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

10 In the Matter of:

FPPC Case No. 16/19829

11 SAVE AVALON NOW, A COMMITTEE
SUPPORTING MAYOR MARSHALL,
12 COUNCIL CANDIDATES MONTANO
AND HERNANDEZ, OPPOSING
13 COUNCIL CANDIDATES
MACGUGAN-CASSIDY, OLSEN AND
14 FERTIG 2016; MIKE SHEEHAN; AND
LYSA RAY,

STIPULATION, DECISION AND ORDER

15 Respondents.
16

17 **INTRODUCTION**

18 Save Avalon Now, A Committee Supporting Mayor Marshall, Council Candidates Montano and
19 Hernandez, Opposing Council Candidates MacGugan-Cassidy, Olsen and Fertig 2016 (the “Committee”)
20 was primarily formed to support and oppose six different candidates for mayor and city council in the
21 City of Avalon’s April 12, 2016 Election. The principal officer of the Committee was Mike Sheehan
22 (“Sheehan”). The treasurer of the Committee was Lysa Ray (“Ray”).

23 This case arises from a sworn complaint alleging that the Committee, Sheehan, and Ray
24 (collectively, “Respondents”) committed multiple violations of the Political Reform Act (the “Act”).¹
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27 ¹ The Political Reform Act—sometimes simply referred to as 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
28 are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references
are to this source.

1 These include Respondents’ failure to timely file certain 24-hour independent expenditure reports and
2 comply with disclosure requirements for political advertisements.

3 **SUMMARY OF THE LAW**

4 The Act and its regulations are amended from time to time. The violations in this case occurred in
5 2016. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they
6 existed at that time—unless otherwise noted.

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

8 When enacting the Political Reform Act, the people of California found and declared that
9 previous laws regulating political practices suffered from inadequate enforcement by state and local
10 authorities.² Thus, it was decreed that the Act “should be liberally construed to accomplish its
11 purposes.”³

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

17 Duty to File 24-Hour Independent Expenditure Reports

18 When a committee makes a late independent expenditure, the committee must disclose the
19 expenditure in a 24-hour independent expenditure report filed at each office with which the committee is
20 required to file its next campaign statement within 24 hours of making the late independent
21 expenditure.⁷ A “late independent expenditure” means any independent expenditure which totals in the
22 aggregate \$1,000 or more and is made for or against any specific candidate or measure involved in an
23 election within 90 days before the date of the election.⁸

24
25 ² Section 81001, subdivision (h).

³ Section 81003.

26 ⁴ Section 81002, subdivision (a).

⁵ Sections 84200, *et seq.*

27 ⁶ Section 81002, subdivision (f).

⁷ Section 84204.

28 ⁸ Section 82036.5.

1 Advertisement Disclosure

2 An “advertisement” under the Act means any general or public advertisement which is authorized
3 and paid for by a person or committee for the purpose of supporting or opposing a candidate for elective
4 office or a ballot measure(s).⁹

5 Under the Act, an independent expenditure advertisement that supports or opposes a candidate
6 must include a disclosure statement identifying the committee making the independent expenditure.¹⁰ In
7 addition, an advertisement supporting or opposing a candidate that is paid for by an independent
8 expenditure must include a disclosure statement that the advertisement is “not authorized or paid for by a
9 candidate for this office.”¹¹

10 Joint and Several Liability of Committee, Principal Officer, and Treasurer

11 It is the duty of a committee treasurer to ensure that the committee complies with the reporting
12 provisions of the Act.¹² It is the duty of the committee’s principal officer to authorize the content of
13 communications made by the committee, authorize expenditures made by the committee, and determine
14 the committee’s campaign strategy.¹³ A treasurer and principal officer may be held jointly and severally
15 liable, along with the committee, for violations committed by the committee.¹⁴

16 **SUMMARY OF THE FACTS**

17 The Committee filed its original statement of organization on March 25, 2016; qualified on
18 March 31, 2016; and terminated as of May 25, 2016. The Committee was primarily formed to support
19 and oppose six different candidates for mayor and city council in the City of Avalon’s April 12, 2016
20 Election. In particular, the Committee supported mayoral candidate Ann Marshall, and city council
21 candidates Richard Hernandez and Yoli Montano; and opposed mayoral candidate Cinde MacGugan-
22 Cassidy and city council candidates Oley Olsen and Bruce Fertig. Candidates Marshall, Hernandez, and
23 Olsen were successful in their respective elections.

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⁹ Section 84501.

26 ¹⁰ Section 84506, subd. (a)(1).

27 ¹¹ Section 84506.5.

