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8
9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

10 STATE OF CALIFORNIA

11
12 In the Matter of:

13 SAM ACTION, INC., A COMMITTEE
AGAINST PROPOSITION 64 WITH
14 HELP FROM CITIZENS (NONPROFIT
501 (C)(4)), KEVIN SABET-SHARGHI,
15 AND DAVID BAUER,

16 Respondents.

FPPC Case No. 16/19641

17 STIPULATION, DECISION, AND ORDER

18 INTRODUCTION

19 Respondent SAM Action, Inc., A Committee Against Proposition 64 with Help from Citizens
20 (Nonprofit 501(c)(4)) (the “Committee”) opposed Proposition 64 on the November 8, 2016 ballot.
21 Respondent Kevin Sabet-Sharghi (“Sabet-Sharghi”) is the Committee’s principal officer. Respondent
22 David Bauer (“Bauer”) was the Committee’s treasurer until September 8, 2016.

23 Under the Political Reform Act (the “Act”),¹ a primarily formed ballot measure committee must
24 amend its Statement of Organization when it receives \$50,000 or more from a single source so that the
25 committee’s name identifies the economic or other special interest of the donor of \$50,000 or more. The
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28 ¹ The 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 Act also requires committees to file various campaign statements and reports that timely and accurately
2 disclose contributions the committee receives. Further, the Act requires a committee that receives more
3 than \$1,000,000 in contributions to file a list of its Top 10 contributors.

4 The Committee, Sabet-Sharghi, and Bauer violated the Act by failing to amend the Committee’s
5 Statement of Organization to identify the economic or other special interest of a donor of \$50,000 or more,
6 failing to timely file five 10-day reports, failing to accurately report on a semi-annual campaign statement
7 three contributions received, and failing to timely file a Top 10 contributors list.

8 **SUMMARY OF THE LAW**

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

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

13 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in
14 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
15 practices are inhibited.⁴ Along these lines, the Act includes a comprehensive campaign reporting system.⁵
16 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be
17 “vigorously enforced.”⁶ Thus, a committee’s treasurer and principal officer are liable for the committee’s
18 campaign reporting violations.⁷

19 **Statements of Organization**

20 A multi-purpose organization such as a non-profit organization that accepts payments of \$2,000 or
21 more from a donor subject to a condition, agreement, or understanding with the donor that a portion of the
22 payment may be used to make a contribution or expenditure related to a California election qualifies as a
23 recipient committee under the Act.⁸ Such a committee must file a Statement of Organization with the
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25 ² Section 81001, subd. (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subd. (a).

28 ⁵ Sections 84200, *et seq.*

⁶ Section 81002, subd. (f).

⁷ Sections 83116.5 and 91006.

⁸ Sections 82013, subd. (a) and 84222, subd. (c)(3).

1 Secretary of State (“SOS”) within 10 days after it has qualified as a committee.⁹ The name of a committee
2 that supports or opposes a ballot measure must clearly identify the economic or other special interest of its
3 donors of \$50,000 or more.¹⁰ If the committee’s name must change to identify a donor, the committee must
4 file an amendment to its Statement of Organization within 10 days.¹¹

5 **Campaign Reports and Statements**

6 A committee must file a 24-Hour Contribution Report within 24 hours of receiving a contribution
7 of \$1,000 or more during the 90 days prior to an election.¹² Outside of those 90 days, a primarily formed
8 state ballot measure committee, that is required to file reports electronically with the Secretary of State¹³,
9 must file a report disclosing the same information within 10 business days of receiving a contribution of
10 \$5,000 or more.¹⁴

11 A committee’s campaign statements must accurately report the total amount of contributions
12 received from persons who have given \$100 or more.¹⁵ Statements must also accurately report the amount
13 of each contribution of \$100 or more from a person and the cumulative amount of contributions received
14 from a person.¹⁶

15 **Top 10 Contributors Lists**

16 A primarily formed state ballot measure committee that raises \$1,000,000 or more must provide a
17 list of the committee’s Top 10 contributors to the Fair Political Practices Commission (the “Commission”)
18 for online disclosure.¹⁷ The list must be submitted to the Commission within 3 business days of meeting
19 the \$1,000,000 threshold, or the next business day if the deadline falls on a weekend or holiday.¹⁸

20 **SUMMARY OF THE FACTS**

21 The Committee is a non-profit organization based in Virginia that advocates against marijuana
22 legalization throughout the United States. Prior to 2016, the Committee did not engage in any reportable
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24 ⁹ Section 84101, subd. (a).

