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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.

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

SUMMARY OF THE FACTS

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

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

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

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

24 This case does not qualify for the Streamline Program as none of the 24-Hour Independent
25 Expenditure Reports were disclosed to the Santa Clara City Clerks Office until after the relevant election
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28 ¹¹ Section 83116, subdivision (c).

¹² Regulation 18361.5, subdivision (e).

1 and were only disclosed one day prior to the election with the Secretary of State's Office.

2 The Commission has found disclosure to be essential, especially before an election. The public
3 harm inherent in campaign reporting violations is that the public is deprived of important, time-sensitive
4 information regarding political contributions. In this case, the lack of disclosure created significant public
5 harm, as voters were unaware of who paid for these mailers. In this matter, Chan is an experienced
6 attorney in a business law firm and is the responsible officer for the 501 (c)(4), BluPAC. In addition,
7 Chan has held various public service offices for which he has been required to file Statement of
8 Economic Interests, but not campaign finance reports. When considering whether there was an intent to
9 conceal, deceive or mislead the public, Chan contends he did not realize he was required to file 24-Hour
10 Independent Expenditure Reports. In mitigation, the slate mailer organization did timely file the receipt
11 of the funds from BluPAC. When considering if the violation was deliberate, negligent or inadvertent,
12 Chan contends the Citizens Economic Council told the professional treasurer that it was a statewide
13 general-purpose committee, and that contributions to Citizens Economic Council therefore did not
14 require the filing of 24-Hour Independent Expenditure Reports. In addition, BluPAC did maintain
15 records, providing for review of the expenditures at issue and cooperated with the Enforcement
16 investigation. BluPAC and Chan have no prior history with the Enforcement Division, and cooperated
17 with the Enforcement Division investigation. Lastly, BluPAC and Chan were fined \$8,380 by the Santa
18 Clara City Clerk's Office for the same 24-Hour Independent Expenditures.

19 The Commission considered a settlement involving similar violations. *In the Matter of Apple*
20 *Valley Professional Firefighters Association Local 4742, James Peratt, and Larry Soper*, FPPC No.
21 16/19935 (the Commission approved a stipulated decision on August 15, 2019.) Apple Valley
22 Professional Firefighters Association Local 4742 failed to timely file four 24-Hour Independent
23 Expenditure Report, totaling \$21,843.74. The same count included the failure to timely file two 24-Hour
24 Contribution Reports, totaling \$4,000. The Commission imposed a penalty of \$2,500 for this violation.

25 In this case, the amount spent by BluPAC was significantly more than in the Apple Valley case.
26 After extensive review of BluPAC activities obtained through the investigation and provided by outside
27 parties, there was insufficient evidence to conclude BluPAC had become a recipient committee, as it kept
28 political expenditures under the \$50,000 threshold for a multipurpose committee to become a recipient

1 committee.¹³ This displayed a level of sophistication, so it is aggravating that no disclosure was made
2 locally prior to the election and only 1 day prior to the election with the Secretary of State’s Office. In
3 mitigation, Chan contends that BluPAC’s professional treasurer was told that Citizens Economic Council
4 was a statewide general-purpose committee, and that contributions to Citizens Economic Council
5 therefore did not require the filing of 24-Hour Independent Expenditure Reports. In addition, BluPAC
6 already paid an \$8,380 penalty to the Santa Clara City Clerk for the late filing of these 24-Hour
7 Independent Expenditure Reports in 2017. Finally, BluPAC and Chan have no prior history with the
8 Enforcement Division. The failure to timely file the verification of independent expenditures is
9 considered aggravating. Under these circumstances, a penalty in the amount of \$3,500 is recommended.

10 **CONCLUSION**

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

- 13 1. Respondents violated the Act as described in the foregoing pages, which are a true and
14 accurate summary of the facts in this matter.
- 15 2. This stipulation will be submitted for consideration by the Fair Political Practices
16 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
- 17 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
18 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
19 liability of Respondents pursuant to Section 83116.
- 20 4. Respondents have consulted their attorney, Nicholas Sanders with Sutton Law Firm.
21 Respondents understand and hereby knowingly and voluntarily waive, any and all procedural rights set
22 forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is
23 not limited to the right to appear personally at any administrative hearing held in this matter, to be
24 represented by an attorney at Respondents’ own expense, to confront and cross-examine all witnesses
25 testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
26 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
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28 ¹³ Section 84222, subdivision (c)(5).

1 reviewed.

2 5. Respondents agree to the issuance of the decision and order set forth below. Also,
3 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
4 \$3,500. One or more payments totaling this amount—to be paid to the General Fund of the State of
5 California—is/are submitted with this stipulation as full payment of the administrative penalty described
6 above, and they will be held by the State of California until the Commission issues its decision and order
7 regarding this matter.

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

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

1 Dated: _____

Angela J. Brereton, Chief of Enforcement
Fair Political Practices Commission

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5 Dated: _____

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

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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