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

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11 In the Matter of:

FPPC Case No. 16/19935

12 STIPULATION, DECISION AND ORDER

13 APPLE VALLEY PROFESSIONAL
FIREFIGHTERS ASSOCIATION
14 LOCAL 4742, JAMES PERATT, AND
LARRY SOPER,

15 Respondents.
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17 INTRODUCTION

18 Apple Valley Professional Firefighters Association Local 4742 (the “Committee”) registered as a
19 city general purpose committee created for the purpose of engaging in elections in the Apple Valley Fire
20 District. At the end of September 2016, the Committee became primarily formed to support Apple
21 Valley Fire Protection District Measure A, which involved a parcel tax continuation and increase, on the
22 November 8, 2016 General Election ballot. The principal officer of the Committee is James Peratt
23 (“Peratt”) and the treasurer of the Committee is Larry Soper (“Soper”).

24 Respondents committed numerous violations of the Political Reform Act (the “Act”)¹ in
25 conjunction with political activity in 2016. In particular, Respondents failed to properly name and
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28 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 Practice Commission are contained in §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

1 identify the Committee as primarily formed; failed to comply with the Act’s advertising disclosure
2 requirements; and failed to timely file two preelection campaign statements, two 24-hour contribution
3 reports, and four 24-hour independent expenditure reports.

4 **SUMMARY OF THE LAW**

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

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

9 When enacting the Act, the people of California found and declared that previous laws regulating
10 political practices suffered from inadequate enforcement by state and local authorities.² For this reason,
11 the Act is to be construed liberally to accomplish its 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
15 system.⁵ Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will
16 be “vigorously enforced.”⁶

17 Duty to Identify Committee as Primarily Formed

18 The Act defines “primarily formed committee” to include a committee which is formed or exists
19 primarily to support or oppose a single ballot measure.⁷ A committee is primarily formed if its “primary
20 purpose and activities” are to support or oppose a single ballot measure.⁸ Further, a committee is
21 primarily formed if it makes more than 70 percent of its total contributions and expenditures on all
22 candidates and measures on a specific single candidate or measure, or group of candidates or measures in
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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 Section 82047.5.

⁸ Regulation 18247.5, subd. (d)(2).

1 the same election, during either the immediately preceding 24 months or the current two-year period
2 beginning January 1 of an odd-numbered year.⁹

3 A committee that has reason to know it is close to becoming primarily formed shall determine
4 whether it is primarily formed quarterly at the end of March, June, September, and December.¹⁰ An
5 existing general purpose committee need only change its filing status to primarily formed if it makes at
6 least \$10,000 of contributions and/or expenditures if supporting or opposing local candidates or
7 measures.¹¹

8 Within 30 days of the designation of the numerical order of propositions appearing on the ballot,
9 any committee which is primarily formed to support or oppose a ballot measure shall, if supporting the
10 measure, include the statement “a committee for Proposition __” in the name of the committee in any
11 reference to the committee required by law.¹² A primarily formed ballot measure committee must also
12 identify the title and ballot measure letter in its statement of organization.¹³

13 Whenever there is a change in any of the information contained in a statement of organization,
14 including the committee name, an amendment shall be filed within ten days to reflect the change.¹⁴ The
15 committee must file the original of the amendment with the Secretary of State and a copy with the local
16 filing officer.¹⁵

17 Advertisement Disclosure

18 An “advertisement” under the Act means any general or public advertisement which is authorized
19 and paid for by a person or committee for the purpose of supporting or opposing a candidate for elective
20 office or a ballot measure(s).¹⁶

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24 ⁹ Regulation 18247.5, subd. (d)(3).

25 ¹⁰ Regulation 18247.5, subd. (e)(1).

26 ¹¹ Regulation 18247.5, subd. (g)(2).

27 ¹² Section 84107.

28 ¹³ Section 84102, subd. (d).

¹⁴ Section 84103, subd. (a).

¹⁵ Sections 84103, subd. (a); and 84215.

¹⁶ Section 84501.

