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

10
11 In the Matter of:

12 PHILLIPS 66

13 Respondent.

FPPC No. 16/111

14 STIPULATION, DECISION, AND ORDER

15
16 **STIPULATION**

17 Complainant, the Enforcement Division of the Fair Political Practices Commission and Phillips
18 66 (Respondent) hereby agree that this Stipulation will be submitted for consideration by the Fair
19 Political Practices Commission (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 mailings that did not include identifying information in violation of Government Code section
4 84305, subdivision (a) and California Code of Regulations, title 2, section 18435, subdivision (d), failing
5 to timely disclose independent expenditures on a semi-annual campaign statement in violation of
6 Government Code section 84211, subdivision (k), and failing to timely disclose late independent
7 expenditures in violation of Government Code section 84204, subdivision (a), all as described in Exhibit
8 1. Exhibit 1 is attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1
9 is a true and accurate summary of the facts in this matter.

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

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24 Dated: _____ Galena West, Chief, on behalf of the Enforcement
25 Division Fair Political Practices Commission

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27 Dated: _____
28 _____, on behalf of Phillips 66

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Phillips 66,” FPPC No. 16/111,
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: _____

_____ Joann Remke, Chair

9 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent Phillips 66 is a corporation based in Houston, Texas. Phillips 66 filed as a major donor committee in California in 2012. The Political Reform Act (the “Act”)¹ requires that mass mailings include information about the sender, including name and address. The Act also requires that costs associated with sending mass mailings be disclosed on campaign statements and reports. Phillips 66 violated the Act by sending mass mailings on which it failed to identify itself as the sender, and by failing to disclose costs associated with those mass mailings on a campaign statement and late independent expenditure report.

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 Independent Expenditures

A corporation that directly or indirectly makes independent expenditures totaling \$1,000 or more in a calendar year qualifies as a committee.⁶ An “independent expenditure” includes an expenditure made in connection with a communication that expressly advocates the passage or defeat of a clearly identified ballot measure.⁷ The committee must file periodic campaign statements disclosing the expenditures it made during the statement period.⁸ 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 disclosing the expenditure.⁹

SUMMARY OF THE FACTS

Phillips 66 owned and operated an oil and gas terminal in the City of Rialto. The 2012 general election ballot in Rialto included a proposed tax increase on oil companies operating in

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 §§82013, subd. (b), and 82047.

⁷ §82031.

⁸ §§ 84200, subd. (b) and 84211, subd. (k).

⁹ §§82036.5 and 84204, subd. (a).

Rialto. The ballot measure, known as Measure V, would have raised funds for city services by increasing taxes on oil operations such as Phillips 66's terminal.

In early October 2012¹⁰, Phillips 66 became aware of Measure V. Phillips 66 considered legal action to remove Measure V from the ballot but ultimately decided it did not have time before the election. Instead, Phillips 66 decided to oppose Measure V through political action. Stephanie Williams, a governmental affairs manager for Phillips 66, learned that political consulting firm JPM&M, Inc., and its principal Josh Pulliam, were managing an independent expenditure campaign opposing Joe Baca, Jr. and supporting Cheryl Brown in a race for State Assembly in San Bernardino County. Williams contacted Pulliam on October 23rd to see if JPM&M could assist them with an anti-Measure V campaign. Pulliam agreed.

JPM&M and Phillips 66 put together a plan and a budget for a campaign opposing Measure V. The plan included (1) a telephone survey, (2) a field program consisting of precinct walkers, literature, and telephone banking, and (3) mass mailings. Phillips 66 allocated \$10,000 for the survey, \$30,000 for the field program, and \$41,000 for mass mailings.

JPM&M arranged for Global Strategy Group, Inc. to conduct the survey, which took place on October 26th. JPM&M wrote a check dated October 26th to Global Strategy Group, Inc. for \$10,000 for the survey. Phillips 66 reimbursed JPM&M through the Howard Agency, which was a consulting firm retained by Phillips 66 to assist with the Measure V opposition.

Pat Dennis, an employee of JPM&M, ran the field program. It began the last week of October and continued until the day before the election. Phillips 66 wrote JPM&M a check for \$30,000 for the field program on October 31st. At Pulliam's instruction, Phillips 66 reported the payment on its major donor campaign statement as a non-monetary contribution to the California Tribal Business Alliance ("CTBA"). Likewise, CTBA reported receiving a \$30,000 non-monetary contribution from Phillips 66. CTBA, a general purpose committee, had paid for much of the pro-Brown/anti-Baca campaign. The field program funded by Phillips 66 was run in conjunction with field program Dennis was running for CTBA.

