



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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June 19, 2018

Amber Maltbie  
Nossaman LLP  
777 S. Figueroa Street, 34th Floor  
Los Angeles, CA 90017

Re: Your Request for Advice  
**Our File No. I-18-051**

Dear Ms. Maltbie:

This letter responds to your request for advice on behalf of BuzzGalaxy regarding the campaign finance provisions of the Political Reform Act (the "Act").<sup>1</sup> Because you seek general information and have not provided information regarding any specific committee, we are providing informal assistance.<sup>2</sup> Nothing in this letter should be construed to evaluate any conduct that has already taken place.

Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### FACTS AS PROVIDED BY REQUESTOR

BuzzGalaxy is a for-profit company that specializes in social media advertising. It recently developed a social media advertising platform, Angel PAC ("the Platform"), that it plans to market to political donors, candidates, and committees<sup>3</sup>. The Platform will serve as a catalogue of political ads uploaded by candidates and committees ("Campaign Users"), each of which can be placed on social media by visitors to the Platform for a fee. BuzzGalaxy plans to charge visitors placing advertisements via the Platform ("Donor Users") a service fee of 15% of the total cost of the ad placement for each advertisement. Advertisements distributed via the Platform take the form of

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. 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 Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

<sup>3</sup> BuzzGalaxy also plans to market the Platform to non-political charitable organizations.

sponsored Facebook posts, which allow for a header, brief description, and video.<sup>4</sup> Campaign Users produce and control the content featured in the header, description, and video. They can also define the target audience for the ad. For example, a Campaign User may specify that their ad must target voters in a specific county or within a certain age group.

### Campaign Users

Once a Campaign User creates an account on the Platform, they may upload their advertisements for public display on the Platform's donor dashboard ("Angel Dashboard"). Campaign Users may use the Platform regardless of their political party affiliation or issue area (with limited exceptions). BuzzGalaxy markets itself and the Platform as nonpartisan commercial enterprises. Per the Platform's terms of use, when Campaign Users choose to use the Platform, they grant BuzzGalaxy the right to use all advertisements uploaded to the Platform for commercial purposes.

### Donor Users

Donor Users may peruse the Angel Dashboard's public catalogue of candidates and measures without paying a fee. Advertisements uploaded by a specific Campaign User may be accessed by selecting the Campaign User's icon. Donor Users can pay to place these advertisements on social media. Once placed, the Platform tracks the advertisement's statistics and discloses that information to the relevant Donor User and Campaign User in separate communications.

The Platform shares the disclosure information for the Donor User (i.e., name, address, occupation/employer) and the nature of the advertisement (e.g., cost, release date, etc.) with the respective Campaign User immediately after payment for placement is processed. However, at no time during the process is a Donor User required to communicate with or provide funds directly to the relevant Campaign User.

### Business Model

BuzzGalaxy will charge Donor Users a service fee of 15% of the total cost of the ad placement.<sup>5</sup> You indicate that fees paid by Donor Users are reasonable given the nature of the services you provide. You also note that BuzzGalaxy does not operate the Platform to bestow a political benefit on a specific candidate, committee, measure, or political party.

## QUESTIONS AND CONCLUSIONS

**Question 1: Is a Donor User's payment to BuzzGalaxy for placement of a Campaign User's advertisement via the Platform considered an in-kind contribution to the respective Campaign User?**

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<sup>4</sup> You noted during our telephone call that initially, the Platform will only place advertisements on Facebook, but that you hope to expand to additional social networks in the future.

<sup>5</sup> Funds will be processed by Democracy Engine, a third-party payment processor.

Yes. A payment for an activity or communication is considered an in-kind contribution to a candidate or committee if it is “made at the behest of” a candidate, ballot measure, or their agents. The Act defines the phrase “made at the behest of” as “made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of.” (Section 82041.3.)

Regulation 18225.7(c) further specifies that an expenditure is “made at the behest of” a candidate or committee if the expenditure funds a communication that is created, produced or disseminated “after the candidate or committee has made or participated in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placing the communication.” (Regulation 18225.7(c)(2).)

