

1 GALENA WEST
Chief of Enforcement
2 ANGELA J. BRERETON
Senior Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant
Enforcement Division of the Fair Political Practices Commission
7

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

11 In the Matter of) FPPC No. 15/1275
12)
13)
MICHAEL HORNER,) **STIPULATION, DECISION and ORDER**
14)
15)
Respondent.)
16)

17 **STIPULATION**

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
19 Respondent Michael Horner, hereby agree that this Stipulation will be submitted for consideration by
20 the Fair Political 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 by
22 this matter and to reach a final disposition without the necessity of holding an additional administrative
23 hearing to determine the liability of Horner.

24 Horner understands, and hereby knowingly and voluntarily waives, any and all procedural rights
25 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 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
28 Horner's 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 Horner violated the Political Reform Act as described in
4 Exhibit 1: In or about October 2014, Horner made cash expenditures of \$100 or more, totaling
5 approximately \$1,456, violating Government Code section 84300, subdivision (b) (1 count); and in or
6 about October 2014, Horner paid for and caused to be sent a mass mailing expressly advocating the
7 defeat of a candidate which failed to display required sender identification, violating Government Code
8 Section 84305, subdivision (a) (1 count).

9 Exhibit 1 is attached hereto and incorporated by reference as though fully set forth herein.
10 Exhibit 1 is a true and accurate summary of the facts in this matter.

11 Horner agrees to the issuance of the Decision and Order, which is attached hereto. Horner also
12 agrees to the Commission imposing an administrative penalty in the total amount of Three Thousand
13 Five Hundred Dollars (\$3,500). A cashier's check from Horner in said amount, made payable to the
14 "General Fund of the State of California," is submitted with this Stipulation as full payment of the
15 administrative penalty, and shall be held by the State of California until the Commission issues its
16 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to
17 accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
18 Commission meeting at which the Stipulation is rejected, all payments tendered by Horner in
19 connection with this Stipulation shall be reimbursed to Horner. Horner further stipulates and agrees that
20 in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
21 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
22 shall be disqualified because of prior consideration of this Stipulation.

23
24 Dated: _____

Galena West, Chief, on Behalf of the Enforcement Division
Fair Political Practices Commission

25
26
27 Dated: _____

Michael Horner, Respondent

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Michael Horner,” FPPC Case No. 15/1275, 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 Michael Horner qualified as an independent expenditure committee in October 2014.

The Enforcement Division received a formal complaint from Jim Steele, an incumbent candidate for the Lake County Board of Supervisors, alleging that in October 2014, his opponent, John Brosnan, sent a mass mailing opposing Jim Steele that failed to disclose the proper sender identification.

Under the Political Reform Act (the “Act”)¹, mass mailings must disclose the name, street address, and city of the sender of the mass mailing. The investigation in this matter revealed that Horner was the sender of this mass mailing, and he failed to disclose the proper sender identification.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed in 2014.

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

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

There are many purposes of the Act. One purpose is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited.⁴ The Act therefore requires senders of mass mailings to properly identify themselves on the mass mailings. Another is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁵

///

¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² § 81001, subd. (h).

³ § 81003.

⁴ § 81002, subd. (a).

⁵ § 81002, subd. (f).

Independent Expenditure Committees

A “committee” includes any person or combination of persons who makes independent expenditures totaling \$1,000 or more in a calendar year.⁶ This type of committee is commonly referred to as an independent expenditure committee.

An “independent expenditure” includes any expenditure made by any person in connection with a communication that expressly advocates the election or defeat of a clearly identified candidate but which is not made to or at the behest of the affected candidate.⁷

An expenditure is any payment, unless it is clear from the surrounding circumstances that it is not made for political purposes.⁸

Prohibited Cash Expenditures of \$100 or More

The Act prohibits making an expenditure of one hundred dollars or more in cash.⁹

Mass Mailing Sender Identification

Candidates and committees are prohibited from sending a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing.¹⁰

A “mass mailing” is defined as over two hundred substantially similar pieces of mail sent in a single calendar month, but not including a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry.¹¹ The “sender” is the committee who pays for the largest portion of expenditures attributable to the designing, printing or posting of the mailing.¹²

SUMMARY OF THE FACTS

In or about October 2014, residents of Lake County received a 5x7 color printed postcard mailer on white glossy stock, expressly advocating the defeat of Jim Steele, a candidate for the Lake County Board of Supervisors in the November 4, 2014 election.

The evidence shows that Horner paid in total approximately \$1,456 to print and send the above mailer. Invoices and emails obtained from Horner, Melo Mail, and Santa Rosa Printing Company, Inc., show that in or about October 2014, Horner paid approximately \$923 to Melo Mail, and approximately \$533 to Santa Rosa Printing Company, Inc., to cover the costs of printing, postage and delivery for the above described mailer.

⁶ § 82013, subd. (b).

⁷ § 82031.

⁸ § 82025.

⁹ § 84300, subd. (b).

¹⁰ § 84305, subd. (b).

¹¹ § 82041.5, and Reg. 18435, subd. (a).

¹² Reg. 18435, subd. (a).

The mailer identified the sender as “Anyone But Jim Steele,” and did not include the street address and city of the sender. Instead the mailer included a P.O. Box that the United States Postal Service identified as fictitious. According to a USPS Postage Statement – Standard Mail form, the mailer was delivered to approximately 3,100 households in Lake County on or about October 31, 2014. Jim Steele won the election.

