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

10
11 In the Matter of

12 CITY OF RIALTO,

13 Respondent.

FPPC No. 12/869

14 STIPULATION, DECISION, AND ORDER

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16 **STIPULATION**

17 Complainant, the Fair Political Practices Commission (Commission), and respondent City of
18 Rialto (Respondent) hereby agree that this Stipulation will be submitted for consideration by the Fair
19 Political Practices Commission at its next regularly scheduled meeting.

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

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

1 the hearing as a hearing officer, and to have the matter judicially reviewed.

2 It is further stipulated and agreed that Respondent violated the Political Reform Act by sending
3 mass mailers at public expense in violation of Government Code section 89001 as described in Exhibit
4 1. Exhibit 1 is attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1
5 is a true and accurate summary of the facts in this matter.

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

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20 Dated: _____ Gary S. Winuk, on behalf of the Enforcement Division
21 Fair Political Practices Commission

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24 Dated: _____ Mike Story, City Administrator,
25 on behalf of the City of Rialto
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1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of City of Rialto,” FPPC No. 12/869,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____
9 Joann Remke, Chair
10 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent City of Rialto (“Respondent”) is an incorporated city in the County of San Bernardino. The Political Reform Act (the “Act”)¹ prohibits local government agencies from sending mass mailings at public expense. Respondent violated the Act by sending mass mailings paid for with public funds.

For the purposes of this Stipulation, Respondent’s violations of the Act are stated as follows:

COUNT 1: Respondent sent mass mailers at public expense to residents of the City of Rialto in 2012 concerning Measure V, a proposed ordinance on the General Election ballot, that included the names, offices, and photographs of Respondent’s city council members and mayor in violation of Section 89001 and Regulation 18901.

COUNT 2: Respondent sent mass mailers at public expense to residents of the City of Rialto in 2012 concerning Measure V, a proposed ordinance on the General Election ballot, that unambiguously urged a particular result in the election in violation of Section 89001 and Regulation 18901.1.

SUMMARY OF THE LAW

Mass Mailing by a Public Agency

Section 89001 provides that no news letter or mass mailing shall be sent at public expense. Regulation §18901 provides that a mailer is prohibited under Section 89001 if:

- (1) It is delivered by any means to the recipient at his/her residence, place of employment, or P.O. box;
- (2) It features an elected officer affiliated with the agency, or includes the name, office, photograph, or other reference to an elected officer affiliated with the agency and is sent in coordination with the officer;
- (3) Its costs of distribution are paid for with public funds, or if \$50 or more in public funds is used to design, produce or print the item; and
- (4) More than 200 substantially similar pieces are sent.

Regulation 18901.1 provides that a mailing is prohibited under Section 89001 if

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 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.

- (1) It is delivered by any means to the recipient at his/her residence, place of employment, or P.O. box;
- (2) The item expressly advocates for or against a clearly identified measure, or unambiguously urges a particular result in an election;
- (3) Its costs of distribution are paid for with public funds, or if \$50 or more in public funds is used to design, produce or print the item; and
- (4) More than 200 substantially similar pieces are sent.

SUMMARY OF THE FACTS

Measure V appeared on the 2012 General Election ballot for residents of Rialto. Measure V proposed to levy a tax on oil companies operating in Rialto. Respondent's city council voted to place Measure V on the ballot in August of 2012. Shortly thereafter, Respondent's city council voted at a city council meeting to approve a contract between Respondent and Bustamante & Associates, LLC ("Bustamante") for Bustamante to provide "educational and outreach efforts" to the community regarding the benefits of Measure V. The contract called for Bustamante to prepare and send out mailers, amongst various other activities. The total cost of Bustamante's services was \$143,500.

As part of the campaign put on by Bustamante, Respondent sent out five sets of mass mailers to voters in its jurisdiction. Each mailer detailed the potential benefits to Respondent and its citizens that would result from the passage of Measure V.

Two of the sets of mailers included the name, photograph, and office of the members of Respondent's city council and its mayor. One of those mailers highlighted the increased funding for fire safety that would result from Measure V. The other included the headline "It's About Their Future" and included a picture of children playing as well claims that Measure V would provide more police officers, more firefighters, safer roads, and improved services for seniors. Both mailers included statements that Measure V would only be a tax on oil companies, and would not result in additional taxes or fees for individuals or other businesses.

The other mailers did not explicitly state "vote yes on Measure V" or "vote for Measure V", but on the whole it was clear that each mailer was urging people to vote in favor of Measure V. One set of mailers contained the phrase "Measure V: It's About Protecting You." It included statements about how Measure V would provide funding to improve public safety, including a quote from Rialto's police chief that Measure V "will provide the funding necessary to keep our neighborhoods safe."

