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

11 In the Matter of) FPPC No. 16/20109
12)
13 CITY OF FOUNTAIN VALLEY,) **STIPULATION, DECISION, AND ORDER**
14)
15 Respondent.)
16)
17)

18 **INTRODUCTION**

19 Respondent City of Fountain Valley (the “City”) is a suburban city in the County of Orange.
20 Under the Political Reform Act (the “Act”),¹ a local government agency that spends \$1,000 or more in
21 public funds to advocate for or against a ballot measure qualifies as a campaign committee and must
22 comply with all provisions of the Act related to campaign committees, including disclosing itself on
23 advertisements and filing campaign statements and reports. The City violated the Act by failing to include

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26 ¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the
27 Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in
28 Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2,
Division 6 of the California Code of Regulations, unless otherwise indicated.

1 a disclosure statement on an advertisement, failing to timely file one 24-hour independent expenditure
2 report, and failing to timely file one semi-annual campaign statement.

3 **SUMMARY OF THE LAW**

4 The violations in this case occurred in 2016, so all legal references and discussions of the law
5 pertain to the Act’s provisions as they existed at that time.

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

7 When enacting the Political Reform Act, the people of California found and declared that previous
8 laws regulating political practices suffered from inadequate enforcement by state and local authorities.²
9 For this reason, the Act is to be construed liberally to accomplish its purposes.³

10 One purpose of the Act is to promote transparency by ensuring that expenditures made in election
11 campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are
12 inhibited.⁴ In furtherance of this purpose, the Act establishes a comprehensive campaign reporting
13 system⁵ and requires any committee that supports or opposes a ballot measure to print its name as part of
14 any advertisement.⁶ Another purpose of the Act is to provide adequate enforcement mechanisms so the
15 Act will be “vigorously enforced.”⁷

16 **Government Agency as a Campaign Committee**

17 A “committee” is any person or combination of persons who, in a calendar year, receives
18 contributions totaling \$2,000 or more; makes independent expenditures totaling \$1,000 or more; or makes
19 contributions totaling \$10,000 or more to or at the behest of candidates or other committees.⁸ When a
20 state or local governmental agency uses public moneys for a communication that (1) expressly advocates
21 for or against a clearly identified candidate or ballot measure or (2) to unambiguously urge a particular
22 result in an election, the Act identifies that payment as an independent expenditure.⁹

24 ² Section 81001, subd. (h).

25 ³ Section 81003.

26 ⁴ Section 81002, subd. (a).

27 ⁵ Sections 84200, *et seq.*

28 ⁶ Section 84506.

⁷ Section 81002, subd. (f).

⁸ Section 82013.

⁹ Regulation 18420.1, subd. (a).

1 If a communication does not contain express language it still may unambiguously urge a particular
2 result if: (1) it clearly is campaign material or campaign activity, such as bumper stickers, billboards,
3 door-to-door canvassing, or other mass media advertising including, but not limited to, television or radio
4 spots; or (2) when considering the style, tenor, and timing of the communication, it can be reasonably
5 characterized as campaign material and is not a fair representation of fact serving only an informational
6 purpose.¹⁰ Some factors to consider when assessing style, tenor, and timing include, but are not limited
7 to whether the communication is (1) funded from a special appropriation related to the measure as
8 opposed to a general appropriation; (2) consistent with the normal communication pattern for the agency;
9 (3) consistent with the style of other communications issued by the agency; and (4) using inflammatory
10 or argumentative language.¹¹

11 The Commission adopted Regulation 18420.1 based on the California Supreme Court’s decision
12 in *Vargas v. City of Salinas, et. al.* (2009) 46 Cal. 4th 1.¹² In *Vargas*, the Court relied heavily on its
13 decision in *Stanson v. Mott* (1976) 17 Cal. 3d 206. *Stanson* established the analysis for determining when
14 communications by a governmental agency that do not contain express advocacy still constitute campaign
15 activity. The Court went on to conclude that certain publicly financed literature that is not clearly
16 campaign material and that purports to contain only relevant factual information can be prohibited
17 campaign activity depending on the “style, tenor and timing of the publication.”¹³

18 Neither *Vargas* nor *Stanson* directly concerned any provisions of the Act. They were decided
19 based on the constitutional prohibition against unauthorized use of public funds. But since in those cases
20 the State Supreme Court had defined when government agencies are prohibited from using public moneys
21 to pay for communications related to ballot measures, the Commission adopted the parameters described
22 in *Vargas* for determining when a government agency makes contributions and independent expenditures
23 under the Act.¹⁴

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26 ¹⁰ Regulation 18420.1, subd. (b).

27 ¹¹ Regulation 18420.1, subd. (d).

28 ¹² Fair Political Practices Commission, Minutes of Meeting, Public Session, Sept. 10, 2009, item no. 25, page 3.

¹³ *Stanson*, at 222.

¹⁴ Fair Political Practices Commission, Minutes of Meeting, Public Session, Sept. 10, 2009, item no. 25, page 3.