1 Under the Act, an independent expenditure advertisement that supports or opposes a ballot
2 measure must include a disclosure statement identifying the committee making the independent
3 expenditure, immediately preceded by the phrase “Paid for by.”¹⁷

4 Mandatory Filing of Campaign Statements

5 At the core of the Act’s campaign reporting system is the requirement that committees file
6 campaign statements and reports for certain reporting periods and by certain deadlines.¹⁸

7 The Act requires that general purpose committees file certain preelection campaign statements if
8 they make contributions or independent expenditures totaling \$500 or more in connection with an
9 election during the period covered by the preelection statements.¹⁹ The Act also requires that primarily
10 formed committees file preelection campaign statements.²⁰ In particular, in connection with the election
11 held November 8, 2016, committees were required to file preelection campaign statements (Form 460s)
12 with the appropriate filing officer by the deadline of September 29, 2016 for the reporting period of July
13 1, 2016 to September 24, 2016, and by the deadline of October 27, 2016 for the reporting period of
14 September 25, 2016 to October 22, 2016.²¹

15 Duty to File 24-Hour Reports

16 Each candidate or committee that makes or receives a late contribution must file a report within
17 24 hours of making or receiving the contribution.²² A “late contribution” includes a contribution
18 aggregating \$1,000 or more that is made to or received by a candidate, controlled committee, or primarily
19 formed committee within 90 days before the date of the election at which the pertinent candidate or
20 measure is to be voted on.²³

21 When a committee makes a late independent expenditure, the committee must disclose the
22 expenditure in a 24-hour independent expenditure report filed in the places where it would be required
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25 ¹⁷ Section 84506, subd. (a)(1); Regulation 18450.4, subd. (b)(1); see also Section 84504, subd. (c).

26 ¹⁸ Sections 84200, *et seq.*

27 ¹⁹ Section 84200.5, subd. (c).

28 ²⁰ Section 84200.5, subd. (a).

²¹ Sections 84200.8, subs. (a) and (b); and 84215.

²² Section 84203.

²³ Section 82036.

1 to file campaign statements as if it were formed or existing primarily to support or oppose the candidate
2 or measure for or against which it is making the late independent expenditure within 24 hours of making
3 the late independent expenditure.²⁴ A “late independent expenditure” means any independent
4 expenditure which totals in the aggregate \$1,000 or more and is made for or against any specific
5 candidate or measure involved in an election within 90 days before the date of the election or on the date
6 of the election.²⁵

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

8 It is the duty of a committee treasurer to ensure that the committee complies with the campaign
9 reporting provisions of the Act.²⁶ It is the duty of the committee’s principal officer to authorize the
10 content of communications made by the committee, authorize expenditures made by the committee, and
11 determine the committee’s campaign strategy.²⁷ A treasurer and principal officer may be held jointly and
12 severally liable, along with the committee, for violations committed by the committee.²⁸

13 **SUMMARY OF THE FACTS**

14 The Committee filed its initial statement of organization on September 23, 2013, and an
15 amendment thereto on December 2, 2013, providing that the Committee qualified on November 22,
16 2013. The Committee was initially formed by the Apple Valley Professional Firefighters Association to
17 help local citizens maintain local control of their fire department in Apple Valley in the face of threats to
18 the department’s survival. The majority of the Committee’s contributions come from the firefighters
19 working and living in the community of Apple Valley.

20 The Committee supported certain candidates and a ballot measure in 2016. In particular, the
21 Committee made expenditures advocating for Apple Valley Fire Protection District Measure A. The
22 Committee also made contributions to Art Bishop and Larry Cusack, candidates for Apple Valley City
23 Council. Measure A was approved by voters, receiving approximately 77.45 percent of the vote. Bishop
24 and Cusack were both re-elected to the City Council, receiving 34.34 and 25.12 percent of the vote,

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26 ²⁴ Section 84204.
27 ²⁵ Section 82036.5.
28 ²⁶ Sections 81004, 84100, 84104, and 84213; Regulation 18427.
²⁷ Section 82047.6; Regulation 18402.1, subd. (b).
²⁸ Sections 83116.5 and 91006.

1 respectively.

2 In 2016, the Committee reported receiving \$20,334.21 in contributions and making \$32,816.86 in
3 expenditures. As of the end of September 2016, when the Committee was required to analyze whether it
4 should be recharacterized as a primarily formed committee, the Committee became primarily formed to
5 support Measure A, given that more than 70 percent of the Committee's expenditures on candidates and
6 measures during the pertinent two-year period were spent on Measure A. Despite the change in
7 committee type, the Committee failed to change itself to primarily formed on its statement of
8 organization, or change its name accordingly.

9 The Committee failed to timely file certain campaign statements. Based on its expenditures
10 supporting Measure A and local candidates, the Committee was required to file preelection campaign
11 statements in advance of the November 8, 2016 General Election. However, the Committee failed to
12 timely file its preelection campaign statement for the reporting period of July 1, 2016 to September 24,
13 2016. Although due on September 29, 2016, the statement was not filed until January 10, 2017 (103
14 days late), after the election. The Committee received \$3,570 in contributions and made \$23,148 in
15 expenditures during that period. The Committee also failed to timely file its preelection campaign
16 statement for the reporting period of September 25, 2016 to October 22, 2016. Although due on October
17 27, 2016, the statement was not filed until January 10, 2017 (75 days late), after the election. The
18 Committee received \$1,428 in contributions and made \$9,618 in expenditures during that period.

