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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

12 BLUPAC and DOUGLAS CHAN,
13 Respondents.

FPPC Case No. 16/19981

STIPULATION, DECISION AND ORDER

14
15 **INTRODUCTION**

16 Respondent BluPAC is a 501(c)(4) organization, which has been renamed Response Analytics
17 Research. BluPAC is a San Francisco based non-profit civic research organization. Respondent Douglas
18 Chan (“Chan”) is the responsible officer for BluPAC. BluPAC became an independent expenditure
19 committee when it paid \$49,265 to a slate mailer organization Citizens Economic Council for
20 independent expenditures to oppose and support Santa Clara City Council candidates on the November
21 8, 2016 General Election ballot. BluPAC and Chan violated the Political Reform Act (the “Act”)¹ by
22 failing to timely file nine late independent expenditure reports.

23 **SUMMARY OF THE LAW**

24 The Act and its regulations are amended from time to time. The violations in this case occurred in
25 2016. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they
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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 existed at that time.

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
4 previous laws regulating political practices suffered from inadequate enforcement by state and local
5 authorities.² Thus, it was decreed that the Act “should be liberally construed to accomplish its
6 purposes.”³

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

12 **Independent Expenditure Committee**

13 Any person who makes independent expenditures totaling \$1,000 or more in a calendar year
14 qualifies as an independent expenditure committee.⁷ An “independent expenditure” is an expenditure by
15 any person in connection with a communication which expressly advocates the election or defeat of a
16 clearly identified candidate or the qualification, passage, or defeat of a clearly identified ballot measure,
17 or taken as a whole and in context, unambiguously urges a particular result in an election but which is
18 not made to or at the behest of the affected candidate or committee.⁸

19 **Duty to File 24-Hour Independent Expenditure Reports**

20 When a committee makes a late independent expenditure, the committee must disclose the
21 expenditure in a 24-hour independent expenditure report filed in the places where it would be required
22 to file campaign statements as if it were formed or existing primarily to support or oppose the candidate
23 or measure for or against which it is making the late independent expenditure within 24 hours of making
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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 82013, subd. (b).

⁸ Section 82031.

1 the late independent expenditure.⁹ A “late independent expenditure” means any independent expenditure
 2 which totals in the aggregate \$1,000 or more and is made for or against any specific candidate or
 3 measure involved in an election within 90 days before the date of the election or on the date of the
 4 election.¹⁰

5 **SUMMARY OF THE FACTS**

6 BluPAC is a 501(c)(4) organization, which has been renamed Response Analytics Research.
 7 BluPAC is a San Francisco based non-profit civic research organization. Chan is the responsible officer
 8 for BluPAC. BluPAC became an independent expenditure committee when it paid \$49,265 to a slate
 9 mailer organization Citizens Economic Council for independent expenditures to oppose and support
 10 Santa Clara City Council candidates on the November 8, 2016 General Election ballot. Specifically,
 11 BluPAC failed to file the following 24-Hour Independent Expenditure Reports with the Santa Clara City
 12 Clerk’s Office:

13 Form	Description	Date Due	Date Filed
14 496	\$3,333.33 opposing Suds Jain	9/17/2016	2/7/2017
15 496	\$8,210.83 supporting John McLemore	9/17/2016	2/7/2017
16 496	\$8,210.83 supporting Patricia Mahan	9/17/2016	2/7/2017
17 496	\$8,210.83 supporting Michael Sellers	9/17/2016	2/7/2017
18 496	\$5,649.58 opposing Debi Davis	9/17/2016	2/7/2017
19 496	\$5,649.58 opposing Tino Silva	9/17/2016	2/7/2017
20 496	\$3,333.33 opposing Kathy Watanabe	9/17/2016	2/7/2017
21 496	\$3,333.33 opposing Pat Nikolai	9/17/2016	2/7/2017
22 496	\$3,333.33 opposing Deborah Bress	9/17/2016	2/7/2017
	Total: \$49,265.00		

23 The above reports were filed with the Secretary of State’s Office the day before the election, on
 24 November 7, 2016. However, these reports were required to be filed and were not filed with the Santa
 25 Clara City Clerk’s Office until after the relevant election. In addition, BluPac’s initial independent
 26 expenditure exceeding \$1,000 occurred on September 16, 2016, totaling \$3,333.33. However, BluPac did
 27 not file a Form 462 verifying independent expenditures were not coordinated with candidates until

28 ⁹ Section 84204.