1 **Advertisement Disclosure**

2 An advertisement is any general or public advertisement which is authorized and paid for by a
3 committee for the purpose of supporting or opposing one or more ballot measures.¹⁵ Such an
4 advertisement, that is paid for by an independent expenditure, must include a disclosure statement that
5 identifies the name of the committee.¹⁶ “Paid for by” should immediately precede the committee’s name,
6 and all of the disclosure statement must be printed clearly and legibly in no less than 14-point bold, sans
7 serif type font.¹⁷ Any person who violates the advertisement disclosure requirements of the Act is liable
8 in a civil or administrative action brought by the Commission for a fine up to three times the cost of the
9 advertisement, including placement cost.¹⁸

10 **Campaign Statements and Reports**

11 If a local government agency makes expenditures and qualifies as a committee, it must file
12 campaign statements.¹⁹ The Act requires independent expenditure committees to file a 24-hour
13 independent expenditure report within 24 hours of making an expenditure of \$1,000 or more during the
14 90 days prior to an election and disclose that independent expenditure on a subsequent campaign
15 statement.²⁰ The report must include the committee’s name, committee’s address, number or letter of the
16 measure, jurisdiction of the measure, amount, date, and description of goods or services for which the
17 late independent expenditure was made.²¹ The 90-day period for the 2016 General Election began on
18 August 10, 2016.

19 A committee also must file semi-annual campaign statements each year for the periods ending
20 June 30 and December 31 if they made independent expenditures during the 6-month period prior to
21 those dates.²² Requiring local government agencies to file campaign reports and statements furthers the

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24 ¹⁵ Section 84501, subd. (a); Regulation 18450.1, subd. (a)(2).

25 ¹⁶ Section 84506, subd. (a)(1).

26 ¹⁷ Section 84507; Regulation 18450.4, subd. (b).

27 ¹⁸ Section 84510, subd. (a).

28 ¹⁹ Regulation 18420, subd. (d).

²⁰ Sections 84200.6, subd. (b), and 84204.

²¹ Section 84204.

²² Section 84200, subd. (b).

1 Act’s purpose in disclosing expenditures made in election campaigns so that voters are fully informed
2 and improper practices are inhibited.²³

3 **SUMMARY OF THE FACTS**

4 On July 19, 2016, the Fountain Valley City Council voted to place Measure HH on the
5 November 8, 2016 General Election ballot. Measure HH imposed a one-cent sales tax within the City of
6 Fountain Valley, and voters approved it with 59.8 percent of the votes.

7 **Magazine Advertisements**

8 On or about August 18, 2016, the City purchased advertisement space to promote Measure HH
9 in Fountain Valley Living Magazine (the “FVL Magazine”), a privately-owned publication that
10 distributes approximately 25,000 copies of its magazine every month to Fountain Valley residents. The
11 Measure HH advertisements were published in the September 2016 and October 2016 issues of the FVL
12 Magazine. The City paid \$800 for each of the Measure HH advertisements, for a total cost of \$1,600, not
13 including the cost to produce the advertisements.

14 The Enforcement Division determined the City’s communications were not solely for
15 informational purposes under the Political Reform Act when considering the style, tenor and timing of
16 the communication. The City had purchased advertisement space in FVL Magazine in the past to
17 communicate with its residents, but those examples differed in tone and style from the Measure HH
18 magazine advertisements. Previous advertisements promoted City programs and events, such as shopping
19 at local Fountain Valley businesses, home improvement loans and grants, community recreation classes,
20 summer festivals, and senior transportation programs, rather than sales tax measures. Previous
21 advertisements also mostly used concise language, pictures, and graphics to convey quick and simple
22 messages. The Measure HH advertisements, on the other hand, were narratives concerning the merits of
23 and need for Measure HH.

24 The Enforcement Division determined that the Measure HH advertisements contained
25 inflammatory and argumentative language, such as “state of California has taken approximately
26 \$100,000,000 of Fountain Valley’s money – causing reductions to the services our residents rely on,”

27 ²³ Section 81002, subd. (a).

1 “[w]e all know that adequate firefighter staffing is necessary to prevent crime and save lives,” and
2 “reliable source of locally controlled funding that can’t be taken by Sacramento,” to persuade residents
3 to vote for Measure HH.

4 The Measure HH advertisement published in the October 2016 issue of the FVL Magazine
5 qualified the City as an independent expenditure committee, as the payment for that advertisement
6 exceeded the \$1,000 threshold. Despite the campaign related nature of the communication and the City’s
7 qualification as an independent expenditure committee, the magazine advertisement in the October 2016
8 issue of the FVL Magazine failed to display a proper advertisement disclosure statement.

9 **Campaign Statement and Report**

10 The City made independent expenditures totaling approximately \$1,600 in support of Measure
11 HH on September 28, 2016, when it paid for the advertisement space in the FVL Magazine. The City
12 failed to timely file a 24-hour independent expenditure report by September 29, 2016 and a semi-annual
13 campaign statement by January 31, 2017 for its activities in support of Measure HH.