19 The Committee also failed to timely file certain 24-hour contribution and 24-hour independent
20 expenditure reports. These reports are summarized as follows:

Statement/ Report Type	Payment Date	Due Date	Date Filed	Amount of Payment	Supported Candidate/ Measure
24-Hour Contribution (made)	10/4/16	10/5/16	N/A	\$2,500	Measure A
24-Hour Contribution (made)	10/17/16	10/18/16	N/A	\$1,500	Measure A
Total Late Contributions:				\$4,000	

24-Hour Independent Expenditure	9/1/16	9/2/16	N/A	\$3,351.24	Measure A
24-Hour Independent Expenditure	9/1/16	9/2/16	N/A	\$5,191.05	Measure A
24-Hour Independent Expenditure	9/21/16	9/22/16	N/A	\$8,022.80	Measure A
24-Hour Independent Expenditure	9/22/16	9/23/16	N/A	\$2,964.27	Measure A
24-Hour Independent Expenditure	9/22/16	9/23/16	N/A	\$1,164.38	Measure A
24-Hour Independent Expenditure	10/4/16	10/5/16	N/A	\$1,150	Measure A
Total Late Independent Expenditures:				\$21,843.74	

Given that the Committee’s preelection campaign statements, which covered the above-referenced activity, were filed after the election, none of the Committee’s late contributions or independent expenditures were otherwise reported on a campaign statement of the Committee prior to the election. The two late contributions were reported by the recipient, Citizens Supporting Apple Valley Emergency Services – Support Measure A, on its campaign statement filed on the date of the election.

Finally, the Committee failed to include the appropriate disclosures on certain advertisements. In September 2016, the Committee paid for four different yard signs that included the disclaimer “Paid for by the Citizens Supporting Apple Valley Emergency Services Measure A,” a different primarily formed committee. However, because the Committee paid for the signs itself, it was required to disclose its name on the signs, not that of the related committee, known as “CSAVES.” The Committee reported the pertinent expenditures on its campaign statements.

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1 **VIOLATIONS**

2 Count 1: Failure to Properly Name the Committee and Identify the Committee as Primarily
3 Formed

4 The Committee, Peratt, and Soper failed to name the Committee to include identification of the
5 pertinent ballot measure, and failed to identify the committee as being primarily formed on its statement
6 of organization, in violation of Sections 84103 and 84107.

7 Count 2: Failure to Comply With Disclosure Requirements for Political Advertisements

8 The Committee and Peratt failed to include the required disclosures on four different yard sign
9 advertisements, in violation of Sections 84504, subdivision (c), and 84506, subdivision (a); and
10 Regulation 18450.4, subdivision (b).

11 Count 3: Failure to Timely File Preelection Campaign Statements

12 The Committee, Peratt, and Soper failed to timely file preelection campaign statements for the
13 reporting periods of July 1, 2016 to September 24, 2016, and September 25, 2016 to October 22, 2016, in
14 violation of Sections 84200.5, subdivisions (a) and (e); and 84200.8, subdivisions (a) and (b).

15 Count 4: Failure to Timely File 24-Hour Reports

16 The Committee, Peratt, and Soper failed to timely file two 24-hour contribution reports for late
17 contributions totaling \$4,000 made on October 4, 2016 and October 17, 2016, and four 24-hour
18 independent expenditure reports for late independent expenditures totaling \$21,843.74 made between
19 September 1, 2016 and October 4, 2016, in violation of Sections 84203 and 84204.

20 **PROPOSED PENALTY**

21 This matter consists of four counts. The maximum penalty that may be imposed is \$5,000 per
22 count. Thus, the maximum penalty that may be imposed is \$20,000.²⁹

23 In determining the appropriate penalty for a particular violation of the Act, the Commission
24 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
25 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
26 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
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28 ²⁹ Section 83116, subd. (c).

1 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
2 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
3 record of violations.³⁰

4 In this case, the Enforcement Division found no evidence that Respondents intended to conceal,
5 deceive, or mislead the public. Further, Respondents do not have a prior history of violations.