¹⁰ Section 82036.5.

1 November 7, 2016, the day before the relevant election. This form was signed by Chan. The failure to
2 timely file the verification of independent expenditures is not charged for settlement purposes.

3 **VIOLATIONS**

4 **Count 1**

5 *Failure to File 24-Hour Independent Expenditure Reports*

6 BluPAC and Chan failed to timely file nine 24-Hour Independent Expenditure Reports, in
7 connection with the November 8, 2016 General Election, in violation of Section 84204.

8 **PROPOSED PENALTY**

9 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per
10 count.¹¹

11 In determining the appropriate penalty for a particular violation of the Act, the Commission
12 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
13 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
14 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
15 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
16 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
17 record of violations.¹² Additionally, the Commission considers penalties in prior cases with comparable
18 violations.

19 The Commission has found disclosure to be essential, especially before an election. The public
20 harm inherent in campaign reporting violations is that the public is deprived of important, time-sensitive
21 information regarding political contributions.

22 The Commission considered a settlement involving similar violations. *In the Matter of Apple*
23 *Valley Professional Firefighters Association Local 4742, James Peratt, and Larry Soper*, FPPC No.
24 16/19935 (the Commission approved a stipulated decision on August 15, 2019.) Apple Valley
25 Professional Firefighters Association Local 4742 failed to timely file four 24-Hour Independent
26 Expenditure Report, totaling \$21,843.74. The same count included the failure to timely file two 24-Hour

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28 ¹¹ Section 83116, subdivision (c).

¹² Regulation 18361.5, subdivision (d).

1 Contribution Reports, totaling \$4,000. The Commission imposed a penalty of \$2,500 for this violation.

2 In this case, the amount spent by BluPAC was significantly more than in the Apple Valley case.
3 The investigation found insufficient evidence that BluPAC had become a recipient committee, as it kept
4 political expenditures under the \$50,000 threshold for a multipurpose committee to become a recipient
5 committee.¹³ This displayed a level of sophistication, so it is aggravating that no disclosure was made
6 locally prior to the election and only 1 day prior to the election with the Secretary of State's Office. In
7 mitigation, BluPAC, Chan and BluPAC's professional treasurer contend they were told that Citizens
8 Economic Council was a statewide general-purpose committee, and that contributions to Citizens
9 Economic Council therefore did not require the filing of 24-Hour Independent Expenditure Reports. In
10 addition, BluPAC already paid an \$8,380 penalty to the Santa Clara City Clerk for the late filing of these
11 24-Hour Independent Expenditure Reports in 2017. Finally, BluPAC and Chan have no prior history with
12 the Enforcement Division. The failure to timely file the verification of independent expenditures is
13 considered aggravating. Under these circumstances, a penalty in the amount of \$3,500 is recommended.

14 CONCLUSION

15 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
16 Respondents BluPAC and Douglas Chan hereby agree as follows:

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

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

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

24 4. Respondents have consulted their attorney, Nicholas Sanders with Sutton Law Firm.
25 Respondents understand and hereby knowingly and voluntarily waive, any and all procedural rights set
26 forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is
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28 ¹³ Section 84222, subdivision (c)(5).

1 not limited to the right to appear personally at any administrative hearing held in this matter, to be
2 represented by an attorney at Respondents' own expense, to confront and cross-examine all witnesses
3 testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
4 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
5 reviewed.

6 5. Respondents agree to the issuance of the decision and order set forth below. Also,
7 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
8 \$3,500. One or more payments totaling this amount—to be paid to the General Fund of the State of
9 California—is/are submitted with this stipulation as full payment of the administrative penalty described
10 above, and they will be held by the State of California until the Commission issues its decision and order
11 regarding this matter.

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

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

1 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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Dated: _____

Douglas Chan, individually, and on behalf of BluPAC,
Respondents

1 The foregoing stipulation of the parties “In the Matter of BluPAC and Douglas Chan,” FPPC
2 Case No. 16/19981, is hereby accepted as the final decision and order of the Fair Political Practices
3 Commission, effective upon execution below by the Chair.

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5 IT IS SO ORDERED.

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7 Dated: _____

Richard C. Miadich, Chair
Fair Political Practices Commission