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3 **FAIR POLITICAL PRACTICES COMMISSION**
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of) FPPC No. 12/890
13)
14) STIPULATION, DECISION and
ALAN FRANK, ALAN FRANK FOR CITY) ORDER
COUNCIL 2012, and JEFF BUCHANAN,)
15 TREASURER)
16)
Respondents.)
17)

18 Complainant, the Fair Political Practices Commission, and Respondents Alan Frank, Alan Frank
19 for City Council 2012, and Jeff Buchanan agree that this Stipulation will be submitted for consideration
20 by the Fair Political Practices Commission at its next regularly scheduled meeting.
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22 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
23 matter and to reach a final disposition without the necessity of holding an administrative hearing to
24 determine the liability of Respondents, pursuant to Section 83116 of the Government Code.

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

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

3 It is further stipulated and agreed that Respondents Alan Frank, Alan Frank for City Council
4 2012, and Jeff Buchanan violated the Political Reform Act by failing to include a proper sender
5 identification on two mass mailings in violation of Section 84305, subdivision (a), of the Government
6 Code. This count is described in Exhibit 1, which is attached hereto and incorporated by reference as
7 though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

8 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
9 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
10 of Two Thousand Five Hundred Dollars (\$2,500). A cashier's check from Respondents in said amount,
11 made payable to the "General Fund of the State of California," is submitted with this Stipulation as full
12 payment of the administrative penalty, to be held by the State of California until the Commission issues
13 its decision and order regarding this matter. The parties agree that in the event the Commission refuses
14 to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
15 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in
16 connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and
17 agree that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
18 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
19 shall be disqualified because of prior consideration of this Stipulation.
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22 Dated: _____

Gary S. Winuk, Chief of Enforcement
Fair Political Practices Commission

26 Dated: _____

Alan Frank, Respondent,
Individually and on behalf of
Alan Frank for City Council 2012

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Dated: _____

Jeff Buchanan, Respondent,
Individually and on behalf of
Alan Frank for City Council 2012

EXHIBIT 1

INTRODUCTION

Respondent Alan Frank was an unsuccessful candidate for city council in the City of Placentia's November 6, 2012 election, having received 6,921 votes, or 17.3% of total votes cast. Respondent "Alan Frank for City Council 2012" was Respondent's candidate controlled committee. Respondent Jeff Buchanan was the treasurer for the committee at all times relevant.

This case was opened as the result of a complaint alleging that Respondents commissioned and paid for two mass mailers, which failed to include sender identification, that were delivered to voters in Placentia in the weeks before the November 6, 2012 city council election. However, the mailers did not identify the sender, in violation of the Political Reform Act (the "Act").¹

For the purposes of this Stipulation, Respondents' violation of the Act is stated as follows:

COUNT 1: In the week preceding the November 6, 2012 election, Respondents Alan Frank, Alan Frank for City Council 2012, and Jeff Buchanan caused to be sent two separate mass mailers, which failed to display required sender identification, in violation of Government Code Section 84305, subdivision (a).

SUMMARY OF THE LAW

Sender Identification Requirements

Section 84305, subdivision (a), requires candidates and committees to properly identify themselves when sending a mass mailing. Specifically, the statute provides that no candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing.

Section 82041.5 defines a "mass mailing" as over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry. Regulation 18435, subdivision (a), clarifies this section, and further defines a mass mailing as over two hundred substantially similar pieces of mail sent in a calendar month. Regulation 18435, subdivision (b), defines the term "sender," as used in Section 84305, as the candidate or committee who pays for the largest portion of expenditures attributable to the designing, printing or posting of the mailing.

¹The 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 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Liability of Committee Treasurers

Under Section 81004, subdivision (b), Section 84100, and Regulation 18427, subdivision (a), it is the duty of the 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. A committee's treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee. (Sections 83116.5 and 91006.)

SUMMARY OF THE FACTS

This case was opened as the result of a complaint that alleged Respondents Alan Frank, Alan Frank for City Council 2012, and Jeff Buchanan were responsible for sending mass mailers which lacked proper sender identification information.

Respondents paid for and caused to be sent two mass mailers that were delivered to voters in Placentia in the week before the November 6, 2012 city council election. One mailer featured Respondent Frank's photograph, accompanied by the words "Elect Alan Frank" and contained a web address; www.alanfrank.org, as well as Respondent Frank's telephone number. Approximately 9,000 pieces of mail were sent. The other mailer opposes the election of two city candidates, It made no reference to Respondent Frank, but included the lines "Vote NO on Underhill" and "Vote NO on Sowards," and contained the phrase "Paid for by Committee #1352738 " in 5 point font. Approximately 6,000 pieces of mail were sent out.

By failing to provide sender identification on a mass mailer, Respondent violated Section 84305, subdivision (a), of the Government Code.

CONCLUSION

This matter consists of one count, which carries a maximum possible administrative penalty of Five Thousand Dollars (\$5,000).

The public harm inherent in the type of violation, where sender identification is not disclosed on a mass mailer, is that the public is deprived of important information regarding the sponsor of the mailing.

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. The Enforcement Division also considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6), which include: 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; whether there was a pattern of violations; and whether upon learning of the violation the Respondent voluntarily filed amendment to provide full disclosure. Additionally, liability under the Act is governed in significant part by the provisions of Section

91001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

Other similar cases regarding a violation of Section 84305, subdivision (a) that have been recently approved by the Commission include:

In the Matter of Protect Burlingame and Kevin Osborne, FPPC No. 09/804. This case involved two separate mailers in a local election campaign, sent to approximately 7,000 households, which lacked proper sender identification. Respondents in this matter did not have an Enforcement history. A \$2,500 penalty was approved for this count by the Commission on April 11, 2011.

In the Matter of Chico Democrats 08 and Michael Worley, FPPC No. 09/537. This case involved a postcard sized mailer sent to approximately 6,000 households in connection with a local election. The sender identification provided on the mailer failed to properly identify the committee responsible for the piece. A \$2,500 penalty was approved by the Commission on January 28, 2011.

In this case, Respondent's actions were similar to the cases above in that none of these cases appear to include anything more than negligent behavior. Respondent has no prior Enforcement history and has no prior experience with campaign reporting. Respondent has fully cooperated with Enforcement in the investigation of this matter.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the Respondent's patter of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Two Thousand Five Hundred Dollars (\$2,500) is recommended.

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