25 ¹⁰ Section 84504, subd. (a) and Regulation 18450.3, subd. (a)

26 ¹¹ Section 84103, subd. (a).

27 ¹² Sections 82036 and 84203.

28 ¹³ Sections 84605, 85309(d).

¹⁴ Section 85309, subd. (d).

¹⁵ Section 84211, subd. (c).

¹⁶ Section 84211, subd. (f).

¹⁷ Section 84223, subd. (a).

¹⁸ Regulations 18116, subd. (a) and 18422.5, subd. (a)(4).

1 campaign activities in California and was unfamiliar with California’s unique, stringent rules that apply to
2 multipurpose organizations such as non-profits. According to the Committee, it was asked to contribute to
3 a primarily formed committee opposing Proposition 64, a measure on the November 8, 2016 ballot that
4 legalized recreational marijuana use.

5 The Committee received \$1,364,000 in donations from Juliet F. Schauer and Trust-Affiliated
6 Entities (the “Schauer Trust”). Those funds were accepted subject to a condition, agreement, or
7 understanding with the donor that a portion of the payments may be used for making contributions or
8 expenditures. However, there was no condition, agreement, or understanding between the Committee and
9 Schauer Trust as to specifically what amount or portion of payments from Schauer Trust would be used in
10 California. At the same time, the Committee was involved in ballot measure and lobbying campaigns in
11 several other states.

12 Statement of Organization

13 The Committee, a multipurpose organization, first qualified as a committee under the Act on April
14 13, 2016, when it reported receiving a \$10,000 contribution from the Schauer Trust and made a \$10,000
15 contribution to the Coalition for Responsible Drug Policies. The Committee reported receiving a
16 contribution of \$120,000 from the Schauer Trust on June 8, 2016, which made the Schauer Trust a donor
17 of \$50,000 or more to the Committee. The Committee did not amend its name on its Statement of
18 Organization within 10 days to identify the economic or special interest of the Schauer Trust. Instead, on
19 September 8, 2016, the Committee amended its Statement of Organization to reflect its current name.

20 Reporting Contributions of \$5,000 or More

21 The Committee failed to timely report receiving the following contributions of \$5,000 or more from
22 the Schauer Trust outside of the 90-day election cycle, which began on August 10, 2016:

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Contribution Date	497 Report Filing Date	Amount	Comment
24 May 20, 2016	September 8, 2016	\$35,000	
25 June 8, 2016	September 8, 2016	\$120,000	\$9,150 reported on semi-annual statement filed August 1, 2016
26 June 13, 2016	September 8, 2016	\$45,000	\$45,000 reported on semi-annual statement filed

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			August 1, 2016
July 20, 2016	September 8, 2016	\$1,000,000	
July 25, 2016	September 8, 2016	\$150,000	

Semi-Annual Campaign Statement Reporting

On August 1, 2016, the Committee timely filed its semi-annual campaign statement for the period of January 1, 2016 through June 30, 2016. On that statement, the Committee reported receiving contributions of \$10,000 on April 18, 2016; \$9,150 on June 8, 2016; and \$45,000 on June 13, 2016 from the Schauer Trust, for a total contribution amount of \$64,150. The Committee mistakenly believed it was only required to report the amount of contributions that it expended in California.

After receiving advice from the Commission, the Committee amended its statement on September 8, 2016, reporting the full amount contributions from the Schauer Trust: \$14,000 on April 13, 2016; \$35,000 on May 20, 2016; \$120,000 on June 8, 2016; and \$45,000 on June 13, 2016. Thus, \$149,850 in contributions were not accurately and timely reported on the semi-annual campaign statement for January 1, 2016 through June 30, 2016.

