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

11 In the Matter of:

12 PRESERVE TRACY / “NO ON
13 MEASURE M” AND DANA
RICHARDS,

14 Respondents.

FPPC Case No. 2018/01104

STIPULATION, DECISION AND ORDER

15
16 **INTRODUCTION**

17 Respondent Preserve Tracy / “No on Measure M” (“Committee”) is a primarily formed local ballot
18 measure committee formed to oppose City of Tracy Ballot Measure M, which appeared on the ballot in the
19 November 6, 2018 General Election. Dana Richards (“Richards”) serves as the treasurer. The Committee,
20 and Richards violated the Political Reform Act¹ (“Act”) by failing to properly identify the Committee on
21 two sets of yard signs.

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28 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 are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source.

1 **SUMMARY OF THE LAW**

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

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

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

11 **Advertising Disclosure**

12 An “advertisement” under the Act means any general or public communication that is authorized
13 and paid for by a committee for the purpose of supporting or opposing a candidate(s) for elective office
14 or a ballot measure(s).⁷

15 Under the Act, any advertisement paid for by a primarily formed committee shall include the
16 words “Paid for by” followed by the name of the committee.⁸ A committee that is primarily formed to
17 support or oppose a ballot measure must include the statement, “a committee for/against Proposition ____”
18 in any reference to the committee required by law.⁹ For disclosures on a printed advertisement, such as a
19 yard sign, the disclosure must be in Arial equivalent type with a total height of at least five percent of the
20 height of the advertisement and printed on a solid background with sufficient contrast that is easily
21 readable by the average viewer.¹⁰

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24 _____
25 ² Section 81001, subdivision (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subdivision (a).

28 ⁵ Sections 84200, *et seq.*

⁶ Section 81002, subdivision (f).

⁷ Section 84501.

⁸ Section 84502.

⁹ Section 84107.

¹⁰ Section 84502.2.

1 A website must include the text “Ad paid for by” or “Paid for by” followed by the name of the
2 committee.¹¹

3 **Joint and Several Liability of Committee, Treasurer, and Principal Officer**

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

9 **SUMMARY OF THE FACTS**

10 This case was opened to investigate a series of yard signs opposing Measure M that were placed
11 around the City of Tracy that lacked the proper disclosure and referred to a committee that was not
12 registered with the local city clerk or the Secretary of State’s office. Measure M was a local ballot measure
13 that would have exempted more than 2,000 acres of land from the local growth management ordinance
14 under certain circumstances. The growth management ordinance limits the number of residential building
15 permits that are issued each year. The measure failed.

16 The Enforcement Division conducted an investigation and contacted the responsible parties,
17 including Richards. The Committee cooperated fully and filed a Statement of Organization with the
18 Secretary of State on October 28, 2018, shortly after being contacted by Enforcement. The Committee filed
19 the first and second pre-election statements on October 22, 2018. As of October 20, 2018, the Committee
20 reported a total \$4,778 in contributions and spent \$3,689 in expenditures. The Committee qualified on or
21 around September 17, 2018, having received at least \$2,000 in contributions. The Committee was required
22 to file a Statement of Organization within 10 days of qualifying as a committee.

23 The Committee submitted a Statement of Organization that was received by the Secretary of State
24 on October 11, 2018, however this statement was rejected, in part, due to the failure to conform to naming
25 requirements for ballot measure committees. The Committee resubmitted, adding “No on Measure M” to
26

27 ¹¹ Section 84502.

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

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

¹⁴ Sections 83116.5 and 91006.

1 the original name “Preserve Tracy” and this statement was filed with the Secretary of State on October 28,
2 2018.

3 The Committee produced two sets of yard signs. The first, purchased on or around September 22,
4 2018, stated “Tracy Vote No on M, no more traffic, no more crime, no on 200,000 more residents,
5 www.preservetracy.com.” This sign lacked the required “Paid for by Preserve Tracy / ‘No on Measure M’.
6 Shortly after, the Committee began placing stickers on this set of signs that said “Paid for by Preserve
7 Tracy.” These stickers were too small, comprising less than 5% of the height of the sign, and the name of
8 the Committee was incomplete.

9 The Committee produced a second set of signs on or around October 4, 2018. The signs included
10 the “Paid for by” language and the font was of adequate height, however, the name of the Committee was
11 incomplete.

12 The Committee maintained the website, www.preservetracy.com, however, the website lacked the
13 proper disclosure statement

14 VIOLATION

15 Count 1

16 Failure to Include the Required Disclosure in an Advertisement

17 The Committee and Richards paid for and distributed two types of yard signs that did not include
18 the full name of the committee and on one version, did not include the “Paid for by” phrase. Respondents
19 failed to include the “Paid for by” phrase on a website. These actions are in violation of Sections 84502,
20 84504.2, subdivision (b), and 84107.

22 PROPOSED PENALTY

23 This matter consists of one count. The maximum penalty that may be imposed is \$5,000.¹⁵

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

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¹⁵ See Section 83116, subdivision (c).

1 whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were
2 filed to provide full disclosure; and (f) whether the violator has a prior record of violations.¹⁶

3 Additionally, the Commission considers penalties in prior cases with comparable violations. *In the*
4 *Matter of Bluff Cove Homeowners' Association Measure E Opposition Committee, Jennifer Hope, and*
5 *Robert L. Chapman*, FPPC No. 18/188 (The Commission approved a stipulated decision on October 18,
6 2018.) In *Bluff Cove*, the committee spent over \$10,000 on five mass mailers that failed to include the
7 correct disclosure. The mailers included reference to a mailer and to a misleading organization name, Bluff
8 Cove Neighborhood Patrol. The committee qualified on February 7, 2018 and sent mailers on February 7
9 and 26, March 1, 9, and 26. The committee did not file any campaign statements timely, but did file prior
10 to the election and did file a Statement of Organization on January 23, 2018. The committee was charged
11 with two counts, one for failure to file pre-election statements for a penalty of \$1,500 and one for failure
12 to include correct advertising disclosure for a penalty of \$2,000.

13 With regard to this case, the Committee spent half as much on advertisements and attempted to
14 correct the failure to include the disclosure statement by immediately printing stickers and a new run of
15 yard signs. However, the Committee's failure to timely file a Statement of Organization made it unclear to
16 the public who was responsible for the signs that were placed. The Committee timely filed the second pre-
17 election statement, but filed the first pre-election statement 25 days late. The Committee was very
18 cooperative and had disclosure prior to the election. For these reasons, the late pre-election statement is
19 not being charged as a separate count but is considered an aggravating factor to the advertising disclosure
20 violation.

21 After considering the factors listed in Regulation 18361.5 and penalties in prior similar cases, a
22 penalty of \$2,500 is recommended.

23 CONCLUSION

24 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
25 Respondents, Preserve Tracy / "No on Measure M" and Dana Richards, hereby agree as follows:

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

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¹⁶ Regulation 18361.5, subdivision (d).

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

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

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

13 5. Respondents agree to the issuance of the decision and order set forth below. Also,
14 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
15 \$2,500. One or more payments totaling this amount, to be paid to the General Fund of the State of
16 California, is/are submitted with this stipulation as full payment of the administrative penalty described
17 above, and they will be held by the State of California until the Commission issues its decision and order
18 regarding this matter.

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

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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: _____

Dana Richards, individually and on behalf of
Preserve Tracy / "No on Measure M"

