).

²³ §§ 83116.5, 84213 and 91006.

1 he was unaware that spending \$1,000 or more qualified him as a committee under the Act, and that he
2 was unaware of the Act's sender identification requirements for mass mailings.

3 VIOLATIONS

4 Count 1: Failure to Timely File Semi-Annual Campaign Statement

5 Horner failed to timely file a semi-annual statement with the Lake County Auditor-
6 Controller/County Clerk disclosing expenditures for a mass mailing expressly advocating the defeat of
7 a candidate by February 2, 2015, for the January 1 through December 31, 2014 reporting period,
8 violating Government Code section 84200, subdivision (b).

9 Count 2: Failure to Timely File Late Independent Expenditure Report

10 In 2014, Horner failed to timely file a late independent expenditure report with the Lake
11 County Auditor-Controller/County Clerk disclosing expenditures totaling \$1,000 or more made within
12 90 days before the date of the election, for a mass mailing expressly advocating the defeat of a
13 candidate, within 24 hours of making the late independent expenditure, violating Government Code
14 section 84204.

15 Count 3: Failure to Timely File Independent Expenditure Verification Form

16 In 2014, Horner failed to timely file an independent expenditure verification form with the
17 Commission by email within 10 days after the date Horner made his first independent expenditure,
18 violating Government Code section 84213.

19 Count 4: Prohibited Cash Expenditures of \$100 or More

20 In 2014, Horner made cash expenditures of \$100 or more, totaling approximately \$1,392,
21 violating Government Code section 84300, subdivision (b).

22 Count 5: Failure to Disclose Required Sender Information on a Mass Mailing

23 In or about October 2014, Horner paid for and caused to be sent a mass mailing expressly
24 advocating the defeat of a candidate which failed to display required sender identification, violating
25 Government Code section 84305, subdivision (a).

26
27 //

OTHER RELEVANT MATERIAL AND ARGUMENTS

Failure to include the proper sender identification on a mass mailing is a serious violation of the Act as it deprives the public of important information regarding the sponsor of the mailing. Here, the sender identification provided on Horner's mass mailing was misleading because it identified a committee that did not exist instead of Horner, the true sender.

6 Horner did not file any campaign statements or reports as an independent expenditure
7 committee disclosing the expenditures for the mailer either in his name or as "Anyone But Jim Steele."
8 And since Horner paid in cash, the full timing, nature and extent of the campaign activity cannot be
9 verified with the available records. The false sender ID, Horner's lack of disclosure and Horner's cash
10 payments prevented the public from tracing the mass mailing back to him. Horner's conduct in this
11 matter showed an intent to conceal his identity as the true sender of the mass mailing.

EXCULPATORY AND MITIGATING INFORMATION

In mitigation, Horner has no history of violating the Act, and cooperated with the investigation.

CONCLUSION

Probable cause exists to believe that Respondent Michael Horner committed four violations of the Act, as set forth above. The Enforcement Division respectfully requests an order finding probable cause pursuant to Section 83115.5 and Regulation 18361.4.

18 || Dated: April 14, 2016 Respectfully Submitted,

FAIR POLITICAL PRACTICES COMMISSION

By: Galena West
Chief of Enforcement

Angela J. Brereton
Senior Commission Counsel
Enforcement Division



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

April 14, 2016

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Michael Horner
[REDACTED]
[REDACTED]

**Re: In the Matter of Michael Horner,
FPPC Case No. 15/1275**

Dear Mr. Horner.

The Enforcement Division of the Fair Political Practices Commission (the “Commission”) is proceeding with an administrative action against you for your failure to comply with mass mailing provisions of the Political Reform Act (the “Act”), as described in our previous correspondence dated February 5, 2016 and February 12, 2016. The enclosed Report in Support of a Finding of Probable Cause (the “Report”) contains a summary of the alleged violations and the relevant law and evidence.

You have the right to file a written response to the Report. That response may contain any information you think is relevant and that you wish to bring to the attention of the Commission’s General Counsel (the “Hearing Officer”). In your response, please indicate whether you would like the Hearing Officer to make a determination of probable cause based on the written materials alone (the Report and your response) or request a conference, during which you may orally present your case to the Hearing Officer. Probable cause conferences are held in our office which is located at 428 J Street, Ste. 620, Sacramento, CA 95814. You may appear at the conference in person or by telephone and you are entitled to be represented by counsel. *If you wish to submit a written response or request a probable cause conference, it must be filed with the Commission Assistant, Sheva Tabatabainejad, at the address listed above within 21 days from the date of service of this letter.* You can reach Ms. Tabatabainejad at (916) 327-8269.

Please note that probable cause conferences are not settlement conferences. The sole purpose of a probable cause conference is to determine whether there is probable cause to believe that the Act was violated. However, settlement discussions are encouraged by the Commission and may take place at any time except during a probable cause conference. *If you are interested in*

reaching a settlement in this matter, please contact Angela Brereton at (916) 322-5771 or abrereton@fppc.ca.gov.

Finally, you have the right to request discovery of the evidence in possession of, and relied upon by, the Enforcement Division. *This request must also be filed with Ms. Tabatabainejad within 21 days from the date of service of this letter.* Should you request discovery, the Enforcement Division will provide the evidence by service of process or certified mail. From the date you are served with the evidence, you would have an additional 21 days to file a written response to the Report, just as described above.

Should you take no action within 21 days from the date of service of this letter, your rights to respond and to request a conference are automatically waived and the Enforcement Division will independently pursue the issuance of an accusation.

For your convenience, I have enclosed a fact sheet on probable cause proceedings and copies of the most relevant statutes and regulations.

Sincerely,

[REDACTED]
Angela J. Brereton
Senior Commission Counsel
Enforcement Division

Enclosures

PROBABLE CAUSE FACT SHEET

INTRODUCTION

The Fair Political Practices Commission is required by law to determine whether probable cause exists to believe that the Political Reform Act (the "Act") was violated before a public administrative accusation may be issued.

The probable cause proceedings before the Fair Political Practices Commission are unique, and most respondents and their attorneys are unfamiliar with them. Therefore, we have prepared this summary to acquaint you with the process.

THE LAW

Government Code sections 83115.5 and 83116 set forth the basic requirement that a finding of probable cause be made in a "private" proceeding before a public accusation is issued and a public hearing conducted in accordance with the Administrative Procedure Act.

The Commission has promulgated regulations further defining the probable cause procedure and delegating to the General Counsel (the "Hearing Officer" for purposes of these proceedings) the authority to preside over such proceedings and decide probable cause. A copy of these statutes and regulations are attached for your convenience.

In summary, the statutes and regulations entitle you to the following:

- a) A written probable cause report containing a summary of the law alleged to have been violated, and a summary of the evidence, including any exculpatory and mitigating information and any other relevant material and arguments;
- b) The opportunity to request discovery, respond in writing, and to request a probable cause conference within 21 days of service of the probable cause report;
- c) If the Commission met to consider whether a civil lawsuit should be filed in this matter, a copy of any staff memoranda submitted to the Commission and a transcript of staff discussions with the Commission at any such meeting; and
- d) If a timely request was made, a non-public conference with the General Counsel and the Enforcement Division staff to consider whether or not probable cause exists to believe the Act was violated.

THE PROCEDURE

Probable Cause Report

Administrative enforcement proceedings are commenced with the service, by registered or certified mail or in person, of a probable cause report. The report will contain a summary of the law and the evidence, including any exculpatory and mitigating information of which the staff has knowledge and any other relevant material and arguments. It is filed with the Hearing Officer.

Discovery

Within 21 calendar days following the service of the probable cause report, you may request discovery of the evidence in the possession of the Enforcement Division. This is not a right to full discovery of the Enforcement Division file, but to the evidence relied upon by the Division along with any exculpatory or mitigating evidence¹.

This request must be sent by registered or certified mail to the Commission Assistant.

Response to Probable Cause Report

Within 21 calendar days following the service of the probable cause report (or, if you timely requested discovery, within 21 calendar days from the service of the evidence) you may submit a response to the Report. By regulation, the written response may contain, "... a summary of evidence, legal arguments, and any mitigating or exculpatory information." (Cal. Code Regs., tit. 2, § 18361.4, subd. (c).)

You must file your response with the Commission Assistant and provide a copy, by service of process or registered or certified mail with return receipt requested, to all other proposed respondents listed in the probable cause report.

