

1 GALENA WEST
Chief of Enforcement
2 NEAL BUCKNELL
Senior Commission Counsel
3 Fair Political Practices Commission
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 323-6424
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant

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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

12 CARLOS VILLAPUDUA; STEVE
13 BESTOLARIDES; and CENTRAL
VALLEY PAC – CALIFORNIA, YES ON
14 MEASURE D,

15 Respondents.

FPPC Case No. 12/798

STIPULATION, DECISION AND ORDER

16 **STIPULATION**

17 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
18 Respondents Carlos Villapudua; Steve Bestolarides; and Central Valley PAC – California, Yes on
19 Measure D hereby agree that this Stipulation will be submitted for consideration by the Fair Political
20 Practices Commission at its next regularly scheduled meeting.

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

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

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

3 It is further stipulated and agreed that Respondents violated the Political Reform Act as set forth
4 in Exhibit 1, which is a true and accurate summary of the facts in this matter—and which is incorporated
5 by reference as though fully set forth herein.

6 Respondents agree to the issuance of the Decision and Order, which is attached hereto. Also,
7 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
8 \$26,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General
9 Fund of the State of California—is/are submitted with this Stipulation as full payment of the
10 administrative penalty described above, and same shall be held by the State of California until the
11 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the
12 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen business
13 days after the Commission meeting at which the Stipulation is rejected, all payments tendered by
14 Respondents in connection with this Stipulation shall be reimbursed to Respondents.

15 Respondents further stipulate and agree that in the event the Commission rejects the Stipulation
16 and a full evidentiary hearing before the Commission becomes necessary, neither any member of the

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1 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this
2 Stipulation.

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5 Dated: _____
6 Galena West, Chief of Enforcement
Fair Political Practices Commission

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9 Dated: _____
10 Carlos Villapudua, Respondent

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12 Dated: _____
13 Steve Bestolarides, Respondent

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15 Dated: _____
16 David Bauer, on behalf of Respondent Central Valley
PAC – California, Yes on Measure D

17 **DECISION AND ORDER**

18 The foregoing Stipulation of the parties “In the Matter of Carlos Villapudua; Steve Bestolarides;
19 and Central Valley PAC – California, Yes on Measure D,” FPPC Case No. 12/798, including all attached
20 exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission,
21 effective upon execution below by the Chair.

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23 IT IS SO ORDERED.

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25 Dated: _____
26 Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

In June 2012, Carlos Villapudua and Steve Bestolarides were re-elected to the San Joaquin County Board of Supervisors for their second term.

Central Valley PAC – California, Yes on Measure D was a primarily formed ballot measure committee that supported San Joaquin County Measure D in the November 2012 election. The measure would have increased term limits for the San Joaquin County Board of Supervisors from two terms to three terms, but it was defeated.

Although Villapudua and Bestolarides did not completely control every action and decision of the PAC, their influence was significant enough that the PAC qualified as their controlled committee under the Political Reform Act (the “Act”).¹ As controlling candidates, their last names were required to be included as part of the committee name for all purposes, including the “paid for by” language in the PAC’s advertising disclosures. This case arises from a failure to identify the PAC’s controlling candidates in the PAC’s advertisements.

SUMMARY OF THE LAW

The Act and its regulations are amended from time to time. The violations in this case occurred in 2012. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they existed at that time.

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

When enacting the Political Reform Act, the people of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.² For this reason, the Act is to be construed liberally to accomplish its purposes.³

One purpose of the Act is to promote transparency by requiring each committee that is controlled by one or more candidates to include the last names of the controlling candidates as part of the committee’s name.⁴ The full committee name in this regard must be used by the committee in conjunction with advertising disclosures that are required by the Act, which helps ensure that the voting public is made aware of who pays for political advertisements—and which

¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to this code. 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 this source.

² Section 81001, subdivision (h).

³ Section 81003.

⁴ Sections 84101, 84102, and Regulation 18402, subdivision (c).

candidates are involved.⁵ Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁶

Definition of Controlled Committee

The Act defines a “committee” to include any person (or combination of persons) who receives contributions totaling \$1,000 or more in a calendar year.⁷ This type of committee commonly is referred to as a “recipient committee.”

A recipient committee that is controlled directly or indirectly by a candidate, or which acts jointly with a candidate in connection with the making of expenditures, is a “controlled committee.” A candidate controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee.⁸

Whether a candidate has “significant influence” on the actions or decisions of a committee depends on all of the facts and circumstances surrounding the candidate’s involvement and the committee’s activities.