Horner admitted that he paid for the printing, postage and delivery of the mass mailing, and that he acted alone, in a statement dated December 15, 2015, to Special Investigator Paul Rasey:

This was an effort made solely by me, not as a member of any committee, with the support of any committee or to the knowledge of any committee or any other candidates.

I acted alone, a private citizen of Lake County, exercising the rights afforded me by the First Amendment of the US Constitution.

At the same time, Horner also admitted that he paid for the mailer in cash: “I do not have any receipts for this mailer as I paid Melo Mail and Santa Rosa Printing in cash.”

Confirmation to Paul Rasey, Special Investigator, from the California Secretary of State’s office and the Lake County Registrar of Voters showed that as of April 2016, Horner had not filed any campaign statements or reports as an independent expenditure committee disclosing the expenditures for the mailer either in his name or as “Anyone But Jim Steele” with the SOS or with Lake County.

Horner was personally served with an Accusation on September 27, 2016. Horner did not file a Notice of Defense within the statutory time period, which ended on October 12, 2016. As a result, this matter was submitted for a Default Decision and Order at the Commission’s public meeting on January 19, 2017. The Commission voted to hold over the matter to the next meeting to allow Horner the opportunity to file the required campaign statements and negotiate a settlement.

On January 25, 2017, Horner sent all of the required campaign statements, completed and signed, to the Enforcement Division, disclosing approximately \$1,456 in independent expenditures related to the mass mailing at issue.

VIOLATIONS

Count 1: Prohibited Cash Expenditures of \$100 or More

In or about October 2014, Horner made cash expenditures of \$100 or more, totaling approximately \$1,456, violating Government Code section 84300, subdivision (b).

///

Count 2: Failure to Disclose Required Sender Information on a Mass Mailing

In or about October 2014, Horner paid for and caused to be sent a mass mailing expressly advocating the defeat of a candidate which failed to display required sender identification, violating Government Code Section 84305, subdivision (a).

CONCLUSION

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

In determining the appropriate penalty for a particular violation of the Act, the 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) 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, upon learning of the violation, the violator voluntarily provided amendments to provide full disclosure.

The Commission also considers penalties in prior cases involving similar violations. Recent cases for similar violations include:

Prohibited Cash Expenditures of \$100 or More

- *In the Matter of Monica Cooper and Friends to Elect Monica Cooper Treasurer of Carson 2015*; FPPC No. 15/200. Monica Cooper was a successful candidate for City Treasurer for the City of Carson in the March 3, 2015 election. Friends to Elect Monica Cooper Treasurer of Carson 2015 (the Committee), was Cooper's candidate controlled committee and Cooper was the Committee's treasurer. Cooper and the Committee made cash expenditures of \$100 or more, totaling approximately \$4,010, a higher amount than in the current case, in violation of Government Code Section 84300, subdivision (b) (1 count). In April 2016, the Commission imposed a penalty of \$1,500 for this violation.

Failure to Disclose Required Sender Information on a Mass Mailing

- *In the Matter of Citizens for Yes on Measure B, Kevin Berger, and Jim L. Theis*; FPPC No. 14/1147. In 2014, the Citizens for Yes on Measure B was a primarily formed city ballot measure committee in the city of Turlock. Berger was the committee treasurer and Theis was the principal officer. In September 2014, the Committee, Berger, and Theis sent a mass mailing supporting Measure B without identifying the Committee as the sender, in violation of Government Code Section 84305, subdivision (a) (1 count). In November 2016, the Commission imposed a \$2,500 penalty for this violation.

- *In the Matter of the Port Hueneme Police Officers' Association Political Action Committee*, FPPC No. 14/1285. The respondent sent a mass mailer that failed to identify itself as the sender. An aggravating factor was the respondent's failure to disclose the costs of the mailer until after the election, which is similar to the facts of the current case. In December 2015, the Commission imposed a \$2,500 penalty for this violation.

Failure to include the proper sender identification on a mass mailing is a serious violation of the Act as it deprives the public of important information regarding the sponsor of the mailing. Here, the sender identification provided on Horner's mass mailing was misleading because it identified a committee that did not exist instead of Horner, the true sender.

Before the election, Horner did not file any campaign statements or reports as an independent expenditure committee disclosing the expenditures for the mailer either in his name or as "Anyone But Jim Steele." The false sender ID, Horner's lack of disclosure and Horner's cash payments prevented the public from tracing the mass mailing back to him. Horner's conduct in this matter showed an intent to conceal his identity as the true sender of the mass mailing.

In mitigation, Horner has no history of violating the Act, the amount of the independent expenditure for the mass mailing was relatively low, and he admitted to sending the mass mailing during the investigation of this matter. When given the opportunity to avoid a Default Decision, Horner worked with the Enforcement Division, disclosing all of the independent expenditures in the required campaign statements and negotiating this settlement agreement. Horner no longer lives in California, and he has no plans to engage in any political activity in California in the future.

PROPOSED PENALTY

After considering the factors listed in Regulation 18361.5, prior similar cases, and other relevant factors, a total penalty of \$3,500 is recommended: \$1,000 for Count 1 and \$2,500 for Count 2.

* * * * *