Top 10 Contributors List

On July 20, 2016, the Committee received a \$1,000,000 contribution from the Schauer Trust. The Committee was therefore required to provide a list of its Top 10 contributors to the Commission by July 25, 2016. The Committee did not submit the list until September 8, 2016, 45 days after it was due. Once submitted and compared to other lists, the Committee’s Top 10 contributors list showed the Schauer Trust had contributed the second-highest amount statewide to oppose Proposition 64.

VIOLATIONS

Count 1: Failure to Timely Change the Committee Name on a Statement of Organization

The Committee, Sabet-Sharghi, and Bauer failed to timely change the Committee’s name to reflect the economic or special interest of the Schauer Trust in violation of Sections 84101 and 84504, subdivision (a).

Count 2: Failure to Timely Report Contributions of \$5,000 or More

The Committee, Sabet-Sharghi, and Bauer failed to timely report five contributions of \$5,000 or more, in violation of Section 85309, subdivision (d).

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2 Count 3: Failure to Report Financial Activity on a Semi-Annual Statement

3 The Committee, Sabet-Sharghi, and Bauer failed to accurately report the total amount of
4 contributions it received and the amounts of single contributions received on its semi-annual campaign
5 statement for the period of January 1, 2016 through June 30, 2016, in violation of Section 84211,
6 subdivisions (c) and (f).

7 Count 4: Failure to Timely File a Top 10 Contributors List

8 The Committee, Sabet-Sharghi, and Bauer failed to timely file a Top 10 contributors list, in
9 violation of Section 84223 and Regulation 18422.5, subdivision (a).

10 **PROPOSED PENALTY**

11 This matter consists of four counts. The maximum penalty that may be imposed is \$5,000 per count.
12 Thus, the maximum penalty that may be imposed is \$20,000.¹⁹

13 In determining the appropriate penalty for a particular violation of the Act, the Commission
14 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission
15 considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention
16 to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d)
17 whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were
18 filed to provide full disclosure; and (f) whether the violator has a prior record of violations.²⁰ Additionally,
19 the Commission considers penalties in prior cases with comparable violations.

20 Recent similar cases include the following:

21 Count 1

22 *In the Matter of Yes on Prop 61, Californians for Lower Drug Prices, With Major Funding by AIDS*
23 *Healthcare Foundation and California Nurses Association PAC*, FPPC No. 16/19686. (The Commission
24 approved a stipulated decision on January 19, 2017.) The respondents timely changed the committee's
25 name to reflect that it received major funding from the California Nurses Association PAC, but failed to
26 timely change the disclosure statement in two of its video advertisements. The Commission imposed a
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28 ¹⁹ Section 83116, subd. (c).

²⁰ Regulation 18361.5, subd. (d).

1 penalty of \$2,500. This was a more egregious violation than here because the Committee did not purchase
2 advertising or campaign materials, so its inaccurate name was not published beyond its Statement of
3 Organization.

4 Count 2

5 *In the Matter of YES on Measure U – Kids Need U and Kelly Brown*, FPPC No. 16/19824. (The
6 Commission approved a stipulated decision on November 17, 2016.) The respondents failed to timely file
7 six 24-Hour Contribution Reports during a pre-election reporting period for contributions totaling \$70,500.
8 The Commission imposed a penalty of \$2,000. In this case, the required reports were due outside the
9 election cycle, unlike in *YES on Measure U*, and the contributions were disclosed prior to the election, so
10 the public harm was lower.

11 Count 3

12 *In the Matter of Margie L. Rice for Mayor 2016, Margie Rice, Anita Rice, and Committee to Elect*
13 *Anita Rice to the Sanitary Board of Midway City 2016*, FPPC No. 16/19818. (The Commission approved
14 a stipulated decision on December 15, 2016.) The respondents failed to timely report making expenditures
15 and receiving contributions in support of another candidate. The respondents amended their campaign
16 statements prior to the election to correct their mistakes, just as here, where the Committee proactively
17 realized its mistake and filed an amendment two months before the election. The Commission imposed a
18 penalty of \$1,000.