Definition of Primarily Formed Ballot Measure Committee

A recipient committee that is formed or exists primarily to support or oppose a ballot measure is referred to as a primarily formed ballot measure committee.⁹

Committee Name Requirements

Whenever identification of a committee is required by law, the identification must include the full name of the committee as required in the statement of organization, and in the case of a committee that is controlled by one or more candidates, the name of the committee must include the last name of each controlling candidate.¹⁰

Mandatory Disclosure for Political Advertisements

Political advertisements that are regulated by the Act include any general or public advertisement that is authorized and paid for by a person or committee for the purpose of supporting or opposing a ballot measure.¹¹ When such an advertisement is paid for by a

⁵ Sections 84501, et seq. and Regulation 18402, subdivision (c).

⁶ Section 81002, subdivision (f).

⁷ Section 82013, subdivision (a).

⁸ See Section 82016.

⁹ Section 82047.5, subdivision (b).

¹⁰ Sections 84101, 84102, and Regulation 18402.

¹¹ Section 84501, subdivision (a).

committee, the advertisement must include a disclosure statement that says, “Paid for by [name of the paying committee].”¹²

Joint and Several Liability

Candidates may be held jointly and severally liable, along with their controlled committee, for violations committed by the committee.¹³

SUMMARY OF THE FACTS

In 2008, Villapudua and Bestolarides were elected to the San Joaquin County Board of Supervisors. In June 2012, they were re-elected to a second term.

On or about July 24, 2012, at a meeting of the San Joaquin County Board of Supervisors, there was a resolution to put a measure on the ballot that would increase existing term limits for the San Joaquin County Board of Supervisors from two terms to three terms. At the time, the members of the board of supervisors included Villapudua and Bestolarides—as well as Ken Vogel, Frank Ruhstaller, and Leroy Ornellas. All of the supervisors were serving their second term of office or had been elected to their second term of office—except Ornellas, who was serving his third term (because his first term was less than a full term). Ornellas voted against the resolution to increase term limits, but the other supervisors voted in favor of it. Villapudua and Bestolarides were two of the signers of the official rebuttal to arguments against the measure.

On or about August 7, 2012, the term limits ballot measure was designated as Measure D by the San Joaquin County Registrar of Voters. Ultimately, the measure would be defeated (as it only garnered approximately 41.73% of the vote).

Central Valley PAC – California, Yes on Measure D was a primarily formed ballot measure committee, which supported Measure D in the November 2012 election. The treasurer of the PAC was David Bauer, and Frank Adams was listed as the principal officer of the PAC on a Statement of Organization (Form 410) filed with the Secretary of State.

Villapudua and Bestolarides maintain that they were not involved in the formation of the PAC. Although they were not involved in the making of all PAC decisions, the actions and decisions of the PAC were influenced significantly by Villapudua and Bestolarides. The PAC qualified as their controlled committee for this reason.

For example, Jeff Acquistapace is one of the people who was a consultant for the PAC. Acquistapace also was Bestolarides’ campaign consultant for Bestolarides’ 2012 re-election campaign (which concluded with the June 2012 election). Acquistapace communicated with Bestolarides concerning the Measure D campaign from time to time, and Bestolarides provided input to Acquistapace regarding pro-Measure D campaign language, fundraising, and pro-

¹² Section 84504, subdivision (c); and Regulation 18450.4. Also, see Campaign Disclosure Manual 3, Ballot Measure Committees (Mar. 2015 ed.), chapter 7.

¹³ Sections 83116.5 and 91006.

Measure D digital advertising that focused on casting Supervisor Ornellas in a negative light. (Ornellas was a well-known opponent of Measure D.)

Also, Villapudua was involved in the decision-making process with respect to advertisements by the PAC, including campaign mailers, signs and a pro-Measure D video, which aired on cable television—and which focused on casting Dean Andal in a negative light. (Andal was another well-known opponent of Measure D.) While Bestolarides was not involved in the planning or production of the video, when he learned about it, he asked that the ad be pulled based on his concerns regarding the reputation of a local consultant, Alan Sawyer, who was associated with the production of the advertisement—and the PAC’s consultants directed that the ad be pulled.

The PAC first qualified as a recipient committee on or about September 20, 2012, when it received contributions totaling \$30,000 from the supervisor committees for Villapudua, Bestolarides, and Vogel. Each committee contributed \$10,000 to the PAC at that time.