Staff Reply

Within 10 calendar days following the date the response was filed with the Commission Assistant, Commission staff may submit any evidence or argument in rebuttal. You will be served with a copy of any such reply.

Probable Cause Conference

Probable cause conferences are held at the offices of the Fair Political Practices Commission, which is located at 428 J Street, Ste. 620, Sacramento, CA 95814. You may appear at the conference in person or by telephone. The proceedings are not public unless all proposed respondents agree to open the conference to the public. Otherwise, the probable cause report, any written responses, and the probable cause conference itself are confidential.

Unless the probable cause conference is public, the only persons who may attend are the staff of the Commission, any proposed respondent and his or her attorney or representative, and, at the discretion of the Hearing Officer, witnesses.

The Hearing Officer may, but need not, permit testimony from witnesses. Probable cause conferences are less formal than court proceedings. The rules of evidence do not apply. The conferences will be recorded and a copy of the recording will be provided upon request.

Since it has the burden of proof, the Enforcement Division is permitted to open and close the conference presentations. The Hearing Officer may also hold the record open to receive additional evidence or arguments.

Probable cause conferences are not settlement conferences. The sole purpose of a probable cause conference is to determine whether or not there is probable cause to believe that the

¹ But see Title 2, California Code of Regulations, Section 18362, which states that the Commission provides access to complaints, responses to complaints, and investigative files and information in accordance with the requirements of the Public Records Act. (Govt. Code § 6250, et seq.)

Political Reform Act was violated. Anyone who wishes to discuss settlement with the Enforcement Division may do so before or after the probable cause conference but not during the conference.

Pursuant to Title 2, California Code of Regulations, Section 18361.4, subdivision (e), the Hearing Officer will find probable cause "if the evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a proposed respondent committed or caused a violation."

Ordinarily, probable cause determinations are made based upon the written probable cause report, any written response by the respondent, any written reply by the Enforcement Division, and the oral arguments presented at the conference. Timely written presentations are strongly recommended.

Probable Cause Order and Accusation

Once the matter is submitted to the Hearing Officer, the probable cause decision will normally be made within ten days. If the Hearing Officer finds probable cause, he will issue a Finding of Probable Cause, which will be publicly announced at the next Commission Meeting. An accusation will be issued soon after the Finding of Probable Cause is publicly announced.

Continuances

Every reasonable effort is made to accommodate the schedules of parties and counsel. However, once a date has been set it is assumed to be firm and will not be continued except upon the order of the Hearing Officer after a showing of good cause. Settlement negotiations will be considered good cause only if the Hearing Officer is presented with a fully executed settlement, or is convinced that settlement is imminent.

Settlements

Settlement discussions may take place at any time except during the probable cause conference. In order to open settlement discussions, a proposed respondent or his or her counsel or representative should present a written offer to settle stating, where appropriate, the violations to be admitted, and the monetary penalty or other remedy to be tendered.

The Enforcement Division attorney assigned to the case will negotiate any potential settlement on behalf of the Fair Political Practices Commission, and will draft the language of the settlement agreement. The Hearing Officer will not directly participate in the negotiations, but will be represented by Enforcement Division attorneys. Staff attorneys will present settlement offers to the Hearing Officer for his/her approval.

CONCLUSION

This fact sheet was intended to give you a brief summary of the probable cause process at the Fair Political Practices Commission. Such a summary cannot answer every question that might arise in such proceedings. Therefore, if you have any questions that are not addressed by this fact sheet or the copies of the law and regulations we have attached, feel free to contact the attorney whose name appears on the probable cause report.

Attachments: Relevant Sections of (1) California Government Code , and (2) Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations.

CALIFORNIA GOVERNMENT CODE

Probable Cause Statutes

§ 83115.5. Probable cause; violation of title; notice of violation; summary of evidence; notice of rights; private proceedings

No finding of probable cause to believe this title has been violated shall be made by the commission unless, at least 21 days prior to the commission's consideration of the alleged violation, the person alleged to have violated this title is notified of the violation by service of process or registered mail with return receipt requested, provided with a summary of the evidence, and informed of his right to be present in person and represented by counsel at any proceeding of the commission held for the purpose of considering whether probable cause exists for believing the person violated this title. Notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office. A proceeding held for the purpose of considering probable cause shall be private unless the alleged violator files with the commission a written request that the proceeding be public.

§ 83116. Violation of title; probable cause; hearing; order

When the Commission determines there is probable cause for believing this title has been violated, it may hold a hearing to determine if a violation has occurred. Notice shall be given and the hearing conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, Government Code). The Commission shall have all the powers granted by that chapter. When the Commission determines on the basis of the hearing that a violation has occurred, it shall issue an order that may require the violator to do all or any of the following:

- (a) Cease and desist violation of this title.
- (b) File any reports, statements, or other documents or information required by this title.
- (c) Pay a monetary penalty of up to five thousand dollars (\$5,000) per violation to the General Fund of the state. When the Commission determines that no violation has occurred, it shall publish a declaration so stating.

**REGULATIONS OF THE FAIR POLITICAL PRACTICES COMMISSION
TITLE 2, DIVISION 6 OF THE CALIFORNIA CODE OF REGULATIONS**

Probable Cause Regulations

§ 18361 (b). Delegation by the Executive Director Pertaining to Enforcement Proceedings and Authority to Hear Probable Cause Proceedings.

Probable cause proceedings under Regulation 18361.4 shall be heard by the General Counsel or an attorney from the Legal Division. The General Counsel may delegate the authority to hear probable cause proceedings, in writing, to an administrative law judge.

§ 18361.4. Probable Cause Proceedings

(a) **Probable Cause Report.** If the Chief of the Enforcement Division decides to commence probable cause proceedings pursuant to Sections 83115.5 and 83116, he or she shall direct the Enforcement Division staff to prepare a written report, hereafter referred to as "the probable cause report." The probable cause report shall contain a summary of the law and evidence gathered in connection with the investigation, including any exculpatory and mitigating information of which the staff has knowledge and any other relevant material and arguments. The evidence recited in the probable cause report may include hearsay, including declarations of investigators or others relating the statements of witnesses or concerning the examination of physical evidence.

(b) No probable cause hearing will take place until at least 21 calendar days after the Enforcement Division staff provides the following, by service of process or registered or certified mail with return receipt requested, to all proposed respondents:

- (1) A copy of the probable cause report;
- (2) Notification that the proposed respondents have the right to respond in writing to the probable cause report and to request a probable cause conference at which the proposed respondent may be present in person and represented by counsel, and;
- (3) If the Commission met in executive session on this matter pursuant to Regulation 18361.2, a copy of any staff memoranda submitted to the Commission at that time along with the recording of any discussion between the Commission and the staff at the executive session as required in subdivision (b) of Regulation 18361.2.

(c) **Response to Probable Cause Report.**

- (1) Each proposed respondent may submit a written response to the probable cause report. The response may contain a summary of evidence, legal arguments, and any mitigating or exculpatory information. A proposed respondent who submits a response must file it with the Commission Assistant who will forward the response to the General Counsel or an attorney in the Legal Division (the "hearing officer") and provide a copy, by service of process or registered or certified mail with return receipt requested, to all other proposed respondents listed in the probable cause report not later than 21 days following service of the probable cause report.
- (2) Within 21 calendar days following the service of the probable cause report, a proposed

respondent may request discovery of evidence in the possession of the Enforcement Division. This request must be sent by registered or certified mail to the Commission Assistant. Upon receipt of the request, the Enforcement Division shall provide discovery of evidence relied upon by the Enforcement Division sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a proposed respondent committed or caused a violation, along with any exculpatory or mitigating evidence. This is not a right to full discovery of the Enforcement Division file. The Enforcement Division shall provide access to documents for copying by the Respondent, or upon agreement among the parties, the Enforcement Division will provide copies of the requested documents upon payment of a fee for direct costs of duplication. The Enforcement Division shall provide such evidence by service of process or registered or certified mail with return receipt requested to all respondents, with a copy to the Commission Assistant. A respondent may submit a written response to the probable cause report described in subsection (1) no later than 21 calendar days after service of discovery.

- (3) The Commission staff may submit any evidence or argument in rebuttal to the response. When the Commission staff submits evidence or argument in rebuttal to the response, it shall provide a copy, by service of process or registered or certified mail with return receipt requested, to all proposed respondents listed in the probable cause report not later than 10 calendar days following the date the response was filed with the Commission Assistant. The hearing officer may extend the time limitations in this section for good cause. At any time prior to a determination of probable cause, the hearing officer may allow additional material to be submitted as part of the initial response or rebuttal.

