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

11 In the Matter of:

12 CALIFORNIANS FOR GOOD
13 SCHOOLS AND GOOD JOBS and
14 SHAWNDA DEANE

Respondents.

FPPC No. 14/887

STIPULATION, DECISION, AND ORDER

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16
17 **STIPULATION**

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
19 Californians for Good School and Good Jobs and Shawnda Deane (Respondents) hereby agree that this
20 Stipulation will be submitted for consideration by the Fair Political Practices Commission (Commission)
21 at its next regularly-scheduled meeting.

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

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

1 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
2 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
3 the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that respondent Californians for Good Schools and Good Jobs
5 violated the Political Reform Act by inaccurately identifying itself as the source of mass mailings in
6 violation of Government Code section 84305, subdivision (a) and California Code of Regulations, title 2,
7 section 18435, subdivision (d), and Respondents violated the Political Reform Act by inaccurately
8 reporting a contribution and expenditures on a semi-annual campaign statement and on a late independent
9 expenditure in violation of Government Code sections 84211 and 84202, all as described in Exhibit 1.
10 Exhibit 1 is attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a
11 true and accurate summary of the facts in this matter.

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

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26 Dated: _____
27 Galena West, Chief, on behalf of the Enforcement
28 Division Fair Political Practices Commission

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Dated: _____
Shawnda Deane, individually and on behalf of
Californians for Good Schools and Good Jobs

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Californians for Good Schools and Good Jobs and Shawnda Deane,” FPPC No. 14/887, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____
Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Californians for Good Schools and Good Jobs (the “Committee”) is a state general purpose committee. Respondent Shawnda Deane is the Committee’s treasurer. The Political Reform Act (the “Act”)¹ requires that a mass mailing identify who paid for the mailing, including the sender’s name and address. It also requires that costs associated with sending mass mailings are disclosed on campaign statements and reports. The Committee violated the Act by causing the Committee’s name to be listed on mass mailings as having paid for the mailings when it was not the true sender of the mailings. The Committee and Deane violated the Act by inaccurately reporting a contribution and expenditures related to the mass mailings.

SUMMARY OF THE LAW

Sender Identification on Mass Mailings

The Act defines a “mass mailing” as over two hundred substantially similar pieces of mail.² The sender of a mass mailing must include the words “paid for by” and the name and address of the sender printed on the mailing.³ The sender of a mass mailing is the committee that pays for the largest portion of expenditures attributable to the design, printing, and posting of the mailing.⁴ To “pay for” a mass mailing means to make, to promise to make, or to incur an obligation to make, any payment.⁵

Reporting Contributions and Expenditures

A committee’s campaign statements must accurately disclose the contributions a committee received and the expenditures it made during the statement period.⁶ Further, a committee that makes independent expenditures of \$1,000 or more to support or oppose a measure within 90 days prior to an election must file a late independent expenditure report.⁷ All campaign statements and reports required by the Act are signed under penalty of perjury and verified by the filer to be true and accurate to the best of the filer’s knowledge.⁸

Treasurer Liability

Every committee must have a treasurer.⁹ It is the duty of a 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.¹⁰ A treasurer may be held liable, along

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and 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, and all regulatory references are to this source.

² §82041.5.

³ §84305 and Reg. 18435, subd. (d).

⁴ Reg. 18435, subd. (b)

⁵ Reg. 18435, subd. (c).

⁶ §84211.

⁷ §§82036.5 and 84204.

⁸ §81004.

⁹ §84100.

¹⁰ § 84100 and Reg. 18427, subd. (a).

with the committee, for any reporting violations by the committee.¹¹ At the time the violations in this case occurred, the Act did not hold a committee's principal officers liable for violations by the committee.

SUMMARY OF THE FACTS

Measure V was put on the ballot in the City of Rialto by the Rialto City Council and appeared on the 2012 general election. Measure V proposed to increase property taxes on oil companies operating fuel storage facilities in Rialto in order to raise funds for city services. Phillips 66, an oil and gas company, owned and operated a terminal in Rialto that would have been subject to the tax increase proposed by Measure V.

The Committee formed on October 12, 2012¹² with Deane as its treasurer and Josh Pulliam as its principal officer. Pulliam is the owner of JPM&M, Inc. a political consulting firm. Leading up to the 2012 general election, JPM&M was managing an independent expenditure campaign opposing Joe Baca, Jr., a Rialto City Councilmember, and supporting Cheryl Brown in a race for State Assembly in San Bernardino County ("AD47 IE"). The California Tribal Business Alliance ("CTBA"), a general purpose committee, paid for much of the AD 47 IE campaign. It consisted mainly of direct mailings and field operations in San Bernardino County.

In mid-October, JPM&M was contacted by one of the CTBA contributors and told that Stephanie Williams, a governmental affairs manager for Phillips 66, would be contacting JPM&M regarding the AD47 IE. Williams contacted JPM&M on October 23rd and discussed doing an anti-Measure V campaign along with the existing AD47 IE program. JPM&M agreed.

Phillips 66 paid for two sets of mass mailings opposing Measure V. Political consultant Thad Howard was hired by Phillips 66 to provide content for the mass mailings, and JPM&M helped to design and produce the mailings. Each set consisted of approximately 17,000 mailers. The mailings were printed by Insource Print & Design, Inc. ("Insource"). The first set of mailings went out for mailing on November 1st and the second set went out for mailing on November 2nd.

The total cost of the mass mailings was \$37,850.10. Rather than paying Insource or JPM&M for the mailings, Phillips 66 wrote a check for \$41,000 to the Committee. The Committee then paid Insource the amount owed for the mailings. Phillips 66 made the \$41,000 payment with the agreement the money would be used to pay for the mass mailings. The Committee had not received a contribution from Phillips 66 at the time the mailings were designed, printed, and mailed.