As of the end of 2012, reported receipts and expenditures for the PAC totaled in excess of \$76,000 and \$80,000, respectively. Most of the contributions that the PAC received were from the following San Joaquin County Supervisor committees:

Contributor	Amount
Citizens to Re-elect Steve Bestolarides for Supervisor, Third District, 2012	\$20,000
Ken Vogel for Supervisor	\$16,200
Re-elect Carlos Villapudua for Supervisor, District 1 – 2012	\$15,000
Ruhstaller for Supervisor 2012	\$4,000
Total: \$55,200	

VIOLATION

Count 1: Improper Advertising Disclosures

Beginning in approximately September 2012, and continuing through the date of the November election, the PAC spent at least \$26,465 on pro-Measure D advertisements that were subject to the Act’s disclosure requirements. This included the following advertising expenses:

Advertising Expense	Known Cost
pro-Measure D television advertisement re: Dean Andal	\$12,000
pro-Measure D Youtube videos re: Leroy Ornellas	\$700
billboards (4’ x 8’)	\$8,620
Yes on D mailer (approximately 11,100 recipients)	\$3,645
website/logo design	\$1,500
Total: \$26,465	

With respect to the television advertisement noted above, a disclosure was included at the end of the advertisement to the effect that the advertisement was: “Paid for by the Central Valley PAC.” However, this was not the full, required name of the PAC. The last names of Villapudua

and Bestolarides, as controlling candidates, should have been included in the name of the PAC for purposes of the advertising disclosure (and for all other purposes).

The disclosures for the other advertisements noted above were similarly deficient.

In this way, Villapudua, Bestolarides, and the PAC violated the advertising disclosure requirements of Section 84504, subdivision (c).

PROPOSED PENALTY

This matter consists of one count involving violation of the Act's advertising disclosure requirements. The maximum penalty that may be imposed is three times the cost of the advertisements. The known advertising expenses that are in question total approximately \$26,465. Thus, the maximum penalty that may be imposed is \$79,395.¹⁴

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior record of violations.¹⁵ Additionally, the Commission considers penalties in prior cases with comparable violations.

In this case, the public was deprived of important, time-sensitive information regarding the identities of the candidates who were controlling the PAC that paid for the advertisements. This type of violation is serious and involves a great degree of public harm because the public is deprived of information that was required to be disclosed before an election—which has the potential to affect how votes are cast.

In the Matter of Patrick J. Furey, Pat Furey for Mayor 2014, Torrance Voters PAC to Support Pat Furey for Mayor 2014, Richard Roesch, and Tina McKinnor; FPPC Case No. 14/1118 (approved Mar. 17, 2016), the Commission imposed a penalty in the amount of \$35,000 against a candidate, his committee, and a PAC for various campaign filing/reporting violations. The case involved coordination between the PAC and the candidate's campaign; and this relationship was concealed from the public—much like the current case. Although the statutory violations that were charged in the *Furey* case are different, technically, from the advertising statute that is involved in the current case, both cases involve a similar type of public harm. Also, both cases involve a similar amount of spending. (*Furey* involved coordinated expenditures totaling approximately \$35,174. The current case involves advertising expenditures totaling approximately \$26,465.) Additionally, both cases involve experienced candidates. (*Furey* involved violations stemming from a 2014 mayoral election—but the candidate first was elected to the city council in 2008. The current case involves a 2012 election, but Villapudua and

¹⁴ See Section 84510, subdivision (a).

¹⁵ Regulation 18361.5, subdivision (d).

Bestolarides first were elected as county supervisors in 2008—and Bestolarides served for a number of years as a Stockton City Councilman before that.) Nevertheless, it may be argued that a higher penalty was warranted in the *Furey* case because that case also involved circumvention of a local contribution limit, and the candidate’s campaign manager was uncooperative when questioned by Enforcement. For this reason, a lower penalty in the amount of \$26,000 is recommended in the current case, but this takes into account the following aggravating factors:

- ❖ The PAC first qualified as a recipient committee on or about September 20, 2012, when it received large contributions from the supervisor committees of the controlling candidates and one other supervisor. This triggered the duty to file a statement of organization within 10 days with the San Joaquin County Registrar of Voters. However, the statement was not filed until October 26, 2012—approximately 25 days late. Although the statement was filed before the election (albeit only 11 days before the election), the statement did not include any of the required information regarding identification of the controlling candidates. (For example, the last names of Villapudua and Bestolarides, as controlling candidates, were required to be included as part of the PAC’s name in the statement of organization, and the cover sheet of the statement was required to identify Villapudua and Bestolarides as controlling candidates.¹⁶)
- ❖ Virtually the same thing occurred with respect to the PAC’s pre-election statement for the period ending September 30, 2012. It was filed three weeks late, only 11 days before the election, and none of the required information regarding identification of the controlling candidates was provided in this statement. Even though this required information was missing, the statement still provided some useful information for the public because it showed sizable contributions from the supervisor committees for Villapudua, Bestolarides, and another county supervisor. However, due to the lateness of the filing with the San Joaquin County Registrar of Voters, this information was not made available to the public until most of the PAC’s advertisements already had been made.
- ❖ The PAC’s other filings also failed to include any of the required information that would have identified the PAC as a controlled committee of Villapudua and Bestolarides. (This includes the second pre-election statement for the period ending October 20, 2012 and 24-hour contribution reports that were filed by the PAC in late October and early November 2012.)
- ❖ After the election, Villapudua’s 2012 supervisor committee filed a semi-annual campaign statement for the period ending December 31, 2012. On Schedule D of the filing, Villapudua was required to report his contributions to the PAC in support of Measure D (which totaled \$15,000), but he failed to do so. Rather, he simply reported the payments as expenditures on Schedule E—without any reference to Measure D.
- ❖ After the election, Bestolarides’ 2012 supervisor committee also filed a semi-annual campaign statement for the period ending December 31, 2012. On Schedule D, Bestolarides did report his contributions to the PAC (which totaled \$20,000). However, instead of using the PAC’s full, legal name, which would have included a reference to