28 ¹² Sections 81004, 84100, 84104, and 84213; Regulation 18427.

¹³ Section 82047.6; Regulation 18402.1, subdivision (b).

¹⁴ Sections 83116.5 and 91006.

1 24-Hour Independent Expenditure Reports

2 During its existence, the Committee received contributions and made expenditures in the amount
3 of \$8,876.30 each. \$8,340.30 of the Committee’s contributions were received from Sheehan, the
4 Committee’s principal officer. The Committee spent a total of \$7,992.22 on independent expenditures
5 related to the candidates previously identified.

6 Although the Committee filed two different 24-hour independent expenditure reports during its
7 existence, it failed to timely file the following reports:

8

9 Statement/Report Type	Date of Expenditure(s)	Due Date	Date Filed	Supported/Opposed Candidate	Amount of Expenditure(s)
10 24-Hour Independent Expenditure	4/5/16	4/6/16	n/a	Bruce Fertig	\$1,527.54
11 24-Hour Independent Expenditure	4/5/16	4/6/16	n/a	Cinde MacGugan-Cassidy	\$840.68 ¹⁵
12 24-Hour Independent Expenditure	4/5/16	4/6/16	n/a	Oley Olsen	\$840.68 ¹⁶
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18 Although these late independent expenditures were otherwise reported on the Committee’s
19 timely-filed campaign statement covering the period of January 1 to May 25, 2016, the statement was not
20 due until after the election. As a result, the subject late independent expenditures were not reported prior
21 to the election.
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23 Advertisement Disclosure

24 Respondents also committed advertising disclosure violations. In all, the Committee paid for
25 three different mass mailers, and eleven separate newspaper advertisements appearing in at least four
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27 ¹⁵ With these expenditures, the Committee’s independent expenditures aggregated \$1,000 or more, which requires a
late independent expenditure report.

28 ¹⁶ With these expenditures, the Committee’s independent expenditures aggregated \$1,000 or more, which requires a
late independent expenditure report.

1 issues of two local newspapers, the Catalina Islander and Avalon Bay News, that supported and opposed
2 the aforementioned local candidates.

3 Each of the advertisements included the committee name “Save Avalon Now” but failed to
4 disclose the longer complete name of the Committee that included the list of candidates supported and
5 opposed and the year of the election. Further, four of the newspaper advertisements did not include the
6 independent expenditure disclaimer required under Section 84506.5, and each of the mass mailers failed
7 to display the correct wording of the disclaimer – instead, providing the shortened “this mailer was not
8 authorized by a candidate or a committee controlled by a candidate.”

9 VIOLATIONS

10 Count 1

11 *Failure to Timely File 24-Hour Independent Expenditure Reports*

12 The Committee, Sheehan, and Ray failed to timely file three 24-hour independent expenditure
13 reports for a total of \$3,208.90 in late independent expenditures, in violation of Section 84204.

14 Count 2

15 *Failure to Comply with Disclosure Requirements for Political Advertisements*

16 The Committee and Sheehan failed to disclose the full name of the Committee on 14 different
17 advertisements; and failed to include the appropriate independent expenditure disclaimer on seven
18 different advertisements, in violation of Sections 84506 and 84506.5.

19 PROPOSED PENALTY

20 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per
21 count. Thus, the maximum penalty that may be imposed is \$10,000.¹⁷

22 In determining the appropriate penalty for a particular violation of the Act, the Commission
23 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
24 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
25 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
26 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective

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¹⁷ See Section 83116, subdivision (c).

1 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
2 record of violations.¹⁸

3 Here, the actions of the Committee appear to be the result of negligence, as there is no evidence
4 of deliberate omission or attempts to conceal. Further, Respondents do not have a prior history of
5 violating the Act. However, the seriousness of the advertising violations is magnified given the high level
6 of subject advertising activity.

7 Additionally, the Commission considers penalties in prior cases with comparable violations.
8 Comparable cases in which a penalty was charged for failure to timely file 24-hour independent
9 expenditure reports include the following:

10 • *In the Matter of Gregory Kelly Meagher*; FPPC No. 16/236. Respondent, a state general purpose
11 major donor committee, failed to timely file a 24-hour independent expenditure report for three late
12 independent expenditures amounting to \$8,811; and a 24-hour contribution report for a \$2,000 late
13 contribution, in violation of Sections 84203 and 84204. While the late contribution was disclosed prior to
14 the election on the recipient's campaign statement, the independent expenditures were not disclosed by
15 respondent prior to the election. In September 2017, the Commission approved a penalty of \$2,000 on
16 one count.