6 The Commission also considers penalties in prior cases involving similar violations. Recent
7 similar cases involving a committee’s failure to properly name itself and advertising disclaimer issues
8 include the following:

9 • *In the Matter of Fair Rents 4 Pacifica, Julie Starobin, and Thursday Roberts*; FPPC No. 17/1217.
10 Respondents, a primarily formed ballot measure committee, and its treasurer and principal officer, failed
11 to timely change the name of the committee to reflect the supported ballot measure, and failed to include
12 the ballot measure in the committee name on mass mailings and advertisements, in violation of Sections
13 84103, 84107, 84305, and 84504. In June 2018, the Commission approved a fine of \$3,500 on one
14 count.

15 • *In the Matter of Southwest Teachers Association PAC, Ben Swearingen, and Michelle Gates*;
16 FPPC No. 17/403. Respondents, a general purpose committee and its principal officer and treasurer,
17 failed to include the required “Paid for by” phrase and committee name on a billboard advertisement; and
18 failed to print a disclosure statement that measured at least five percent of the height of the advertisement
19 on a banner advertisement, in violation of Sections 84506 and 84506.5, and Regulation 18450.4. In
20 December 2018, the Commission approved a fine of \$3,000 on one count.

21 As to Count 1, Respondents are deserving of a penalty similar to that approved in the *Fair Rents 4*
22 *Pacifica* case. Although, unlike in the comparable case, the deficient advertising disclosures are being
23 charged separately because the ads identified a different committee as the source, the violation here is
24 aggravated because the Committee also failed to identify itself as primarily formed on its statement of
25 organization, unlike in the comparable case.

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³⁰ Regulation 18361.5, subd. (d).

1 As to Count 2, a penalty higher than that approved in the *Southwest Teachers* case is warranted
2 given the elevated level of public confusion caused by the Committee’s identification of a committee
3 other than the true sender on four different mass mailings.

4 Recent similar cases involving a failure to timely file preelection campaign statements include the
5 following:

6 • *In the Matter of Humboldt Deputy Sheriff’s Organization PAC, Leslie S. Borges, and Scott N.*
7 *Hicks*; FPPC No. 15/1966. A general purpose committee failed to timely file two preelection campaign
8 statements, which covered a total of \$23,900 in receipts and expenditures, in violation of Sections
9 84200.5, subdivision (e); and 84200.7, subdivision (a). The two statements were not filed until after the
10 pertinent election. In December 2017, the Commission approved a fine of \$3,000 on one count.

11 As to Count 3, the violation here is similar to the comparable case since the subject preelection
12 statements were not filed until after the election. However, a higher penalty is warranted given the
13 higher amount of financial activity associated with the statements.

14 Recent similar cases involving a failure to timely file 24-hour reports include the following:

15 • *In the Matter of Gregory Kelly Meagher*; FPPC No. 16/236. Respondent, a major donor
16 committee, failed to timely file 24-hour reports disclosing late independent expenditures amounting to
17 \$8,811 and a late contribution of \$2,200, in violation of Sections 84203 and 84204. In May 2018, the
18 Commission approved a fine of \$2,000 on one count.

19 As to Count 4, a penalty higher than what was approved in the comparable case is justified given
20 the higher amount of financial activity that went unreported.

21 In mitigation of all counts, the Committee provided that they intend to retain a professional firm
22 to manage their campaign reporting going forward.

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

Count	Violation	Proposed Penalty
1	Failure to Properly Name the Committee and Identify the Committee as Primarily Formed	\$3,500
2	Failure to Comply With Disclosure Requirements for Political Advertisements	\$3,500

3	Failure to Timely File Preelection Campaign Statements	\$3,500
4	Failure to Timely File 24-Hour Reports	\$2,500
	TOTAL:	\$13,000

CONCLUSION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondents, Apple Valley Professional Firefighters Association Local 4742, James Peratt, and Larry Soper, hereby agree as follows:

1. Respondents violated the Act as described in the foregoing pages, which are a true and accurate summary of the facts in this matter.
2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose of reaching a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondents pursuant to Section 83116.
4. Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not limited to, the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at Respondents’ own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially reviewed.
5. Respondents agree to the issuance of the decision and order set forth below. Also, Respondents agree to the Commission imposing against them an administrative penalty in the amount of \$13,000. One or more payments totaling this amount, to be paid to the General Fund of the State of California, is/are submitted with this stipulation as full payment of the administrative penalty described above, and they will be held by the State of California until the Commission issues its decision and order regarding this matter.

1 The foregoing stipulation of the parties “In the Matter of Apple Valley Professional Firefighters
2 Association Local 4742, James Peratt, and Larry Soper,” FPPC Case No. 16/19935 is hereby accepted as
3 the final decision and order of the Fair Political Practices Commission, effective upon execution below
4 by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

9 Richard C. Miadich, Chair
10 Fair Political Practices Commission