¹⁶ Sections 84101, 84102; Regulations 18402, and 18430.

Measure D, the PAC simply was referred to as “Central Valley PAC / California.”¹⁷ No reference to Measure D was made in the name of the PAC—nor anywhere else in the campaign statement.

The aggravating factors noted above reflect a pattern of behavior that served to downplay or conceal the involvement/roles of Villapudua and Bestolarides with respect to the PAC and the PAC’s advertisements. Some of these factors could be charged as additional counts, but for settlement purposes, they are being noted as aggravating information instead—since they all stem from the same core violation of controlling the committee, and the proposed fine adequately includes the harm resulting from the other violations.

Stipulations involving advertising violations show that the Commission has a history of forgoing treble damages in favor of penalties of \$5,000 or less per count. For example, *In the Matter of Southern California Taxpayers Association, Sponsored by and with Major Funding from Milan REI IV, LLC, Barrett Garcia, and Ann Garrett*; FPPC Case No. 12/782 (approved Nov. 20, 2014), the Commission imposed a penalty in the amount of \$2,500 for an advertising violation where 750 lawn signs failed to include information identifying the group that paid for the signs. It was noted that treble damages were not appropriate in that case—partially because respondents’ other advertisements contained proper “paid for by” disclosures. In the current case, none of the PAC’s advertisements included the required disclosures that would have identified Villapudua and Bestolarides as controlling candidates—making treble damages more appropriate.

The Commission certainly has not waived its right to impose treble damages, and in any case, separate counts could be charged for each advertisement in question. (For example, *In the Matter of Dean Andal, Citizens for Andal, Citizens for Andal-Lincoln Unified, and Larry Solari*; FPPC Case No. 05/703 (approved Oct. 8, 2009), the Commission considered a case involving lack of sender identification information in connection with multiple mass mailings—which are a form of advertising—and each mass mailing was charged as a separate count.¹⁸) Also, the aggravating factors listed above could be charged as additional counts. Rather than charge this way, however, it is recommended that the current case be resolved as a single count—for up to three times the cost of the advertisements—because this is the simplest, most straight-forward way to charge, and because it affords the greatest flexibility and discretion for the Commission to impose the most appropriate penalty. Also, this manner of charging is consistent with the Act’s stated purpose of providing adequate enforcement mechanisms to ensure vigorous enforcement.¹⁹

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¹⁷ Per Section 84107 and Regulation 18402, the PAC’s full, legal name was required to include the phrase “a committee for Measure D” (or something similar to this) because the PAC was a primarily formed ballot measure committee in support of Measure D.

¹⁸ Per Regulation 18450.1, the definition of “advertisement” includes direct mailings intended for delivery in substantially similar form to more than 200 recipients.

¹⁹ Section 81002, subdivision (f).

A higher penalty is not being sought for the following reasons:

- Villapudua and Bestolarides cooperated with the Enforcement Division by agreeing to an early settlement.
- They do not have a history of prior, similar violations of the Act.²⁰
- They maintain that they had very limited prior experience with local ballot measure campaigns, and thus had limited understanding of the legal requirements that applied.
- With respect to the public, it was well-known that Villapudua and Bestolarides supported Measure D since both supervisors voted to place the measure on the ballot—and they both signed the official rebuttal to arguments against the measure.
- Also, with respect to Bestolarides, he was not involved in the planning or production of the pro-Measure D television advertisement (regarding Dean Andal), which had the highest cost—and possibly the widest distribution of the PAC’s advertisements.

CONCLUSION

Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$26,000 is justified. For settlement purposes, each respondent accepts one-third responsibility for this violation.

²⁰ In September 2010, a warning letter was issued to Villapudua for failure to disclose occupation and employer information for some contributors—as well as small amounts of unlawful cash expenditures and personal use of campaign funds.