- (d) Probable Cause Conference. Any proposed respondent may request a probable cause conference. The request shall be served upon the Commission Assistant and all other proposed respondents not later than 21 days after service of the probable cause report unless the hearing officer extends the time for good cause. The Commission Assistant shall fix a time for the probable cause conference and the hearing officer shall conduct the conference informally. The conference shall be closed to the public unless a proposed respondent requests and all other proposed respondents agree to a public conference. If the conference is not public, only members of the Commission staff, any proposed respondent and his or her legal counsel or representative shall have the right to be present and participate. The hearing officer may allow witnesses to attend and participate in part or all of the probable cause conference. In making this determination, the hearing officer shall consider the relevancy of the witness' proposed testimony, whether the witness has a substantial interest in the proceedings, and whether fairness requires that the witness be allowed to participate. Representatives of any civil or criminal prosecutor with jurisdiction may attend the conference at the discretion of the hearing officer if they agree to respect the confidential nature of the proceedings. If the conference is not open to the public and none of the parties and the presiding officer object, the conference may be conducted in whole or in part by telephone. The probable cause conference shall be recorded. The hearing officer may determine whether there is probable cause based solely on the probable cause report, any responses or rebuttals filed and any arguments presented at the probable cause conference by the interested parties. If the hearing officer requires additional information before determining whether there is probable cause, he or she may permit any party to submit additional evidence at the probable cause conference.

(e) Finding of Probable Cause. The hearing officer may find there is probable cause to believe a violation has occurred if the evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a proposed respondent committed or caused a violation. A finding of probable cause by the hearing officer does not constitute a finding that a violation has actually occurred. The hearing officer shall not make a finding of probable cause if he or she is presented with clear and convincing evidence that, at a time prior to the alleged violation, the violator consulted with the staff of the Commission in good faith, disclosed truthfully all the material facts, and committed the acts complained of either in reliance on the advice of the staff or because of the staff's failure to provide advice. If the hearing officer makes a finding of probable cause, the Enforcement Division shall prepare an Accusation pursuant to Section 11503 and have it served upon the person or persons who are subjects of the probable cause finding. The hearing officer shall publicly announce the finding of probable cause. The announcement shall contain a summary of the allegations and a cautionary statement that the respondent is presumed to be innocent of any violation of the Act unless a violation is proved in a subsequent proceeding. The Chief of the Enforcement Division shall be responsible for the presentation of the case in support of the Accusation at an administrative hearing held pursuant to Section 83116.

§ 18362. Access to Complaint Files

- (a) Access to complaints, responses thereto, and investigative files and information shall be granted in accordance with the requirements of the Public Records Act (Government Code Section 6250, et seq.).
- (b) When release of material is requested pursuant to subdivision (a), the Executive Director, or his or her designee, shall review the material prior to its release or prior to a claim of exemption to determine that the requirements of the Public Records Act have been satisfied.
- (c) Any person requesting copies of material pursuant to subdivision (a) shall reimburse the Commission \$0.10 per page for each page copied or supply copying equipment and make copies in the offices of the Commission. Documents may not be removed from the offices of the Commission. If the request is for copies totaling ten pages or less, the copies shall be provided without charge for copying since the administrative costs do not warrant collection of \$1.00 or less. If the request is for copies totaling more than ten pages, reimbursements of copying costs shall include the cost for the first ten pages. Charges imposed pursuant to this subdivision are for the purpose of recovering the cost of copying.
- (d) Requests for access and copies pursuant to subdivision (a) shall be made in writing and shall specifically identify the documents sought.

§ 18361.2. Memorandum Respecting Civil Litigation.

- (a) If the Executive Director concludes civil litigation should be initiated, he or she shall submit to the Commission a written memorandum, which shall be first reviewed by the General Counsel, or an attorney from the Legal Division, summarizing the facts and the applicable law of the case and recommending the initiation of a lawsuit. The memorandum shall include all exculpatory and mitigating information known to the staff.

(b) The Commission shall review the memorandum at an executive session. The General Counsel, or an attorney from the Legal Division, and the Commission Assistant shall be in attendance. No other member of the staff may be present unless the Commission meets with a member of the staff for that person to answer questions. The Commission may not resume its deliberations until the person is no longer present. Any communication between the Commission and the person during the executive session shall be recorded. After review of the memorandum, the Commission may direct the Executive Director to do any of the following:

- (1) Initiate civil litigation.
- (2) Decide whether probable cause proceedings should be commenced pursuant to 2 Cal. Code of Regulations Section 18361.4.
- (3) Return the matter to the staff for further investigation.
- (4) Take no further action on the matter or take any other action it deems appropriate.

(c) If the Commission decides to initiate civil litigation, the Commission may then permit other members of the staff to attend the executive session.

(d) If the Executive Director deems it necessary, he or she may call a special meeting of the Commission to review a staff memorandum recommending the initiation of civil litigation.

(e) It is the intent of the Commission in adopting this section to preserve for the members of the Commission the authority to decide whether alleged violations should be adjudicated in administrative hearings or in civil litigation, while at the same time avoiding the possibility that discussions with members of the staff might cause members of the Commission to prejudge a case that might be heard by the Commission under Government Code Section 83116.

EXHIBIT B

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. My business address is Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814. On April 14, 2016, I served the following document(s):

1. Letter dated April 14, 2016 from Angela J. Brereton;
2. FPPC Case No. 15/1275: Report in Support of a Finding of Probable Cause;
3. Fact Sheet regarding Probable Cause Proceedings with selected Sections of the California Government Code and selected Regulations of the Fair Political Practices Commission regarding Probable Cause Proceedings for the Fair Political Practices Commission.

By United States Postal Service. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the addresses listed below and placed the envelope or package for collection and mailing by certified mail, return receipt requested, following my company's ordinary business practices. I am readily familiar with this business' practice for collection and processing correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail in Sacramento County, California.

SERVICE LIST

Certified Mail, Return Receipt Requested

Michael Horner
[REDACTED]

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 14, 2016.
[REDACTED]

Kathryn Trumbly



[English](#)[Customer Service](#)[USPS Mobile](#)[Register / Sign In](#)

USPS Tracking®



[Customer Service](#) ›
Have questions? We're here to help.



[Get Easy Tracking Updates](#) ›
Sign up for My USPS.

Tracking Number: 7012346000026957350

Product & Tracking Information

Postal Product:

Features:
Certified Mail™

DATE & TIME**STATUS OF ITEM****LOCATION**

April 18, 2016, 2:29 pm

Delivered

[REDACTED]

Your item was delivered at 2:29 pm on April 18, 2016 in MEDFORD, OR 97504.

April 18, 2016, 5:43 am

Departed USPS Facility

[REDACTED]

April 18, 2016, 4:22 am

Arrived at USPS Facility

[REDACTED]

April 16, 2016, 11:08 am

Arrived at USPS Facility

[REDACTED] [REDACTED]

April 14, 2016, 11:21 pm

Departed USPS Facility

WEST
SACRAMENTO, CA 95799

April 14, 2016, 8:07 pm

Arrived at USPS Facility

WEST
SACRAMENTO, CA 95799

Available Actions

Track Another Package

Tracking (or receipt) number[Track It](#)

Manage Incoming Packages

Track all your packages from a dashboard.
No tracking numbers necessary.

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OFFICE

(Enter Address)
 Recepient
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 To:
 Street, Apt. No.
 or PO Box No.
 City, State, ZIP+4

7012 3460 0000 2695 7350

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

Michael Horner

COMPLETE THIS SECTION ON DELIVERY

A.

