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7
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**

10
11 In the Matter of:

FPPC No. 12/984

12 YES ON 37 FOR YOUR RIGHT TO
13 KNOW IF YOUR FOOD HAS BEEN
14 GENETICALLY ENGINEERED.
15 SUPPORTED BY CONSUMER
16 ADVOCATES, MAKERS OF ORGANIC
17 PRODUCTS AND CALIFORNIA
18 FARMERS,

STIPULATION, DECISION AND ORDER

19 Respondent.

20 **STIPULATION**

21 Complainant, the Fair Political Practices Commission, and the above-captioned Respondent,
22 which is hereafter referred to as Respondent Yes on 37 for ease of reference, hereby agree that this
23 Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next
24 regularly scheduled meeting.

25 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
26 matter and to reach a final disposition without the necessity of holding an additional administrative
27 hearing to determine the liability of Respondent, pursuant to section 83116 of the Government Code.

28 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to

1 appear personally at any administrative hearing held in this matter, to be represented by an attorney at
2 Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to
3 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
4 the hearing as a hearing officer, and to have the matter judicially reviewed.

5 As described in Exhibit 1, it is further stipulated and agreed that Respondent authorized and paid
6 for video advertisements in support of Proposition 37, but the required disclosure statements as to the
7 committee name and donors of \$50,000 or more were not presented in a clear and conspicuous manner in
8 violation of Government Code section 84507 and California Code of Regulations, title 2, section 18450.4
9 (one count). Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth
10 herein, is a true and accurate summary of the facts in this matter.

11 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
12 Respondent also agrees to the Commission imposing upon it an administrative penalty in the amount of
13 \$1,500. One or more cashier's checks or money orders totaling said amount—to be paid to the General
14 Fund of the State of California—is/are submitted with this Stipulation as full payment of the
15 administrative penalty described above, and same shall be held by the State of California until the
16 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the
17 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)
18 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered
19 by Respondent in connection with this Stipulation shall be reimbursed to Respondent. Respondent
20 further stipulates and agrees that in the event the Commission rejects the Stipulation and a full

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1 evidentiary hearing before the Commission becomes necessary, neither any member of the Commission,
2 nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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4 Dated: _____

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

7 Dated: _____

8 Respondent Yes on 37 (Signature of Authorized
9 Representative)

10 _____
11 Printed Name and Title

12 **DECISION AND ORDER**

13 The foregoing Stipulation of the parties “In the Matter of Yes on 37 for Your Right to Know if
14 Your Food Has Been Genetically Engineered. Supported by Consumer Advocates, Makers of Organic
15 Products and California Farmers,” FPPC No. 12/984, including all attached exhibits, is hereby accepted
16 as the final decision and order of the Fair Political Practices Commission, effective upon execution below
17 by the Chair.

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19 IT IS SO ORDERED.

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21 Dated: _____

22 Ann Ravel, Chair
23 Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent is the committee known as “Yes on 37 for Your Right to Know if Your Food Has Been Genetically Engineered. Supported by Consumer Advocates, Makers of Organic Products and California Farmers.” Hereafter, for ease of reference, Respondent simply is referred to as Respondent Yes on 37.

The Political Reform Act (the “Act”)¹ requires each advertisement for or against a ballot measure to include disclosure as to the name of the committee that authorized/paid for the advertisement along with disclosure of the identities of donors who contributed \$50,000 or more to the committee. In this case, Respondent attempted to comply with this requirement, but the disclosure statements were not presented in a clear and conspicuous manner.

For purposes of this stipulation, Respondent’s violation of the Act is stated as follows:

Count 1: In approximately October/November 2012, Respondent authorized and paid for video advertisements in support of Proposition 37, but the required disclosure statements as to the committee name and donors of \$50,000 or more were not presented in a clear and conspicuous manner in violation of Section 84507 and Regulation 18450.4.

SUMMARY OF THE LAW

All legal references and discussions of law pertain to the Act’s provisions as they existed at the time of Respondent’s violation in 2012.

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

When the Political Reform Act was enacted, 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. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act 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. (Section 81002, subd. (a).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.” (Section 81002, subd. (f).)

¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Required Disclosures for Ballot Measure Advertisements

Generally speaking, the Act requires each advertisement for or against a ballot measure to include disclosure as to the name of the committee that authorized/paid for the advertisement along with disclosure of the identities of donors who contributed \$50,000 or more to the committee. If there are more than two such contributors, only the highest and second highest need be disclosed. (See Sections 84501, 84503, and 84504, subd. (c).) The disclosure must be presented in a clear and conspicuous manner that gives adequate notice to the reader, observer or listener. (Section 84507 and Regulation 18450.4.)

In the case of video, the disclosure must be both written and spoken either at the beginning or 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 appear with a reasonable degree of color contrast between the background and text of the statement, must be of sufficient size to be readily legible to an average viewer and air for not less than four seconds. (See Regulation 18450.4, subd. (b)(3)(A).)

SUMMARY OF THE FACTS

As stated above, Respondent is the committee known as “Yes on 37 for Your Right to Know if Your Food Has Been Genetically Engineered. Supported by Consumer Advocates, Makers of Organic Products and California Farmers.”

Count 1: Failure to Comply with Disclosure Requirements for Political Advertisements

In approximately October/November 2012, Respondent authorized and paid for video advertisements, including Youtube videos, in support of Proposition 37. Respondent attempted to comply with the Act’s disclosure requirements by including the following text at the end of the advertisements: “Paid for by Yes on 37 For Your Right to Know if Your Food Has Been Genetically Engineered. Supported by Consumer Advocates, Makers of Organic Products and California Farmers. Major funding by Mercola.com Health Resources LLC and the Organic Consumers Fund.” However, in at least two Youtube videos, the text was not presented in a clear and conspicuous manner because there was insufficient color contrast between the text and the background of the video.

In this way, Respondent violated Section 84507 and Regulation 18450.4.

At the time, the Enforcement Division was conducting a self-initiated evaluation of political advertising. When the Enforcement Division notified Respondent about the foregoing violation, Respondent promptly corrected the videos before the election by adding black background in the form of rectangular boxes behind the text.

CONCLUSION

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

In determining the appropriate penalty for a particular violation of the Act, the 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 the context of the following factors set forth in Regulation 18361.5, subdivision (d)(1) through (6):

- (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 the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);
- (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
- (6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Regarding Count 1, the failure to comply with disclosure requirements for political advertisements is a serious violation of the Act because it deprives the public of important information regarding the funding for the advertisement. A recent stipulation involving this type of penalty imposed a penalty in the mid-range. (See *In the Matter of Yes on Proposition A*, FPPC No. 12/301, approved Jul. 12, 2012 [\$2,500 penalty for failure to display disclosure for the required amount of time and with sufficient color contrast].)

In this case, it is respectfully submitted that a lower penalty is warranted because Respondent's violation only involved a color contrast issue—as opposed to *both* a color contrast issue and a failure to display the disclosure for the required amount of time. Also, a higher penalty is not being sought because Respondent promptly corrected the disclosure violation before the election at the request of the Enforcement Division. Additionally, Respondent cooperated with the Enforcement Division by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held. Also, Respondent has no history of prior violations of the Act.

PROPOSED PENALTY

Based on the facts of this case, including the factors discussed above, an agreed upon penalty of \$1,500 is recommended.