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FAIR POLITICAL PRACTICES COMMISSION

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6
7 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

8 **STATE OF CALIFORNIA**

9
10 In the Matter of) FPPC No. 10/932
11)
12 YES ON PROPOSITION B,) STIPULATION, DECISION and
13) ORDER
14 Respondent.)

15 Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission,
16 and Respondent Yes on Proposition B, hereby agree that this Stipulation will be submitted for
17 consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

18 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
19 matter and to reach a final disposition without the necessity of holding an administrative hearing to
20 determine the liability of Respondent.

21 Respondent understands, and hereby knowingly and voluntarily waive, any and all procedural
22 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Section 18361.1
23 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
24 the right to personally appear at any administrative hearing held in this matter, to be represented by an
25 attorney at Respondent's own expense, to confront and cross-examine all witnesses testifying at the
26 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
27 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

1 It is further stipulated and agreed that Respondent violated the Political Reform Act by failing to
2 provide written disclosure identifying persons whose contributions were \$50,000 or more for a period of
3 at least five seconds on a television advertisement, in violation of Government Code Section 84503 (1
4 count).

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

17 Dated: _____

18 _____
Roman G. Porter, Executive Director
Fair Political Practices Commission

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20
21 Dated: _____

22 _____
Jeff Adachi, on behalf of
Yes on Proposition B

DECISION AND ORDER

1 The foregoing Stipulation of the parties “In the Matter of Yes on Proposition B, FPPC No. 10/932,”
2 including all attached exhibits, is hereby accepted as the final Decision and Order of the Fair Political
3 Practices Commission, effective upon execution below by the Chairman.
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5 IT IS SO ORDERED.
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7 Dated: _____

8 Dan Schnur, Chairman
9 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent Yes on Proposition B (Respondent Committee) was formed in 2010 as a primarily formed ballot measure committee supporting Proposition B, which was placed on the November 2010 ballot in the City of San Francisco.

Respondent was required under the Political Reform Act (the “Act”)¹, to include in the committee name the name and economic or other special interest of its major donors of \$50,000 or more. Respondent did not comply with these requirements. Additionally, Respondent was required to provide specified written disclosures under the Act, for a period of at least five seconds, for all television advertisements, but failed to do so.

For the purposes of this Stipulation, Respondent’s violation is as follows:

COUNT 1: Respondent failed to provide written disclosure identifying persons whose contributions were \$50,000 or more for a period of at least five seconds on a television advertisement, in violation of Government Code Section 84503.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act therefore establishes a campaign reporting and disclosure system designed to accomplish this purpose.

Identification of Committee

Any committee that supports or opposes one or more ballot measures shall name and identify itself using a name or phrase that clearly identifies the economic or other special interest of its major donors of fifty thousand dollars (\$50,000) or more in any reference to the committee required by law, including, but not limited, to its statement of organization filed pursuant to Section 84101. (b) If the major donors of fifty thousand dollars (\$50,000) or more share a common employer, the identity of the employer shall also be disclosed. (c) Any committee which supports or opposes a ballot measure, shall print or broadcast its name as provided in this section as part of any advertisement or other paid public statement. (d) If candidates or their

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18109 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

controlled committees, as a group or individually, meet the contribution thresholds for a person, they shall be identified by the controlling candidate's name. Government Code Section 84504.

Advertisements

An "advertisement" means any general or public advertisement which is authorized and paid for by a person or committee for the purpose of supporting or opposing a candidate for elective office or a ballot measure or ballot measures. Government Code Section 84501.

Disclosure in an Advertisement for or Against a Ballot Measure

Any advertisement for or against any ballot measure shall include a disclosure statement identifying any person whose cumulative contributions are fifty thousand dollars (\$50,000) or more. If there are more than two donors of fifty thousand dollars (\$50,000) or more, the committee is only required to disclose the highest and second highest in that order. In the event that more than two donors meet this disclosure threshold at identical contribution levels, the highest and second highest shall be selected according to chronological sequence. Government Code Section 84503.

Committee Name Identification. Advertisement Disclosure

The name of a committee primarily formed to support or oppose a ballot measure shall clearly identify the economic or other special interest of the committee's major donors of \$50,000 or more. The name identification requirements of Section 84504 shall apply only to committees that are primarily formed to support or oppose a ballot measure, as defined by Section 82047.5.

For purposes of implementing the name identification requirements of Section 84504, the following shall apply:

- (1) Identification of a disclosable contributor's "economic or other special interest" pursuant to Section 84504 shall identify any ascertainable economic interest that exists that is likely to be affected by the ballot measure. If no ascertainable economic interest exists, the name or phrase pursuant to Section 84504 shall identify any goal or purpose that is likely to be affected by the ballot measure. In the event that there is more than one disclosable contributor and all such disclosable contributors do not share an economic interest or goal or purpose, the name or phrase shall identify the various economic interests or goal or purpose that are likely to be affected by the ballot measure.
- (2) If candidates or their controlled committees, as a group or individually, are major contributors of \$50,000 or more, the committee name identification shall include the controlling candidates' names.

(3) If the major donors of \$50,000 or more share a common employer, the identity of the employer shall also be disclosed in the name of the primarily formed committee.