X

- Agent
 Addressee

B. Received by (Printed Name)

Michael Horner

C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No



9590 9403 0234 5146 5237 98

2. Article Number (Transfer from service label)

7012 3460 0000 2695 7350

PS Form 3811, April 2015 PSN 7530-02-000-9053

3. Service Type

- Adult Signature
 Adult Signature Restricted Delivery
 Certified Mail®
 Certified Mail Restricted Delivery
 Collect on Delivery
 Collect on Delivery Restricted Delivery
 Insured Mail
 Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
 Registered Mail™
 Registered Mail Restricted Delivery
 Return Receipt for Merchandise
 Signature Confirmation™
 Signature Confirmation Restricted Delivery

Domestic Return Receipt

EXHIBIT C

FPPC No. 15/1275, In the matter of Michael Horner

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. My business address is Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, CA 95814. On the date below, I served the following document:

FINDING OF PROBABLE CAUSE AND ORDER TO PREPARE AND SERVE AN ACCUSATION

MANNER OF SERVICE

(U.S. Mail) By causing a true copy thereof to be served on the parties in this action through the U.S. Mail and addressed as listed below. I am familiar with the procedure of the Fair Political Practices Commission for collection and processing of correspondence for mailing with the United States Postal Service, and the fact that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

SERVICE LIST

Mr. Michael Horner
[REDACTED]
[REDACTED]

(By Personal Service) On Wednesday, August 31, 2016, at approximately 2:15 p.m., I personally served:

Galena West, Chief of Enforcement, at 428 J Street, Suite 700, Sacramento, CA 95814.
Angela Brereton, Senior Commission Counsel, at 428 J Street, Suite 700, Sacramento, CA 95814.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this document is executed at Sacramento, California, on August 31, 2016.

[REDACTED]
Sheva Tabatabainejad

1 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
2
3 STATE OF CALIFORNIA

4 In the Matter of) FPPC No. 15/1275
5 MICHAEL HORNER,)
6 Respondent.) FINDING OF PROBABLE CAUSE AND
7) ORDER TO PREPARE AND SERVE AN
8) ACCUSATION)
9) Gov. Code § 83115.5)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)

By means of an Ex Parte Request for an Order Finding Probable Cause and an Order that an Accusation be Prepared and Served, dated August 15, 2016, the Enforcement Division submitted the above-entitled matter to the Hearing Officer for a determination of Probable Cause. As set forth in the Ex Parte Request, the Enforcement Division served a Report in Support of a Finding of Probable Cause (the Report) to Respondent Horner, concerning this matter on April 18, 2016. Service was made by certified mail. Accompanying the Report was a packet of materials that informed Horner of his right to file a written response to the Report within 21 days following service of the Report, and to request a probable cause conference. During the 21 days that followed service of the Report, Horner did not file a response to the Report or request a probable cause conference. Pursuant to California Code of Regulations Title 2, Section 18361.4, determination of probable cause may be made solely on papers submitted when the respondent does not request that a probable cause conference be held.¹

In making a probable cause determination, it is the duty of the Hearing Officer of the Fair Political Practices Commission to determine whether probable cause exists for believing that a respondent has violated the Political Reform Act as alleged by the Enforcement Division in the probable cause report served on the respondent.

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

Probable cause to believe a violation has occurred can be found to exist when "the evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that the proposed respondent(s) committed or caused a violation."²

The Probable Cause Report served on Horner and the subsequent Ex Parte Request for an Order Finding Probable Cause and an Order that an Accusation be Prepared and Served in this matter allege five violations of the Political Reform Act were committed, as follows:

Count 1: Failure to Timely File Semi-Annual Campaign Statement

Horner failed to timely file a semi-annual statement with the Lake County Auditor-Controller/County Clerk disclosing expenditures for a mass mailing expressly advocating the defeat of a candidate by February 2, 2015, for the January 1 through December 31, 2014 reporting period, violating Government Code section 84200, subdivision (b).

Count 2: Failure to Timely File Late Independent Expenditure Report

In 2014, Horner failed to timely file a late independent expenditure report with the Lake County Auditor-Controller/County Clerk disclosing expenditures totaling \$1,000 or more made within 90 days before the date of the election, for a mass mailing expressly advocating the defeat of a candidate, within 24 hours of making the late independent expenditure, violating Government Code section 84204.

Count 3: Failure to Timely File Independent Expenditure Verification Form

In 2014, Horner failed to timely file an independent expenditure verification form with the Commission by email within 10 days after the date Horner made his first independent expenditure, violating Government Code section 84213.

Count 4: Prohibited Cash Expenditures of \$100 or More

In 2014, Horner made cash expenditures of \$100 or more, totaling approximately \$1,392, violating Government Code section 84300, subdivision (b).

Count 5: Failure to Disclose Required Sender Information on a Mass Mailing

In or about October 2014, Horner paid for and caused to be sent a mass mailing expressly advocating the defeat of a candidate which failed to display required sender identification, violating Government Code section 84305, subdivision (a).

² Reg. 18361.4, subd. (e).

1 Based on the Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation
2 be Prepared and Served given to me, I find that notice has been given to Horner.³ I further find, based on
3 the Report in Support of a Finding of Probable Cause and the Ex Parte Request for a Finding of Probable
4 Cause and an Order that an Accusation be Prepared and Served, that there is probable cause to believe
5 Horner violated the Political Reform Act as alleged in Counts 1 through 5, above.

I therefore direct that the Enforcement Division issue an Accusation against Horner in accordance with this Finding.

8 | IT IS SO ORDERED.

9 Dated: 8/25/16

Brian Lau, Hearing Officer
Fair Political Practices Commission

³ § 83115.5 and Reg. 18361.4, subd. (b).

EXHIBIT A-7



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

STATEMENT TO RESPONDENT

[Government Code Section 11505, subdivision (b)]

Michael Horner

FPPC Case No. 15/1275

Enclosed is an Accusation, which was filed with the Fair Political Practices Commission (the "FPPC") and which is hereby served upon you, along with two copies of a Notice of Defense and Government Code Sections 11506 through 11508.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to the FPPC within 15 days after the Accusation was served on you, the FPPC may proceed upon the Accusation without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled Notice of Defense, or by delivering or mailing a notice of defense as provided by Section 11506 of the Government Code to the Commission Assistant at the FPPC.

You may, but need not, be represented by counsel at any or all stages of these proceedings.

If you desire a list of the names and addresses of witnesses against you, or an opportunity to inspect and copy the items mentioned in Section 11507.6 of the Government Code that are in the possession, custody, or control of this agency, or if you wish to discuss the possibility of resolving this matter without a formal hearing, you may contact Angela J. Brereton, Senior Commission Counsel, FPPC Enforcement Division.

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify the FPPC or, if an administrative law judge has been assigned to the hearing, the Office of Administrative Hearings, within 10 working days after you discover the good cause. Failure to give notice within 10 days will deprive you of a postponement.

After a hearing, the FPPC will consider the following factors in determining whether to assess a penalty (Title 2, California Code of Regulations, Section 18361.5, subdivision (d.)):

1. The seriousness of the violation;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violator demonstrated good faith by consulting Commission staff or any other government agency in a manner not constituting a complete defense under Government Code Section 83114, subdivision (b);
5. Whether the violation was isolated or part of a pattern;
6. Whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
7. Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.



Before the Fair Political Practices Commission

State of California

In the Matter of

MICHAEL HORNER,

Respondents.

-) NOTICE OF DEFENSE
-) (Pursuant to Gov. Code § 11506)
-)
-) FPPC Case No. 15/1275
-)
-)
-)
-)

MICHAEL HORNER, a Respondent named in the above entitled proceeding, hereby acknowledges receipt of the Accusation, a copy of the Statement to Respondent, a copy of Government Code Sections 11506 through 11508, and two copies of a *NOTICE OF DEFENSE*.

Pursuant to Government Code Section 11506, subdivision (a), you may file this *NOTICE OF DEFENSE* requesting a hearing on the grounds listed below. Failure to file this *NOTICE OF DEFENSE* shall constitute a waiver of your right to a hearing. If you waive your right to a hearing, you may file a statement of mitigation by separate letter that will be considered by the Commission in assessing any penalties for the violations alleged in the Accusation.

If you wish to file a *NOTICE OF DEFENSE*, please check all applicable grounds for the *NOTICE OF DEFENSE*, complete the remainder of the form, and mail to the Commission within fifteen (15) days of receipt of the Accusation.

GROUNDΣ FOR NOTICE OF DEFENSE

- 1) I request a hearing;
- 2) I object to the Accusation upon the ground that it does not state acts or omissions upon which the agency may proceed;
- 3) I object to the form of the Accusation on the ground that it is so indefinite or uncertain that I cannot identify the transaction that is the subject of the Accusation or prepare my defense;
- 4) I admit the Accusation in whole or in part (check box "a" or "b");
 - a) I admit the Accusation in whole.
 - b) I admit the Accusation in part as indicated below:

- 5) I wish to present new matter by way of defense;
- 6) I object to the accusation upon the ground that, under the circumstances, compliance with the requirements of a regulation of the Fair Political Practices Commission would result in a material violation of another regulation enacted by another department affecting substantive rights.