14 **VIOLATIONS**

15 Count 1: Failure to Include Advertisement Disclosure Statements

16 The City failed to include a proper advertisement disclosure statement in its magazine
17 advertisement, in violation of Government Code sections 84506, subdivision (a)(1), and 84507; and
18 Regulation 18450.4, subdivision (b).

19 Count 2: Failure to Timely File a 24-Hour Independent Expenditure Report

20 The City failed to timely file one 24-hour independent expenditure report by September 29, 2016,
21 in violation of Government Code section 84204.

22 Count 3: Failure to Timely File a Semi-Annual Campaign Statement

23 The City failed to timely file a semi-annual campaign statement for the period covering
24 July 1, 2016 through December 31, 2016 by January 31, 2017, in violation of Government Code section
25 84200, subdivision (b).

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1 **PROPOSED PENALTY**

2 This matter consists of three counts. The maximum penalty that may be imposed is \$5,000 per
3 count.²⁴ The Commission also may impose a fine up to three times the cost of an advertisement when it
4 finds an advertisement disclosure violation.²⁵ Thus, the maximum penalty and fine that may be imposed
5 is \$10,000 and \$4,800, respectively, for a combined amount of \$14,800.

6 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
7 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
8 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers
9 the facts and circumstances of the violation in the context of the following factors set forth in Regulation
10 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused by the
11 specific violation; (2) The level of experience of the violator with the requirements of the Act;
12 (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence or absence
13 of any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate, negligent or
14 inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission staff or any
15 other governmental agency in a manner not constituting complete defense under Government Code
16 Section 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the violator has
17 a prior record of violations of the Political Reform Act or similar laws; and (8) Whether the violator,
18 upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.²⁶

19 These violations resulted in delayed transparency for the public into the City’s campaign
20 activities. However, the absence of any evidence of an intention to conceal, deceive, or mislead; the
21 absence of a prior record, and the voluntary filing of the delinquent campaign statement are mitigating.
22 Further, the City made good faith effort to act lawfully, and has agreed to settle rather than litigate the
23 facts and law of this matter. In aggravation, the City also sent two letters to its residents in support of
24 Measure HH at a total cost of under \$200.

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26 ²⁴ Section 83116, subd. (c)

27 ²⁵ Section 84510, subd. (a).

28 ²⁶ Regulation 18361.5, subd. (e).

1 The Commission also considers penalties in prior cases with comparable violations. Recent
2 similar cases include the following:

3 Counts 1-3

4 *In the Matter of San Francisco Bay Area Rapid Transit District (BART)*; FPPC No. 16/19959.
5 (The Commission approved a stipulated decision on December 20, 2018.) BART made late independent
6 expenditures for two YouTube video advertisements in support of Measure RR during the 90-day period
7 preceding the November 8, 2016 General Election. BART failed to include a proper advertisement
8 disclosure statement in the two video advertisements. Additionally, BART failed to timely file a semi-
9 annual campaign statement and late independent expenditure reports to disclose those late independent
10 expenditures to the public. The Commission approved a penalty of \$3,500 for failing to include an
11 advertisement disclosure statement; \$2,500 for failing to timely file a 24-hour independent expenditure
12 report; and \$1,500 for failing to file a semi-annual campaign statement.

13 For Count 1, similar to *BART*, the City failed to include a proper advertisement disclosure in its
14 advertisement. The Commission may impose a fine of up to three times the cost of an advertisement
15 when it finds an advertisement disclosure violation. However, similar to *BART*, such a penalty is not
16 justified in this circumstance. The City spent around a fifth of the amount spent in *BART*. The City fully
17 cooperated with the Enforcement Division's investigation and contends that it did not intend to produce
18 advertisements that constituted campaign activity.

19 For Counts 2 and 3, the City failed to timely file a 24-hour independent expenditure report and a
20 semi-annual campaign statement just as in *BART*.

21 For the foregoing reasons, a penalty of \$2,500 for Count 1; \$2,500 for Count 2; and \$1,500 for
22 Count 3 are recommended, for a total in the amount of \$6,500.

23 **CONCLUSION**

24 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
25 Respondent City of Fountain Valley hereby agree as follows:

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

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
5 the liability of the City pursuant to Section 83116.

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

13 5. The City agrees to the issuance of the decision and order set forth below. Also, the City
14 agrees to the Commission imposing against it an administrative penalty in the amount of \$6,500. One or
15 more cashier’s checks or money orders totaling said amount—to be paid to the General Fund of the State
16 of California—is/are submitted with this stipulation as full payment of the administrative penalty
17 described above, and same shall be held by the State of California until the Commission issues its decision
18 and order regarding the 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 the City in connection with this stipulation shall be reimbursed to the
22 City. If this stipulation is not approved by the Commission, and if a full evidentiary hearing before the
23 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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6 Dated: _____
7 Angela J. Brereton, Chief of Enforcement
8 Fair Political Practices Commission

9 Dated: _____
10 _____, on behalf of City of Fountain Valley

1 The foregoing stipulation of the parties “In the Matter of City of Fountain Valley,” FPPC No.
2 16/20109, is hereby accepted as the final decision and order of the Fair Political Practices Commission,
3 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