(4) When the committee name is required to list the major donors of \$50,000 or more, either by name or by a name or phrase that identifies the economic or other special interest of the major donors, the list of the major donors shall be in descending order based on the amount of contributions made by the listed donor to the committee. The list of major donors shall precede, and not be interspersed with, other constituencies supporting or opposing the measure, such as "concerned citizens," "consumers," "taxpayers," etc.

FPPC Regulation 18450.3.

Contents of Disclosure Statements. Advertisement Disclosure

Where a "disclosure statement" or "disclosure" is required for an advertisement under Sections 84503, 84504, 84506, or 84506.5, the following shall apply to the committee that authorized and paid for the advertisement:

(1) Disclosures required under Sections 84503 and 84506 shall include the name, pursuant to Regulation 18450.3, of the \$50,000 contributor or contributors. The disclosure shall explicitly indicate that the contributor or contributors were major donors to the committee by stating, for example, "major funding by" or "paid for by." In the case of a contributor that is a committee pursuant to Section 82013(a), the word "committee" shall be included in the disclosure. The aggregation rules of Regulation 18215.1 shall apply in determining when a contributor has reached the \$50,000 disclosure threshold of Sections 84503 and 84506.

(2) Where two or more contributors of identical amounts meet the threshold for the top two contributors, the order of disclosure shall be made beginning with the most recent contributor of that amount.

(3) The disclosures required by Sections 84503, 84504, 84506, and 84506.5 shall be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice of the identity of the person(s) or committee(s) that paid for the communication, as specified below.

(A) Video: The information shall be both written and spoken either at the beginning or at the end of the communication, except that if the disclosure statement is written for at least five seconds of a broadcast of thirty seconds or less or ten seconds of a sixty second broadcast, a spoken disclosure statement is not required. The written disclosure statement shall be of sufficient size to be readily legible to an average viewer and air for not less than four seconds.

FPPC Regulation 18450.4.

Remedies for Violations; Fines.

In addition to the remedies provided for in Chapter 11 (commencing with Section 91000) of the Act, any person who violates Section 84503 or 84504 of the Act is liable in a civil or administrative action brought by the Commission or any person for a fine up to three times the cost of the advertisement, including placement costs. This also applies to any person who purposely causes any other person to violate any provision of this article or who aids and abets any other person in a violation. Government Code Section 84510.

Liability of Committee Treasurers

As provided in Section 84100, every committee shall have a treasurer. Under Section 84100 and Regulation 18427, subdivision (a), it is the duty of a committee's treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds and the reporting of such funds. Under Sections 83116.5 and 91006, a committee's treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee.

SUMMARY OF THE FACTS

Respondent Yes on Proposition B is a primarily formed ballot measure committee. It was created in 2010 to support Measure B, which appeared on the November 10, 2010 ballot in the City of San Francisco.

In its initial statement of organization, the Respondent listed the full name of the committee as "Yes on Proposition B Pension and Benefits Reform, Supported by Public Defender Jeff Adachi, Harriet Heyman, Michael Moritz and Warren Hellman." Respondent failed to amend its' statement of organization or include in its' advertisements additional donors of \$50,000 or more. Specifically, Respondent failed to include American Foods executives George Hume and William Hume, and business executives Eric Schmidt and Richard Beleson. Additionally, Respondent failed to include the economic or other special interest of Harriet Heyman, Michael Moritz and Warren Hellman. The additional donors and the economic interests were eventually disclosed on an amended statement of organization filed on October 25, 2010 after Respondent was contacted by the Enforcement Division.

Respondent Committee further ran a television advertisement on or about October 2010 that did not contain a proper written disclosure of the committee name and did not air the written disclosure for the required five seconds. Specifically, the committee name did not provide the economic or other special interest of the top two major donors to the committee, and only ran at most two seconds at the end of the advertisement.

COUNT 1

(Failure to Provide Proper Written Disclosure)

Respondent Committee ran a television advertisement on or about October 2010 that did not contain a proper written disclosure of the committee name and did not air the written disclosure for the required five seconds. Specifically, the committee name did not provide the economic or other special interest of the top two major donors to the committee, and only ran at most two seconds at the end of the advertisement.

By failing to provide proper written disclosure on a television advertisement Respondent violated Government Code Section Government Code Section 84503.

CONCLUSION

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

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

For Count 1, failure to provide proper written disclosure can be a serious violation of the Act as it deprives the public of important information regarding the sponsor of the mailing. The typical administrative penalty for a failure to provide proper written disclosure, depending on the facts of the case, has been in the low to middle range of available penalties.

FACTORS IN AGGRAVATION

Respondent failed to provide important information to the public about those that were providing major financial support to their campaign in their campaign statements and filings. This, when combined with their failure to provide even the minimum required amount of time of disclosure on their television advertisement deprived the public of important information.

FACTORS IN MITIGATION

Respondents have no history of violating the Act, and cooperated with the investigation. Additionally, Respondents immediately pulled down their television advertising when notified of the violation and immediately corrected their statement of organization to correctly reflect their

major donors.

PENALTY

Because of the mitigating factors identified above, the Enforcement Division is not seeking either a fine up to three times the amount of the cost of the advertising or seeking action against any person who purposely causes any other person to commit the violation detailed in count 1.

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of the agreed upon penalty of Two Thousand Dollars (\$2,000).