Dated: _____

Respondent Signature _____

Print Name _____

Mailing Address _____

City, State, Zip _____



Before the Fair Political Practices Commission

State of California

In the Matter of

MICHAEL HORNER,

Respondents.

) NOTICE OF DEFENSE
) (Pursuant to Gov. Code § 11506)
)
) FPPC Case No. 15/1275
)
)
)
)

MICHAEL HORNER, a Respondent named in the above entitled proceeding, hereby acknowledges receipt of the Accusation, a copy of the Statement to Respondent, a copy of Government Code Sections 11506 through 11508, and two copies of a *NOTICE OF DEFENSE*.

Pursuant to Government Code Section 11506, subdivision (a), you may file this *NOTICE OF DEFENSE* requesting a hearing on the grounds listed below. Failure to file this *NOTICE OF DEFENSE* shall constitute a waiver of your right to a hearing. If you waive your right to a hearing, you may file a statement of mitigation by separate letter that will be considered by the Commission in assessing any penalties for the violations alleged in the Accusation.

If you wish to file a *NOTICE OF DEFENSE*, please check **all** applicable grounds for the *NOTICE OF DEFENSE*, complete the remainder of the form, and mail to the Commission within fifteen (15) days of receipt of the Accusation.

GROUNDΣ FOR NOTICE OF DEFENSE

- 1) I request a hearing;
- 2) I object to the Accusation upon the ground that it does not state acts or omissions upon which the agency may proceed;
- 3) I object to the form of the Accusation on the ground that it is so indefinite or uncertain that I cannot identify the transaction that is the subject of the Accusation or prepare my defense;
- 4) I admit the Accusation in whole or in part (check box "a" or "b");
 - a) I admit the Accusation in whole.
 - b) I admit the Accusation in part as indicated below:

- 5) I wish to present new matter by way of defense;
- 6) I object to the accusation upon the ground that, under the circumstances, compliance with the requirements of a regulation of the Fair Political Practices Commission would result in a material violation of another regulation enacted by another department affecting substantive rights.

Dated: _____

Respondent Signature

Print Name

Mailing Address

City, State, Zip

California Government Code sections 11506 through 11508

§ 11506. Filing of notice of defense or notice of participation; Contents; Right to hearing on the merits

(a) Within 15 days after service of the accusation or District Statement of Reduction in Force the respondent may file with the agency a notice of defense, or, as applicable, notice of participation, in which the respondent may:

(1) Request a hearing.

(2) Object to the accusation or District Statement of Reduction in Force upon the ground that it does not state acts or omissions upon which the agency may proceed.

(3) Object to the form of the accusation or District Statement of Reduction in Force on the ground that it is so indefinite or uncertain that the respondent cannot identify the transaction or prepare a defense.

(4) Admit the accusation or District Statement of Reduction in Force in whole or in part.

(5) Present new matter by way of defense.

(6) Object to the accusation or District Statement of Reduction in Force upon the ground that, under the circumstances, compliance with the requirements of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights.

(b) Within the time specified the respondent may file one or more notices of defense, or, as applicable, notices of participation, upon any or all of these grounds but all of these notices shall be filed within that period unless the agency in its discretion authorizes the filing of a later notice.

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense or notice of participation, and the notice shall be deemed a specific denial of all parts of the accusation or District Statement of Reduction in Force not expressly admitted. Failure to file a notice of defense or notice of participation shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in paragraph (3) of subdivision (a), all objections to the form of the accusation or District Statement of Reduction in Force shall be deemed waived.

(d) The notice of defense or notice of participation shall be in writing signed by or on behalf of the respondent and shall state the respondent's mailing address. It need not be verified or follow any particular form.

(e) As used in this section, "file," "files," "filed," or "filing" means "delivered or mailed" to the agency as provided in Section 11505.

HISTORY: Added Stats 1945 ch 867 § 1. Amended Stats 1963 ch 931 § 1; Stats 1982 ch 606 § 1; Stats 1986 ch 951 § 20; Stats 1995 ch 938 § 29 (SB 523), operative July 1, 1997; Stats 2013 ch 90 § 5 (SB 546), effective January 1, 2014.

§ 11507. Amended or supplemental accusation or District Statement of Reduction in Force; Objections

At any time before the matter is submitted for decision, the agency may file, or permit the filing of, an amended or supplemental accusation or District Statement of Reduction in Force. All parties shall be notified of the filing. If the amended or supplemental accusation or District Statement of Reduction in Force presents new charges, the agency shall afford the respondent a reasonable opportunity to prepare his or her defense to the new charges, but he or she shall not be entitled to file a further pleading unless the agency in its discretion so orders. Any new charges shall be deemed controverted, and any objections to the amended or supplemental accusation or District Statement of Reduction in Force may be made orally and shall be noted in the record.

HISTORY: Added Stats 1945 ch 867 § 1. Amended Stats 2013 ch 90 § 6 (SB 546), effective January 1, 2014; Stats 2014 ch 71 § 69 (SB 1304), effective January 1, 2015.

§ 11507.3. Consolidated proceedings; Separate hearings

(a) When proceedings that involve a common question of law or fact are pending, the administrative law judge on the judge's own motion or on motion of a party may order a joint hearing of any or all the matters at issue in the proceedings. The administrative law judge may order all the proceedings consolidated and may make orders concerning the procedure that may tend to avoid unnecessary costs or delay.

(b) The administrative law judge on the judge's own motion or on motion of a party, in furtherance of convenience or to avoid prejudice or when separate hearings will be conducive to expedition and economy, may order a separate hearing of any issue, including an issue raised in the notice of defense or notice of participation, or of any number of issues.

HISTORY: Added Stats 1995 ch 938 § 30 (SB 523), operative July 1, 1997. Amended Stats 2013 ch 90 § 7 (SB 546), effective January 1, 2014.

///

§ 11507.5. Exclusivity of discovery provisions

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

HISTORY: Added Stats 1968 ch 808 § 3.

§ 11507.6. Request for discovery

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

- (a)** A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;
- (b)** A statement pertaining to the subject matter of the proceeding made by any party to another party or person;
- (c)** Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;
- (d)** All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;
- (e)** Any other writing or thing which is relevant and which would be admissible in evidence;
- (f)** Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

HISTORY: Added Stats 1968 ch 808 § 4. Amended Stats 1985 ch 1328 § 5; Stats 1995 ch 938 § 31 (SB 523), operative July 1, 1997.

§ 11507.7. Motion to compel discovery; Order

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of *Section 915 of the Evidence Code* and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become

effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

HISTORY: Added Stats 1968 ch 808 § 5. Amended Stats 1971 ch 1303 § 8; Stats 1980 ch 548 § 2; Stats 1995 ch 938 § 32 (SB 523), operative July 1, 1997.

§ 11508. Time and place of hearing

(a) The agency shall consult the office, and subject to the availability of its staff, shall determine the time and place of the hearing. The hearing shall be held at a hearing facility maintained by the office in Sacramento, Oakland, Los Angeles, or San Diego and shall be held at the facility that is closest to the location where the transaction occurred or the respondent resides.

(b) Notwithstanding subdivision (a), the hearing may be held at either of the following places:

(1) A place selected by the agency that is closer to the location where the transaction occurred or the respondent resides.

(2) A place within the state selected by agreement of the parties.

(c) The respondent may move for, and the administrative law judge has discretion to grant or deny, a change in the place of the hearing. A motion for a change in the place of the hearing shall be made within 10 days after service of the notice of hearing on the respondent.

Unless good cause is identified in writing by the administrative law judge, hearings shall be held in a facility maintained by the office.

HISTORY: Added Stats 1945 ch 867 § 1. Amended Stats 1963 ch 710 § 1; Stats 1967 ch 17 § 39; Stats 1987 ch 50 § 1; Stats 1995 ch 938 § 33 (SB 523), operative July 1, 1997; Stats 2005 ch 674 § 22 (SB 231), effective January 1, 2006.

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. My business address is Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814. On September 21, 2016, I served the following document(s):

1. Statement to Respondent;
2. FPPC Case No. 15/1275: Accusation;
3. Notice of Defense (Two Copies);
4. Selected Sections of the California Government Code, Administrative Procedure Act.