Phillips 66 also paid for two sets of mass mailings opposing Measure V. Each set consisted of approximately 17,000 mailers. Phillips 66 consultant Thad Howard, principal of the Howard Agency, worked with JPM&M on the design and message of the mailings. The mailings were printed by Insource Print & Design, Inc. ("Insource"), which is owned by Pulliam. The first set of mailings went out on November 1st and the second set went out 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 a general purpose committee of which Pulliam was the principal officer called Californians for Good Schools and Good Jobs ("Good Schools"). Good Schools then paid Insource the amount owed for the mailers. The transaction was constructed in this manner at the direction of Pulliam. Despite this arrangement, Phillips 66 made the \$41,000 payment with the agreement that the money would be used to produce the mass mailings so it was in fact the sender of the mailers, not Good Schools.

¹⁰ All dates refer to the year 2012 unless otherwise indicated.

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.” Phillips 66 did not disclose the mass mailings as independent expenditures on its campaign statement for the July 1st through December 31st statement period. Instead, it reported making a contribution of \$41,000 to Good Schools. Because Phillips 66 reported the payment as a contribution instead of an independent expenditure, its campaign statement did not indicate that the payment was made for the purpose of opposing Measure V.

Phillips 66 also failed to disclose paying for the two sets of mass mailings on a late independent expenditure report.

Good Schools reported making an independent expenditure on November 2nd for mailings opposing Measure V on its semi-annual statement for October 21st through December 31st period. Good Schools’ statement also reported receiving a \$41,000 monetary contribution from Phillips 66 on the same day. Good Schools filed a late independent expenditure report (Form 496) on November 5th reporting an independent expenditure of \$37,850.10 for the anti-Measure V mass mailings.

Phillips 66 was the true sender of the mass mailings. JPM&M and Phillips 66 intended that the check to Good Schools be for payment for the cost of the mailers, not a contribution to Good Schools.

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 – Failure to identify sender on mass mailings

Phillips 66 paid for two sets of a mass mailing opposing Measure V on which it failed to include accurate sender information in violation of section 84305, subdivision (a) and regulation 18435, subdivision (d).

Count 3 – Failure to disclose independent expenditures on semi-annual campaign statement

Phillips 66 failed to timely disclose the mass mailings it sent opposing Measure V as independent expenditures on its semi-annual campaign statement for the July 1st through December 31st statement period in violation of section 84211, subdivision (k).

Count 4 – Failure to disclose late independent expenditures

Phillips 66 failed to timely disclose the mass mailings it sent opposing Measure V as independent expenditures on late independent expenditure reports in violation of section 84204, subdivision (a).

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 failing to properly disclose expenditures vary significantly depending on what information is not properly disclosed, and why it was not properly disclosed. In the *Abhyanker* case discussed above, the Commission approved a penalty of \$4,000 for the respondents’ failure to disclose two expenditures on the committee’s pre-election campaign statement. The cost of the mass mailings in that case, which totaled \$2,406.23, made up the bulk of the undisclosed expenditures. By comparison, in cases where the respondent was not attempting to conceal expenditures, the penalty is lower. For example, *In the Matter of Service Employees International Union Local 721 CTW, CLC Workers Strength Committee and Tony Bravo*, FPPC No. 14/261, involved respondents who failed to timely disclose expenditures totaling \$33,863 on a pre-election statement. The failure to disclose appeared to have been inadvertent. The Commission approved a stipulated settlement on February 19, 2015 imposing a penalty of \$2,500 for the violation.

Penalties for failing to timely file late independent expenditure reports typically result in mid-range fines. For example, *In the Matter of California Taxpayer Protection Committee and Thomas N. Hudson, Treasurer*, FPPC No. 12/106 concerned respondents who failed to timely file reports for twelve late independent expenditures totaling \$85,194.22 with their local filing officer. However, respondents did file timely late independent expenditures with the Secretary of State. The investigation revealed no evidence that the violations were intentional. On August 22, 2013, the Commission approved a stipulated settlement imposing a penalty of one count at \$3,000 for the violations. Similarly, *In the Matter of Colton Police Officers Association*, FPPC

No. 10/1026 concerned a committee that failed to timely report four late independent expenditures, totaling \$14,392. In December 2012, the Commission approved a stipulated settlement with a penalty of one count for failing to timely report late independent expenditures with a fine of \$2,500. The stipulation did not indicate the violations were intentional.

Inaccurate sender information on mass mailings misleads recipients. Phillips 66 had a business interest in opposing a tax increase on companies conducting business in the City of Rialto. The mass mailings did not contain accurate sender information and Phillips 66's semi-annual campaign statement misreported the mass mailings as a monetary contribution to Good Schools. Also, by not reporting the mass mailings as late independent expenditures, the public did not have information connecting Phillips 66 to the mass mailings.

Phillips 66 contends that in reporting the payments for the mass mailings as contributions instead of independent expenditures that it did not believe at the time that it was violating the law. But the lack of accurate disclosure on the mass mailings sent by Phillips 66 misled the voters of Rialto thereby justifying a penalty in this case.

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.