Another mailer had the heading "Measure V will Help Protect our Seniors and Their Services from Budget Cuts" next to a picture of a female senior citizen. It also included the following representations: Measure V will provide funding for Senior Citizens; Measure V will Protect Rialto's Police and Fire Services; Measure V will fix potholes in our streets; Measure V is a tax on a few wealthy oil companies in Rialto; and Measure V is NOT a tax on residents or other Rialto businesses. Next to each of these statements was a box with a checkmark in it. On both the front and back of the mailer it said "Remember to Vote on November 6, 2012."

The final mailer included the heading “Who Benefits from Measure V on the November 6th Ballot?” The mailer answered that senior citizens, firefighters, police, and the citizens of Rialto all would benefit from Measure V. The mailer also included written testimonials from Respondent’s police chief, fire chief, community services director, and a senior citizen Rialto resident about how Measure V would benefit each of those groups.

In the General Election, Measure V did not obtain enough votes to become law.

VIOLATIONS

Count 1

Sending Mass Mailers at Public Expense

Respondent sent mass mailers at public expense to residents of the City of Rialto in 2012 concerning Measure V that included the names, offices, and photographs of Respondent’s city council members and mayor in violation of Section 89001 and Regulation 18901.

Count 2

Sending Mass Mailers at Public Expense

Respondent sent mass mailers at public expense to residents of the City of Rialto in 2012 concerning Measure V that unambiguously urged a particular result in the election in violation of Section 89001 and Regulation 18901.1.

CONCLUSION

This matter consists of two counts of violating the Act, which carry a maximum administrative penalty of Five Thousand Dollars (\$5,000) per count for a total of Ten Thousand Dollars (\$10,000).

In determining the appropriate penalty for a particular violation of the Act, the Fair Political Practices Commission (“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 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): 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 the Respondent, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

In similar cases where mass mailers are sent at public expense, the penalties range from \$2,000 to \$3,500 depending largely on the nature of the mailer. For example, the Commission approved a penalty of \$2,000 against the City of Rocklin on June 19, 2014 for sending out an information mailer that included names, offices, and photographs of the city’s elected officials. (*In the Matter of City of Rocklin*, FPPC No. 14/346.) The mailer contained an events schedule and other articles of general interest to city residents. It was not produced in connection with an election and did not advocate for a candidate or ballot measure.

By comparison, *In the Matter of the City of Orange Cove and Victor Lopez* (FPPC No. 06/617) concerned a mailer sent out by the respondents using public funds that was titled “the Mayor’s Report” that included the name of the mayor, Victor Lopez, as well as a list of the mayor’s accomplishments. The mailer was sent in response to a newspaper article that had been critical of the mayor’s expense account spending. The respondents sent the mass mailer less than a week after the mayor declared his intention to run for re-election. On January 14, 2010, the Commission approved a penalty of \$3,500 for the violation.

Similarly, *In the Matter of San Gabriel Unified School District*, FPPC No. 06/191 concerned two mass mailers sent by the respondent that featured two elected members of the school district governing board. The mailers were paid for by respondent and sent by a campaign consulting firm that had contracted with respondent to “conduct a voter education, outreach and information effort relating to its schools facilities and a potential general obligation bond.” On February 11, 2010, the Commission approved a penalty of \$3,000 for one count of violating the Act.

The mass mailers Respondent sent were designed to influence citizens to vote in favor of Measure V. They were not merely informational. In this way, Respondents violations were more similar to the violations in the *City of Orange Cove* and the *San Gabriel Unified School District* case than the *City of Rocklin* case.

Respondent contends that in entering into the contract with Bustamante and sending the mass mailers, it consulted with legal counsel in an attempt to comply with the Act. However, Respondent’s inclusion of names, offices, and photographs of elected officials on mass mailers clearly violated the law. With regard to the other mailers, although Respondent did not expressly advocate for Measure V, the law not only prohibits the use of so-called “magic words” (i.e. “Vote Yes on Measure V”), but also more subtle messages in mailings sent at public expense that attempt to influence voters, which was the case here. To Respondent’s credit, it has cooperated with the Commission’s investigation, acknowledges its violations of the Act, and has agreed to settle this matter without any further administrative proceedings.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including the seriousness of the violations, as well as consideration of penalties in a prior enforcement action, the imposition of a penalty of \$3,000 per count for a total penalty of \$6,000 is recommended.