By Personal Delivery. I personally delivered the document(s) listed above to the person(s) at the address(es) as shown on the service list below.

By personal service. At 8:35 a.m./p.m.:

- I personally delivered the document(s) listed above to the person(s) at the address(es) as shown on the service list below.
- By providing the document(s) listed above with instructions for registered process server to personally deliver the envelope(s) to the person(s) at the address(es) set forth on the service list below. **The signed proof of service by the registered process server will be attached as soon as it is available.**

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail in Sacramento County, California.

SERVICE LIST

Personal Service

Michael Horner
[REDACTED]
[REDACTED]

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 21, 2016.

[REDACTED]

Roone Petersen

EXHIBIT A-8

ATTORNEY OR PARTY WITHOUT ATTORNEY:	FOR COURT USE ONLY
TELEPHONE NO.:	
ATTORNEY FOR:	
ENFORCEMENT DIVISION COURT OF CALIFORNIA, COUNTY OF SACRAMENTO	
PLAINTIFF: Fair Political Practices Commission, Enforcement Division	CASE NUMBER: 15/1275
DEFENDANT: Michael Horner	Ref. No. or File No.: Horner
PROOF OF SERVICE	

1. I am over 18 years of age and not a party to this action.
2. Received by Quality Process Serving to be served on Michael Horner, [REDACTED].
3. PERSONALLY served on the within named defendant (s) a true copy of the Statement to Respondent, FPPC Case No 15/1275 Accusation, Notice of Defence (two copies), Selected Sections of the California Government Code, Administrative Procedure Act by delivering to and leaving with the defendant(s), just named, personally and in person a copy thereof at the aforementioned address.

I declare under penalty of perjury that I am a resident of the State of Oregon. I am a competent person 18 years of age or older and not a party to nor attorney in this proceeding and am authorized to serve the process described herein. I certify that the person, firm, or corporation served is the identical one named in this action. I am not a party to nor an officer, director, or employee of, nor attorney for any party, corporate or otherwise.

4. Date and Time of service: 9/27/2016 at 8:57 am
5. My name, address, telephone number, and, if applicable, county of registration and number are:
 Name: Mark Parks
 Firm: Quality Process Serving
 Address: 40 N Front St #4, Central Point, OR 97502
 Telephone number: (541) 664-1130
 Registration Number: Process Server
 County: All Areas
 The fee for the service was: \$55.00
6. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 10/10/16

Mark Parks

(TYPE OR PRINT NAME OF PERSON WHO SERVED THE PAPERS)



(SIGNATURE OF PERSON WHO SERVED THE PAPERS)

EXHIBIT A-9

EXHIBIT 1 IN SUPPORT OF DEFAULT DECISION AND ORDER
FPPC NO. 15/1275



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

January 3, 2017

Via Certified Mail, Return Receipt Requested

Michael Horner
[REDACTED]
[REDACTED]

NOTICE OF INTENT TO ENTER DEFAULT DECISION AND ORDER

Re: FPPC No. 15/1275
In the Matter of Michael Horner

Dear Mr. Horner:

Enclosed please find a copy of the Default Decision and Order, and accompanying Exhibit and attachments, for the above-referenced matter. The Fair Political Practices Commission (Commission) will consider these papers at its public meeting on **January 19, 2017**, and decide whether to impose a penalty against you, and the maximum administrative penalty you face is Twenty-Five Thousand Dollars (\$25,000).

You were previously served a Report in Support of a Finding of Probable Cause, commonly known as a Probable Cause Report, advising you of your right to request a probable cause conference or submit a written response to the probable cause report. You did not request a probable cause conference, nor did you submit anything in writing for the Commission's Hearing Officer to consider in his determination of probable cause.

Following the issuance of a Report in Support of a Finding of Probable Cause, the Commission's Hearing Officer found probable cause that you committed five violations of the Political Reform Act's campaign provisions. Thereafter, the Enforcement Division issued an Accusation against you on these violations. The Accusation was personally served on you on September 27, 2016. Under the law, you have therefore received adequate notice of these proceedings and the action filed against you. Under the Administrative Procedure Act, you were required to file your Notice of Defense within 15 days after service of the Accusation. You failed to file your Notice of Defense. As such, your right to an administrative hearing on this matter has been forfeited, and you are in a default position.

You may, but you are not required to, provide a response brief, along with any supporting materials, no later than five calendar days before the Commission hearing at which the default is scheduled to be heard. Your response brief must be served on the Commission Assistant, at the above address.

At its public meeting on January 19, 2017, the Commission may impose an administrative penalty against you in the amount of \$25,000, the maximum penalty for the five violations.

Following the issuance of the default decision and order and imposition of the administrative penalty, we will commence legal proceedings to collect this fine, which may include converting the Commission's order to a court judgment. Please be advised that administrative penalties for violations of the Political Reform Act cannot be discharged in bankruptcy proceedings.

This letter is your last opportunity to resolve this matter informally by way of a stipulated settlement, before the default proceedings are commenced. If we do not reach a resolution by January 5, 2017, the enclosed documents will be placed on the Commission's agenda for the January 19, 2017 meeting. Please contact me immediately if you wish to enter into a negotiated settlement.

You may contact me directly at (916) 322-5771 or abrereton@fppc.ca.gov.

Sincerely,

[REDACTED]
Angela J. Brereton
Senior Commission Counsel
Enforcement Division

Enclosures

EXHIBIT A-10

DOUBLE DIPPER!

**Don't let this
"Power Couple"
into our pockets!!**

Olga Steele

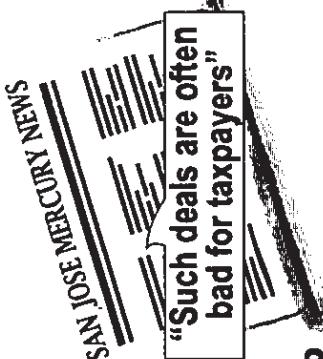
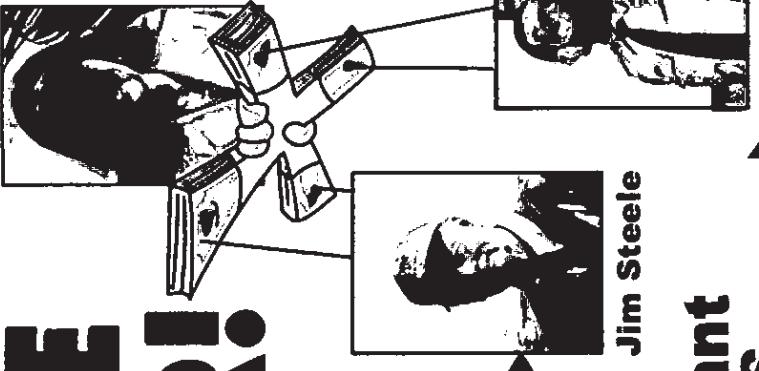
"Pension + part time
salary equals \$432,000."

-San Jose Mercury News

**Don't vote
for THIS**

**Unless you want
more of THIS**

VOTE FOR ANYONE BUT JIM STEELE ON NOV. 4!



Frank Rivero

**ANYONE BUT JIM STEELE
PO Box 7998
Clearlake Oaks, CA
95423**

PRSR STD
US POSTAGE PAID
PERMIT #76
PETALUMA CA

507
1



EXHIBIT A-11

Paul Rasey

From: Michael Horner [REDACTED]
Sent: Tuesday, December 15, 2015 2:54 PM
To: Paul Rasey
Subject: Subpoena number 14-1387-04
Attachments: FPPC 14-1387-04.pdf; melo mail email.pdf; melo mail estimate.pdf

Paul Rasey,

Please find attached documents in my possession regarding the Jim Steel mailer.

Please allow me to be clear. This was an effort made solely by me, not as a member of any committee, with the support of any committee or to the knowledge of any committee or any other candidates.

I acted alone, a private citizen of Lake County, exercising the rights afforded me by the First Amendment of the US Constitution.

So I answer this subpoena for myself, and not as representative of any candidate or committee.

I do not have any receipts for this mailer as I paid Melo Mail and Santa Rosa Printing in cash. I have provided documentation of their estimates.

This is all of the documentation I have.

