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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. 14/037
13)
14) STIPULATION, DECISION and
15) ORDER
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Respondent.

19 Complainant, the Fair Political Practices Commission (“Commission”), and respondents slate
20 mailer organization Parent Teacher Action Voter Guide (“Respondent Organization”). Patrick Furey Jr.,
21 the organization’s principal officer, and Gary Crummitt, the organization’s treasurer, hereby agree that
22 this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next
23 regularly scheduled meeting.

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

27 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
28 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1

1 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
2 the right to personally appear at any administrative hearing held in this matter, to be represented by an
3 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the
4 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
5 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

6 It is further stipulated and agreed that Respondents Parent Teacher Action Voter Guide, Patrick
7 Furey Jr., and Gary Crummitt violated the Political Reform Act by failing to include in a slate mailer the
8 required "Notice to Voters" disclaimer, in violation of Government Code Section 84305.5 subdivision
9 (a)(2) (1 count). This count is described in Exhibit 1, which is attached hereto and
10 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of
11 the facts in this matter.

12 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
13 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
14 of One Thousand Seven Hundred Fifty Dollars (\$1,750). A cashier's check from Respondent in said
15 amount, made payable to the "General Fund of the State of California," is submitted with this
16 Stipulation as full payment of the administrative penalty, to be held by the State of California until the
17 Commission issues its decision and order regarding this matter. The parties agree that in the event the
18 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)
19 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered
20 by Respondent in connection with this Stipulation shall be reimbursed to Respondent. Respondent
21 further stipulates and agrees that in the event the Commission rejects the Stipulation, and a full
22 evidentiary hearing before the Commission becomes necessary, neither any member of the Commission,
23 nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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Dated: _____

Gary Winuk, Enforcement Chief,
on behalf of the
Fair Political Practices Commission

Dated: _____

Respondent Patrick Furey, Jr.,
Individually and on behalf of
Parents Teachers Action Voter Guide

Dated: _____

Respondent Gary Crummitt,
Individually and on behalf of
Parents Teachers Action Voter Guide

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Parent Teacher Action Voter Guide,
3 Patrick Furey Jr., principal officer, and Gary Crummitt, treasurer” FPPC No. 14/037, including all
4 attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices
5 Commission, effective upon execution below by the Chair.

6
7 **IT IS SO ORDERED.**

8
9 Dated: _____

Sean Eskovitz, Vice Chair
Fair Political Practices Commission

1 **EXHIBIT 1**

2 **INTRODUCTION**

3
4 Respondent Parent Teacher Action Voter Guide (“Respondent Organization”) is a slate mailer
5 organization. Respondent Patrick Furey Jr. (“Respondent Furey”) serves as Respondent Organization’s
6 principal officer and oversees its slate mailers. Respondent Gary Crummitt (“Respondent Crummitt”)
7 serves as the treasurer for Respondent Organization.

8 This matter arose from a referral received by the Fair Political Practices Commission’s
9 (“Commission”) Enforcement Division. An investigation of the allegations in the referral revealed that
10 Respondents did not comply with disclosure provisions specified in the Political Reform Act (the
11 “Act”)¹. Specifically, Respondents failed to display the required “Notice to Voters” disclaimer on a
12 slate mailer distributed to voters prior to the November 5, 2013 election.

13
14 For the purposes of this stipulation, Respondents’ violations of the Act are stated as follows:

15
16 **COUNT 1** Respondents Parent Teacher Action Voter Guide, a slate mailer organization, Patrick
17 Furey Jr., the Organization’s principal officer, and Gary Crummitt, the Organization’s
18 treasurer, failed to include in a slate mailer the required disclaimer “Notice to Voters,” in
19 violation of Government Code Section 84305.5 subdivision (a)(2).

20 **SUMMARY OF THE LAW**

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

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26 _____
27 ¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references
28 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.

1 Slate mailer organizations are included among the entities subject to the Act’s campaign
2 reporting requirements. Under the Act, a slate mailer organization is any person who directly or
3 indirectly, does all of the following: 1) is involved in the production of one or more slate mailers and
4 exercises control over the selection of the candidates and measures to be supported or opposed in the
5 slate mailers; and 2) receives or is promised payments totaling five hundred dollars (\$500) or more in a
6 calendar year for the production of one or more slate mailers. (Section 82048.4, subd. (a).)

7 **Duty to Include Disclaimers in Slate Mailers**

8 Section 84305.5 requires a slate mailer organization to include certain disclosures in its mailers.
9 Subdivision (a)(2) requires that at the top or bottom of the front side or surface of at least one insert or at
10 the top or bottom of one side or surface of a postcard or other self-mailer, there is a notice in at least 8-
11 point roman boldface type, which shall be in a color or print which contrasts with the background so as
12 to be easily legible, and in a printed or drawn box and set apart from any other printed matter. The notice
13 shall consist of the following statement:

14 “NOTICE TO VOTERS

15 THIS DOCUMENT WAS PREPARED BY (name of slate mailer organization or committee
16 primarily formed to support or oppose one or more ballot measures), NOT AN OFFICIAL POLITICAL
17 PARTY ORGANIZATION. Appearance in this mailer does not necessarily imply endorsement of others
18 appearing in this mailer, nor does it imply endorsement of, or opposition to, any issues set forth in this
19 mailer. Appearance is paid for and authorized by each candidate and ballot measure which is designated
20 by an *.”