17 As to Count 1, although this case is similar to *Meagher* in that the subject independent
18 expenditures were not reported by the Committee prior to the election, this case is deserving of a penalty
19 lower than in *Meagher*, given the lower amount of unreported financial activity at issue.

20 Comparable cases in which a penalty was charged for failure to comply with disclosure
21 requirements for political advertisements include the following:

22 • *In the Matter of Fullerton Taxpayers for Reform, Tony Bushala, and Jack Dean*; FPPC No.
23 16/422. Respondents, a city general purpose committee and its principal officers, failed to print a
24 disclosure statement on 200 campaign sign advertisements opposing a State Senate candidate that
25 measured at least five percent of the height of the advertisement, and failed to include a disclaimer that
26 the advertisements were not "authorized or paid for by a candidate for this office," in violation of
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28 ¹⁸ Regulation 18361.5, subdivision (d).

1 Sections 84506, subdivision (a)(1); and 84506.5, subdivision (a); and Regulation 18450.4, subdivision
2 (b)(3)(D). In April 2017, the Commission approved a penalty of \$2,500 on one count.

3 • *In the Matter of Silicon Valley Progressive Women for Equity and Oportunidad Supporting Vicki*
4 *Veenker for Assembly 2016*; FPPC No. 16/19728. Respondent, a primarily formed candidate committee,
5 on a mailer advertisement, failed to print the words “Paid for by” and the committee’s name in 14-point
6 font, failed to identify that it was primarily formed to support a candidate, and failed to include a
7 disclaimer that the advertisement was not “authorized or paid for by a candidate for this office,” in
8 violation of Sections 84507; 84506, subdivision (a)(1); and 84506.5, subdivision (a). In November 2016,
9 the Commission approved a fine of \$2,500 on one count.

10 As to Count 2, a penalty higher than the two comparable cases is justified given the higher
11 number of advertisements that included a disclosure violation (14 different advertisements). Further, in
12 aggravation, Respondents committed additional minor disclosure violations, which are not being charged
13 herein in the interest of settlement.

14 In aggravation of all counts, Respondents also failed to timely report the necessary employer and
15 occupation information for Sheehan, as a contributor, on the Committee’s single campaign statement.
16 However, in the interest of settlement, this additional violation is not being charged herein.

17 Based on the foregoing, the following penalties are recommended:

Count	Violation	Proposed Penalty
1	Failure to Timely File 24-Hour Independent Expenditure Reports	\$1,500
2	Failure to Comply with Disclosure Requirements for Political Advertisements	\$3,000
TOTAL:		\$4,500

CONCLUSION

25 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
26 Respondents, Save Avalon Now, A Committee Supporting Mayor Marshall, Council Candidates
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1 Montano and Hernandez, Opposing Council Candidates MacGugan-Cassidy, Olsen and Fertig 2016,
2 Mike Sheehan, and Lysa Ray hereby agree as follows:

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

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

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

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

17 5. Respondents agree to the issuance of the decision and order set forth below. Also,
18 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
19 \$4,500. One or more cashier's checks or money orders totaling said amount—to be paid to the General
20 Fund of the State of California—is/are submitted with this stipulation as full payment of the
21 administrative penalty described above, and same shall be held by the State of California until the
22 Commission issues its decision and order regarding this matter.

23 6. If the Commission declines to approve this stipulation—then this stipulation shall become
24 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
25 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to
26 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing
27 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
28 Director, shall be disqualified because of prior consideration of this Stipulation.

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

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5 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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8 Dated: _____

Mike Sheehan, individually and on behalf of Save Avalon
Now, A Committee Supporting Mayor Marshall, Council
Candidates Montano and Hernandez, Opposing Council
Candidates MacGugan-Cassidy, Olsen and Fertig 2016

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12 Dated: _____

Lysa Ray, individually and on behalf of Save Avalon Now,
A Committee Supporting Mayor Marshall, Council
Candidates Montano and Hernandez, Opposing Council
Candidates MacGugan-Cassidy, Olsen and Fertig 2016

1 The foregoing stipulation of the parties “In the Matter of Save Avalon Now, A Committee Supporting
2 Mayor Marshall, Council Candidates Montano and Hernandez, Opposing Council Candidates
3 MacGugan-Cassidy, Olsen and Fertig 2016,” FPPC Case No. 16/19829 is hereby accepted as the final
4 decision and order of the Fair Political Practices Commission, effective upon execution below by the
5 Chair.

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7 IT IS SO ORDERED.

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9 Dated: _____

10 Alice T. Germond, Chair
11 Fair Political Practices Commission
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