Michael Horner

Paul Rasey

From: Michael Horner [REDACTED]
Sent: Tuesday, December 15, 2015 2:33 PM
To: Paul Rasey
Subject: Fw: Emergency mail FORWARD FOR SUBPOENA NUMBER 14-1387-04

On Thursday, October 30, 2014 9:59 AM, Michael Horner [REDACTED] wrote:

Should I send you the list. It is political but it not from a committee

Sent from my iPhone

> On Oct 30, 2014, at 9:51 AM, Melo Mail <orders@melomail.com> wrote:

>

> Michael,

> Depends on what it is. If it is a political piece I believe it has to have a return address. Check with Craig on specifics.

> We should be able to get it out for you if we get it in enough time to process and deliver before 6pm to the Post office.

> Lisa

> Melo Mail

> Billing Address:

> PO Box 1303

> Sebastopol CA 95473

>

> Physical Address: as of March 1, 2013

> 3160 Ross Rd

> Graton CA 95444

> 707-823-8840 phone

> 707-824-2672 fax

>

>

> www.melomail.com

>

> On Thu 30/10/14 9:01 AM , Michael Horner [REDACTED] sent:

>> Hi Lisa,

>> I have small mailer (3300 pieces) that would have to go out tomorrow. Is

>> this possible?Also, can it be sent out without a return address?

>> Michael

>>

>> Sent from my iPhone

>

Paul Rasey

From: Michael Horner [REDACTED]
Sent: Tuesday, December 15, 2015 2:39 PM
To: Paul Rasey
Subject: Fw: Fw: IMPORTANT! Proof FORWARS FOR SUBPOENA NUMBER 14-1387-04

On Thursday, October 30, 2014 2:43 PM, Ivan Astudillo <ivan@srprint.com> wrote:

Hello Michael.

The price for 5 x 7 postcard printed color front and black on the back,
on 100lb card stock.

3,500 \$490.00 + tax

The cards can be ready tomorrow afternoon.

If you bay any question please let me know

Thank you

Ivan Astudillo
Santa Rosa Printing Co, Inc
707-525-0898

Subject: Estimate from MELO MAIL

From: orders@melomail.com (orders@melomail.com)

To: [REDACTED]

Date: Thursday, October 30, 2014 4:04 PM

Dear Michael :

We will be able to get this out if received by 2:00PM on 10/31/14

Please note that we cannot guarantee on time delivery by the Post Office.

We will need a signed & dated, for day of Post Office delivery(10/31/14), of the POLITICAL MAIL
MAILER LATE ENTRY NOTICE.

IF YOU NEED ANOTHER COPY OF THIS, PLEASE EMAIL US.

Thank you for the opportunity to bid on your project. Please review the attached estimate. Feel free to contact us if you have any questions.

We look forward to working with you.

Sincerely,

MELO MAIL

707-823-8840 phone

707-824-2672 fax

orders@MeloMail.com

Attachments

- Est_5924_from_MELO_MAIL_3776.pdf (105.04KB)



3160 ss Rd
Graton CA 95444-9369

Estimate/Work Order

DATE	ESTIMATE #
9/25/2014	5924

Phone # 707-823-8840
Fax # 707-824-2672
orders@melomail.com

CUSTOMER NAME / ADDRESS

Michael Horner

Mailing Address
MELO MAIL
PO BOX 1303
SEBASTOPOL CA 95473-1303

Contact	Phone	Project Description		
5 x 7 Emergency Card				
DESCRIPTION			QTY	COST
Data Processing - CASS Certification reports, Barcode Enhancement Includes NCOA (National change of Address) USPS Postal Paperwork			1	55.00
Duplication Search: Address/Household/Name			1	22.00
Ink Jet Address (IF INDICIA NEEDED ADD .01 PER PIECE)			3,109	0.0275
Sort, Bundle, Tie, Sack or Tray : LTRS			3,109	0.011
SERVICE SUBTOTAL				196.70
PO Delivery - North Bay				25.00
Postage Cost: POSTAGE MUST BE RECEIVED BEFORE WE MAIL - PLEASE MAKE CHECK OUT TO MELO MAIL				680.76
3% add on for Postage charged to Credit Card				3.00%
Thank you for the opportunity to bid on your project.			TOTAL	
			\$922.88	

Listed charges (especially postage) are estimated and are therefore subjected to change as needed to perform the requested job. You will be notified of any price change before we continue work unless otherwise requested. By signing this estimate/job order you are agreeing to pay for all services performed at the price stated above (unless notified of a change that you approve) and agree to the laws and venue of Sonoma County, California if any legal matters are to arise from the process of completion of the above work order.

SIGNATURE



MAIL 3160 R. 3 Rd
Graton CA 95444-9369

Estimate/Work Order

DATE	ESTIMATE #
9/25/2014	6023

Phone # 707-823-8840
Fax # 707-824-2672
orders@melomail.com

CUSTOMER NAME / ADDRESS

Anyone but Jim Steele
PO Box 7998
Clearlake Oaks CA 95423

Mailing Address
MELO MAIL
PO BOX 1303
SEBASTOPOL CA 95473-1303

Listed charges (especially postage) are estimated and are therefore subjected to change as needed to perform the requested job. You will be notified of any price change before we continue work unless otherwise requested. By signing this estimate/job order you are agreeing to pay for all services performed at the price stated above (unless notified of a change that you approve) and agree to the laws and venue of Sonoma County, California if any legal matters are to arise from the process of completion of the above work order.

SIGNATURE



3160 Ross Rd

Graton CA 95444-9369

Invoice

Phone # 707.823.8840
Fax # 707.823.3340
orders@melomail.com

Bill To

Anyone but Jim Steele
PO Box 7998
Clearlake Oaks CA 95423

PAID

Date	Invoice #
9/25/2014	1006621

Please Remit Payment to
our Mailing Address:

MELO MAIL
PO BOX 1303
SEBASTOPOL CA 95473-1303

Customer Phone	PO Number / Project Description	Terms		Due Date
	5x7 mailer	Due on receipt		9/25/2014
	Description	Qty	Rate	Amount
	Data Processing - CASS Certification reports, Barcode Enhancement Includes NCOA (National change of Address) USPS Postal Paperwork		55.00	55.00
	Duplication Search: Address/Household/Name		22.00	22.00
	Ink Jet Address (IF INDICIA NEEDED ADD .01 PER PIECE)	3,109	0.0275	85.50
	Sort, Bundle, Tie, Sack or Tray : LTRS	3,109	0.011	34.20
	SERVICE SUBTOTAL			196.70
	PO Delivery - North Bay		25.00	25.00
	Postage Cost: POSTAGE MUST BE RECEIVED BEFORE WE MAIL Postage Payment, Check#: CASH		680.76 -902.46	680.76 -902.46
	Thank you for your business.			
			Total	\$0.00

Payments/Credits	\$0.00
Balance Due	\$0.00

From: Michael Horner [REDACTED]
To: orders@melomail.com
Subject: Emergency mail

Sent: Thu 30/10/14 9:01 AM
Priority: Normal

Hi Lisa,
I have small mailer (3300 pieces) that would have to go out tomorrow. Is this possible?
Also, can it be sent out without a return address?
Michael