21 **Liability for Violations**

22 Section 83116.5 provides that any person who violates any provision of this title, who purposely
23 or negligently causes any other person to violate any provision of this title, or who aids and abets any
24 other person in the violation of any provision of this title, shall be liable under the provisions of this
25 chapter. However, this section shall apply only to persons who have filing or reporting obligations
26 under this title, or who are compensated for services involving the planning, organizing, or directing any
27 activity regulated or required by this title.
28

1 Section 84108 requires slate mailer organizations to comply with Section 84100, which requires
2 the entity to have a treasurer. Sections 83116.5 and 91006 provide that a treasurer may be held jointly
3 and severally liable, along with the organization, for any violations of the Act.

4
5 **SUMMARY OF THE FACTS**

6 Respondent Parent Teacher Action Voter Guide (“Respondent Organization”) is a slate mailer
7 organization formed in May 2013. Respondent Patrick Furey Jr. (“Respondent Furey”) serves as
8 Respondent Organization’s principal officer and oversees its slate mailers. Respondent Gary Crummitt
9 (“Respondent Crummitt”) serves as the treasurer for Respondent Organization.

10 Prior to the November 5, 2013 election, Respondents produced and distributed a slate mailer
11 consisting of 6,000 pieces supporting several candidates involved in local South Bay Area elections. All
12 6,000 of the mailings failed to display the required “Notice to Voters” disclaimer as required by the Act.
13 In place of the disclaimer, the mailer displayed a brief summary of the organization. According to
14 Respondent Furey, when Respondent Organization identified the omission it immediately halted any
15 further distribution of the mailings.

16 In addition to the slate mailer sent to the South Bay Area, Respondent Organization produced
17 and distributed three other slate mailers targeting other areas in the greater Los Angeles Area. All three
18 of the other slate mailers properly displayed the “Notice to Voters” disclaimer.

19
20 **CONCLUSION**

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

23 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
24 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
25 emphasis on serving the purposes and intent of the Act. The Enforcement Division also considers the
26 facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5,
27 subdivision (d)(1)-(6), which include: the seriousness of the violations; the presence or lack of intent to
28 deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the

1 Respondent demonstrated good faith in consulting with Commission staff; whether there was a pattern
2 of violations; and whether upon learning of the violation the Respondent voluntarily filed amendment to
3 provide full disclosure.

4 Additionally, liability under the Act is governed in significant part by the provisions of Section
5 91001, subdivision (c), which requires the Commission to consider whether or not a violation is
6 inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and
7 sanctions.

8 Failure to include the required "Notice to Voters" disclaimer is a serious violation of the Act as it
9 deprives the public of important information. In this matter, the public would not have been able to tell
10 which candidates and measures featured in the slate mailer actually paid to appear.

11 The Commission has previously assessed a penalty for a violation of section 84305.5, subsection
12 (a)(2) in two other instances:

13 ***In the Matter of Election Digest - A Project of The Coalition for Literacy and Tracey Pomerance-***
14 ***Poirier.*** (FPPC No. 13/107). Respondents Election Digest - A Project of The Coalition for Literacy, a
15 slate mailer organization, and Tracey Pomerance-Poirier, the Organization's founder, failed to provide
16 the required "Notice to Voters" disclaimer in a color or print which contrasted with the background so as
17 to be easily legible, on slate mailers sent in connection with the November 6, 2012 election, in violation
18 of Government Code Section 84305.5 subdivision (a)(2). The violation was aggravated by the fact that
19 Respondent Pomerance-Poirier had experience producing slate mailers, had already been fined twice by
20 the Commission in connection with disclosure requirements, and appeared to have acted with intent at
21 worst or negligence at best. On August 22, 2013, the Commission approved a fine of \$3,000 for the one
22 count.

23 ***In the Matter of Paul Fickas and Decline to State Voter Guide.*** (FPPC No. 10/959). Respondent
24 Decline to State Voter Guide was a slate mailer organization formed and controlled by respondent Paul
25 Fickas. Respondents failed to include required wording in the slate mailer disclaimer "Notice to Voters"
26 and to place asterisks following the names of the candidates that paid to appear in slate mailers sent in
27 connection with the November 2, 2010 Election. The respondents had no prior experience with
28 producing slate mailers and did not make any effort to ensure they were in compliance with the Act.

1 However, respondents had no prior history of violating the Act and it did not appear they intended to
2 deceive voters. On September 22, 2011, the Commission approved settlement of this case, with a
3 \$1,500 penalty for this violation.

4 The circumstances here appear to be closer aligned to the second comparable case. Most
5 importantly, in contrast to the first case described above, the violation here was likely inadvertent and
6 there is no evidence demonstrating that Respondents acted with an intent to deceive voters. Also,
7 Respondent Furey, the officer who oversaw the production and distribution of the slate mailer, has no
8 prior history of violating the Act.

9 However, in aggravation, Respondent Furey is an experienced political operative and should
10 have been aware of the Act and its disclaimer requirements. In further aggravation, Respondent
11 Crummitt has a prior history of violating the Act including *In the Matter of CA Voter Guide and Gary*
12 *Crummitt*, FPPC No. 12/374, where Respondent Crummitt's employer failed to provide proper
13 identification on a slate mailer.

14 **Proposed Penalty**

15 After consideration of the factors of Regulation 18361.5, including whether the behavior in
16 question was inadvertent, negligent or deliberate and the Respondent's pattern of behavior, as well as
17 consideration of penalties in prior enforcement actions, the imposition of a penalty of One Thousand
18 Seven Hundred Fifty Dollars (\$ 1,750) is recommended.

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