Both sets of mass mailings included a sender ID that said "Californians for Good Schools and Good Jobs, 1787 Tribute Road, Suite K, Sacramento, CA 95815. Not authorized by a candidate or candidate controlled committee." The Committee reported on its semi-annual statement for October 21st through December 31st making an independent expenditure on November 2nd for mailings opposing Measure V.

¹¹ §§83116.5 and 91006; Reg. 18316.6.

¹² All dates refer to the year 2012 unless otherwise indicated.

Further, the Committee statement reported receiving a \$41,000 monetary contribution from Phillips 66 on the same day. The Committee also filed a late independent expenditure report (Form 496) on November 2nd reporting an independent expenditure of \$37,850.10 for mailings.

The Committee contends it believed it was in compliance with the Act when it identified itself as the sender of the mass mailings. However, since Phillips 66 was largely responsible for the content of the mass mailings and intended the payment to the Committee to be used for the mailings, Phillips 66 was the sender of the mass mailings, and not the Committee.

Measure V failed to pass by a margin of 52.77% to 47.23%, a difference of 1,154 votes.

VIOLATIONS

Counts 1 and 2 – Inaccurate identification of sender on mass mailings

The Committee caused two sets of mass mailings opposing Measure V to be sent that inaccurately identified the Committee as the sender of the mailings rather than the true sender of the mass mailings, Phillips 66, in violation of section 84305, subdivision (a) and regulation 18435, subdivision (d).

Count 3 – Inaccurate reporting on semi-annual campaign statement

The Committee and Deane inaccurately reported the payment by Phillips 66 for the two sets of mass mailers opposing Measure V as a contribution to the Committee by Phillips 66, and as an independent expenditure by the Committee on the Committee's semi-annual campaign for October 21st through December 31st, in violation of section 84211.

Count 4 – Inaccurate reporting on late independent expenditure report

The Committee and Deane inaccurately reported the payment by Phillips 66 for the two sets of mass mailers opposing Measure V as a contribution to the Committee by Phillips 66, and as an independent expenditure by the Committee, on a late independent expenditure report filed on November 2nd, in violation of section 84204.

CONCLUSION

This matter consists of four counts of violating the Act, which carry a maximum administrative penalty of \$5,000 per count, and \$20,000 total.

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 Commission considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to conceal, deceive or mislead; whether the violation was deliberate, negligent, or inadvertent; whether the respondents demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether the violator, upon learning of the violations, voluntarily filed amendments.

The Commission also considers prior comparable violations in determining an appropriate penalty for a violation. With regard to mass mailing sender identification violations, *In the Matter of Common Sense Voters, SF 2010; Vote for Mark Farrell for District 2 Supervisor committee and Chris Lee*, FPPC No. 10/973, involved a committee controlled by a candidate that sent out four sets of mass mailings in support of the candidate. Each of the mass mailings failed to display the name of the candidate who controlled the committee. The Commission approved a stipulated settlement on November 20, 2014 that included four counts for failing to provide sender identification on mass mailings with a penalty of \$3,000 per count. Similarly, *In the Matter of Raj Abhyanker and Committee to Elect Raj Abhyanker for Cupertino City Council*, FPPC No. 07/737, concerned a city council candidate who sent a mass mailing attacking a rival candidate. The mass mailing listed a fictitious committee as the sender of the mailing rather than the candidate, and included a phony address. The Commission approved a stipulated settlement on August 12, 2010 imposing a maximum penalty of \$5,000 for the mass mailing sender identification violation.

Penalties for false reporting on campaign statements are typically at the high end of the penalty range when the false reporting conceals the true nature of the transaction. For instance, *In the Matter of Reginald Byron Jones-Sawyer Sr. and Reginald Jones-Sawyer for Assembly 2012*, FPPC No. 14/22 concerned an Assembly candidate who received a \$50,000 contribution that he intentionally, inaccurately reported on his campaign statement as a loan from his personal funds. The Commission approved a stipulated settlement on June 19, 2014 imposing a maximum penalty of \$5,000 for the violation. In another comparable case, *In the Matter of Aide Castro, Friends to Elect Aide Castro, and Matt Lemcke*, FPPC No. 11/253, the agents of a city council candidate received contributions and made expenditures for the candidate that should have been reported on the campaign statements of the candidate's controlled committee. Instead, the items were reported on campaign statements for a general purpose committee run by the candidate's agents. The contributions totaled \$8,500 and the expenditures totaled about \$10,525. The expenditures were for mailings supporting the candidate and attacking her opponents. On June 20, 2013, the Commission approved a stipulated settlement with a penalty of \$3,500.

Inaccurate sender information on mass mailings misleads recipients. In the present case, the Committee inaccurately identified itself as the sender on the mass mailings and inaccurately reported the Phillips 66 payment for mass mailings as a contribution to the Committee. The Committee contends that in reporting the payment received from Phillips 66 as a contribution and the payments for the mass mailings as independent expenditures, it believed at the time that it was following the law. But the lack of accurate disclosure on the mass mailings and campaign statements misled the voters of Rialto into believing the Committee, and not Phillips 66, was responsible for the mass mailers. The lack of accurate disclosure of the true source of the mass justifies penalties near the top of the range for similar violations.

PROPOSED PENALTY

After considering the factors of Regulation 18361.5, and the penalties imposed in prior cases, we propose a penalty of \$4,500 for Counts 1 and 2, and \$3,500 for Counts 3 and 4, for a total penalty of \$16,000.