Sent from my iPhone

From: Michael Horner [REDACTED] Emergency mail

EXHIBIT A-12

EXHIBIT 1 IN SUPPORT OF DEFAULT DECISION AND ORDER
FPPC NO. 15/1275

Postage Statement -- Standard Mail

Transaction Number: 201430418452953 M1	CAPS Transaction Number: 2014103118452903M1	Postage Statement Number: 199061973				
Mailing Group Mailing Group ID 141450559		Mailing Job Number Open Date 10-31-2014				
Preparer 76-PI-		Origin PSW - USPS Entered Close Date 10-31-2014				
Job Description						
Mailer	Permit Holder's Name and Address and Email Address, If Any MELO MAIL 3160 ROSS RD GRATON, null 95444-9369 Contact Name: GEORGE MELO (707)823-8840 orders@melomail.com CRID: 1855019	Name and Address of Mailing Agent <i>(If other than permit holder)</i>	Name and Address of Individual or Organization for Which Mailing is Prepared <i>(If other than permit holder)</i> ANYONE BUT JIM STEELE PO BOX 7998 CLEARLAKE OAKS, null 95423 CRID: 14447219			
Mailing	Post Office of Mailing PETALUMA CA 94999-9998	Processing Category Letters	Mailer's Mailing Date 10/31/14	Federal Agency Cost Code	Statement Seq. No.	No. & Type of Container
	Type of Postage Permit Imprint		SSF Transaction # 0	Total # of Pieces in Mailing 3,108		Sacks: 0 1 ft. Letter Trays: 5 2 ft. Letter Trays: 0 EMM Letter Trays: 2 Flat Trays: 0 Pallets: 0 Other: 0
	Permit # 76		Weight of a Single Piece 0.0138 lbs.	Combined Mailing	Total Weight 42.8904 lbs.	
For Automation Rate Pieces, Enter Date of Address Matching and Coding 10/31/14	For Carrier Route Pieces, Enter Date of Address Matching and Coding 10/31/14	For Carrier Route Pieces, Enter Date of Carrier Route Sequencing / / / / / / / /	For Pieces Bearing a Simplified Address Enter Date of Delivery Statistics File or Alternative Method / / /			
Move Update Method: Alternative Address Format						
This is a Political Mailing No		This Is Official Election Mail No		[]Letter-size or flat mailpiece contains DVD/CD or other disc.		
Postage Parts Completed A	Subtotal Postage (Add parts totals) _____ pcs. x \$ _____ = Postage Affixed \$0.00					
Incentive/Discount \$0.00 Fee \$0.00						
Net Postage Due \$680.66						
Total USPS Adjusted Postage \$680.66						
Certification	ee: N/A to pay any revenue deficiencies assessed on this mailing, subject to appeal. If an agent certifies that he or she is bound by the certification and agrees to pay any deficiencies. In addition, agents may be liable for any deficiency, knowledge, or control. The mailer hereby certifies that all information furnished on this form is true and accurate and that the documentation complies with all postal standards and that the mailing qualifies for the prices and discounts prohibited by law or postal regulation. I understand that anyone who furnishes false or misleading information on this form may be subject to criminal and/or civil penalties, including fines and imprisonment. visit www.usps.com					

Automation Letters

Letters 3.3 oz (0.2063 lbs) or less

Entry Category	Price	Price	No. of Pieces	Subtotal Postage	Discount Total*	Fee Total	Total Postage	
A3	None	AADC	\$0.279	8	\$2.2320	\$0.0000	\$0.0000	\$2.2320
A4	None	Mixed AADC	\$0.301	25	\$7.5250	\$0.0000	\$0.0000	\$7.5250
A9	DSCF	5-Digit	\$0.217	2,875	\$623.8750	\$0.0000	\$0.0000	\$623.8750
A10	DSCF	3-Digit	\$0.235	197	\$46.2950	\$0.0000	\$0.0000	\$46.2950
A11	DSCF	AADC	\$0.235	3	\$0.7050	\$0.0000	\$0.0000	\$0.7050

A23

Part A Total (Add lines A1-A22)

\$680.63

* May contain both Full Service Intelligent Mail and other discounts.

EXHIBIT A-13

Paul Rasey

From: Michael Horner [REDACTED]
Sent: Tuesday, December 15, 2015 2:54 PM
To: Paul Rasey
Subject: Subpoena number 14-1387-04
Attachments: FPPC 14-1387-04.pdf; melo mail email.pdf; melo mail estimate.pdf

Paul Rasey,

Please find attached documents in my possession regarding the Jim Steel mailer.

Please allow me to be clear. This was an effort made solely by me, not as a member of any committee, with the support of any committee or to the knowledge of any committee or any other candidates.

I acted alone, a private citizen of Lake County, exercising the rights afforded me by the First Amendment of the US Constitution.

So I answer this subpoena for myself, and not as representative of any candidate or committee.

I do not have any receipts for this mailer as I paid Melo Mail and Santa Rosa Printing in cash. I have provided documentation of their estimates.

This is all of the documentation I have.

Michael Horner

EXHIBIT A-14

EXHIBIT 1 IN SUPPORT OF DEFAULT DECISION AND ORDER
FPPC NO. 15/1275

**Galena West, Acting Enforcement Chief
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, California 95814
Telephone: (916) 322-5660**

Attorneys for Complainant

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

In re the Matter of

FPPC Subpoena Number 141387-04

**FAIR POLITICAL PRACTICES
COMMISSION
CASE NUMBER 14-1387**

**DECLARATION OF
CUSTODIAN OF RECORDS**

I, Michael L. Horn, declare as follows:

Mike Horner

- i. In response to Subpoena 14-1387-04 I have diligently searched my records, and:

 - a. I have provided a true copy of all of the records described in the subpoena.
 - b. I have provided a true copy of all of the records described in the subpoena, except for the following document(s), which have not been produced for the reasons stated herein:

c. _____ I do not have within my possession or control any of the records described in the subpoena.

- 23 | 2. These records were prepared by. _____

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct.

Date: 12/15/12 Signed

 [REDACTED]

GALENA WEST
Chief of Enforcement
ANGELA J. BRERETON
Senior Commission Counsel
FAIR POLITICAL PRACTICES COMMISSION
428 J Street, Suite 620
Sacramento, CA 95814
Telephone: (916) 322-5771
Email: abrereton@fppc.ca.gov

**Attorneys for Complainant
Enforcement Division of the Fair Political Practices Commission**

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of

FPPC No. 15/1275

MICHAEL HORN

**DECLARATION OF ANGELA J.
BRERETON IN SUPPORT OF DEFAULT
DECISION AND ORDER**

Respondent.

(Gov. Code §11503)

I, Angela J. Brereton, declare as follows:

1. I am employed by and I represent the Enforcement Division of the Fair Political Practices Commission in my capacity as Senior Commission Counsel for the Enforcement Division. My business address is 428 J Street, Suite 620, Sacramento, California.

2. I am the attorney assigned to this case. If called as a witness, I competently could and would testify to the following, which is based upon my own personal knowledge.

3. As stated in the proof of service, on September 27, 2016, the Accusation and accompanying information, consisting of a Statement to Respondent, two copies of a Notice of Defense Form, copies of Government Code Sections 11506, 11507.5, 11507.6 and 11507.7 were personally served on Respondent Michael Horner.

4. Horner did not file a Notice of Defense within the statutory time period, which ended on October 12, 2016.

5. To date, Horner has not filed a Notice of Defense.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Sacramento, California, on _____, 2017.

Angela J. Brereton
Senior Commission Counsel, Enforcement Division
Fair Political Practices Commission

GALENA WEST
Chief of Enforcement
ANGELA J. BRERETON
Senior Commission Counsel
FAIR POLITICAL PRACTICES COMMISSION
428 J Street, Suite 620
Sacramento, CA 95814
Telephone: (916) 322-5771
Email: abrereton@fppc.ca.gov

**Attorneys for Complainant
Enforcement Division of the Fair Political Practices Commission**

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

In the Matter of

FPPC No. 15/1275

MICHAEL HORN

DECLARATION OF PAUL RASEY IN SUPPORT OF DEFAULT DECISION AND ORDER

Respondent.

(Gov. Code §11503)

I, Paul Rasey, declare as follows:

1. I am a Special Investigator for the Enforcement Division of the Fair Political Practices Commission. My business address is 428 J Street, Suite 620, Sacramento, California.

2. I am the investigator assigned to this case. If called as a witness, I competently could and would testify to the following, which is based upon my own personal knowledge and upon my investigation.

3. As part of my investigation, I obtained and reviewed various documents, including expenditure and personal records of Michael Horner and of other material witnesses. Such records included: Payment records, telephone records, email communications, campaign statements, and other records, as necessary.

111

1 4. As part of my investigation, I communicated with Horner and other material witnesses on
2 several occasions regarding the facts and circumstances of this case, in writing, in person, and on the
3 telephone.

4 5. Exhibit 1 (which is incorporated by reference into the Default Decision and Order) is a
5 true and correct summary of the evidence in this case as I know them to be, based upon the findings of
6 my investigation.

7 6. On April 22, 2015, I confirmed with the USPS that P.O. Box 7998 was a fictitious mailing
8 address.

9 7. On April 13, 2016, I confirmed with the California Secretary of State's office and the Lake
10 County Registrar of Voters that Horner did not file any campaign statements or reports as an independent
11 expenditure committee disclosing the expenditures for the mailer either in his name or as "Anyone But
12 Jim Steele" with the SOS or with Lake County.

13

14 I declare under penalty of perjury under the laws of the State of California that the foregoing is
15 true and correct. Executed at Sacramento, California, on January 3, 2017.

16

17 Paul Rasey
18 Special Investigator, Enforcement Division
19 Fair Political Practices Commission

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