19 A central purpose of the Act is to ensure receipts and expenditures in election campaigns are fully
20 and truthfully disclosed.²¹ In this case, the Committee failed to timely and accurately disclose contributions
21 received and the Schauer Trust's involvement as a major donor to the Committee. In aggravation, the
22 Committee did not file a Statement of Organization until August 1, 2016, 100 days after the Statement of
23 Organization was due.

24 However, there is no evidence the respondents intended to conceal the Schauer Trust's
25 contributions or that it provided major funding. The Committee proactively sought advice and filed
26 accurate semi-annual and pre-election campaign statements two months before the election, so the public
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²¹ Section 81002, subd. (a).

1 had notice of the Committee’s activity before voting. According to the Committee, their violations were
2 inadvertent due to their inexperience with California campaign reporting requirements. Contributions from
3 the Committee were timely disclosed by the No on 64 committee, so the public had timely notice of the
4 amount of contributions from the Committee.

5 This is a case of first impression for the issue of the failure to timely file a Top 10 contributors list.
6 The Top 10 contributors list helps bring additional attention to contributor information that has already
7 been publicly disclosed on campaign statements and reports. Thus, the failure to timely file a Top 10
8 contributors list does not deny the public information, but it does deny the public information in an easily
9 understood format.

10 For the foregoing reasons, penalties of \$1,500 for Count 1, \$1,500 for Count 2, \$1,000 for Count
11 3, and \$2,000 for Count 4 are recommended, for a total administrative penalty in the amount of \$6,000.

12 **CONCLUSION**

13 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
14 respondents SAM Action, Inc., A Committee Against Proposition 64 with Help from Citizens (Nonprofit
15 501(c)(4)), Kevin Sabet-Sharghi, and David Bauer (Respondents) hereby agree as follows:

16 1. Respondents violated the Act as described in the foregoing pages, which are a true and
17 accurate summary of the facts in this matter.

18 2. This stipulation will be submitted for consideration by the Fair Political Practices
19 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

20 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
21 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
22 liability of Respondents pursuant to Section 83116.

23 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all
24 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
25 This includes, but is not limited to the right to appear personally at any administrative hearing held in this
26 matter, to be represented by an attorney at Respondents’ own expense, to confront and cross-examine all
27 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
28 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially

1 reviewed.

2 5. Respondents agree to the issuance of the decision and order set forth below. Also,
3 Respondents agree to the Commission imposing against it an administrative penalty in the amount of
4 \$6,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General
5 Fund of the State of California—is/are submitted with this stipulation as full payment of the administrative
6 penalty described above, and same shall be held by the State of California until the Commission issues its
7 decision and order regarding this matter.

8 6. If the Commission refuses to approve this stipulation—then this stipulation shall become
9 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
10 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to
11 Respondent. If this stipulation is not approved by the Commission, and if a full evidentiary hearing before
12 the Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
13 shall be disqualified because of prior consideration of this Stipulation.

14 7. The parties to this agreement may execute their respective signature pages separately. A
15 copy of any party's executed signature page including a hardcopy of a signature page transmitted via fax
16 or as a PDF email attachment is as effective and binding as the original.

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18 Dated: _____
19 Galena West, Chief of Enforcement
20 Fair Political Practices Commission

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22 Dated: _____
23 Kevin Sabet-Sharghi, individually and on behalf of
24 SAM Action, Inc., A Committee Against Proposition
64 with Help from Citizens (Nonprofit 501(c)(4))

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26 Dated: _____
27 David Bauer, individually

1 The foregoing stipulation of the parties “In the Matter of SAM Action, Inc., A Committee Against
2 Proposition 64 with Help from Citizens (Nonprofit 501(c)(4)), Kevin Sabet-Sharghi, and David Bauer,”
3 FPPC No. 16/19641, is hereby accepted as the final decision and order of the Fair Political Practices
4 Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

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10 Joann Remke, Chair
11 Fair Political Practices Commission
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