A Donor User’s payments via the Platform are made at the behest of a candidate, ballot measure, or their agents. Campaign Users place their advertisements on the Angel Dashboard solely to encourage Donor Users to distribute the ads via the Platform. By making their advertisements available for placement by a Donor User, the Campaign User is effectively requesting that the Donor User make an expenditure on its behalf. Additionally, Campaign Users create and control the advertisement’s content, the medium and mode it is distributed in, and its intended audience. Therefore, pursuant to Section 82041.3 and Regulation 18225.7(c)(2), a payment made by a Donor User to place a Campaign User’s ad via the Platform is considered a payment made at the behest of the respective Campaign User, and thus an in-kind contribution to that entity.<sup>6</sup>

**Question 2: What disclaimer(s) must a Donor User provide on advertisements distributed via the Platform?**

The Act’s disclaimer requirements differ depending on several factors, including the source of the advertisement and its form (e.g., print, video, etc.). You indicate that at least initially, advertisements distributed via the Platform will only appear as sponsored ads on Facebook. This means advertisements distributed via the Platform include two communications: (1) a sponsored Facebook post and (2) a campaign video.

Section 84504.3 provides that an electronic media advertisement distributed by a committee, excluding political party committees and candidate controlled committees established for an elective office of the controlling candidate, must:

“(1) Include the text ‘Who funded this ad?’ in a contrasting color and font size that is easily readable by the average viewer [and that]

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<sup>6</sup> Additionally, we will mention that Regulation 18225.7(d) creates a rebuttable presumption that an expenditure funding a communication is “made at the behest of” a candidate or committee if “the communication relating to a clearly identified candidate or ballot measure replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication, including video footage, designed, produced, paid for or distributed by the candidate or committee.” (Id. at (d)(4).) In your case, a Donor User’s expenditure effectively republishes and disseminates the Campaign User’s advertisement on social media. Accordingly, the presumption under Regulation 18225.7 is triggered, and with no facts indicating that the presumption could be rebutted, we find that the ad is “made at the behest of” the respective Campaign User for this reason as well.

“(2) Such text shall be a hyperlink to an Internet Web site containing the disclosures required by Sections 84502, 84503, and 84506.5 in a contrasting color and in no less than 8-point font.” (Section 84504.3.)

Donor Users pay for distribution of the sponsored post, and Campaign Users cover costs related to the featured campaign video. Accordingly, Donor Users qualifying as a “committee”<sup>7</sup> incur disclaimer obligations as to the electronic media communication, the sponsored Facebook post.

Additionally, while you only request advice regarding the disclaimer requirements for Donor Users, we also note that Campaign Users may also trigger disclaimers pursuant to Sections 84502, 84503 and 84506.5. Because the only communication paid for by the Campaign User is the video, the disclaimers triggered pursuant to Sections 84502, 84503 and if applicable 84506.5, must be displayed on the video per the display requirements set forth in Section 84504.1 (Disclaimer; Television Ads).

In general terms, Sections 84502 and 84503 require that committees, excluding political party committees and candidate controlled committees established for an elective office of the controlling candidate, must display the following disclaimer language on their advertisements:

- The committee’s name preceded by the phrase “Paid for by” (Section 84502.); and
- The names of the “top contributors” to the committee preceded by the phrase “committee major funding from.” (Section 84503.)<sup>8</sup>

Section 84506.5 requires an advertisement supporting or opposing a candidate that is paid for by an independent expenditure to include a statement that it was not authorized by a candidate or a committee controlled by a candidate. If the advertisement was authorized or paid for by a candidate for another office, the advertisement must instead include the following statement: “This advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office.”

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<sup>7</sup> The Act defines a “committee” as “any person or combination of persons” who: “(a) Receives contributions totaling two thousand dollars (\$2,000) or more in a calendar year; (b) Makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year; or (c) Makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees.” (Section 82013.)

<sup>8</sup> The Act defines “top contributors” as “the persons from whom the committee paying for an advertisement has received its three highest cumulative contributions of \$50,000 or more.” (Section 84501(c)(1).) The term “cumulative contributions” is defined as “the cumulative amount of contributions received by a committee beginning 12 months before the date of the expenditure and ending seven days before the time the advertisement is sent to the printer or broadcaster.” (Section 84501(b).)

**Question 3: What information must BuzzGalaxy, the Donor User, or both, report to Campaign Users regarding advertisements placed via the Platform?**

Section 84306 provides that all contributions received by a person acting as an agent of a candidate or committee must be reported by the agent to the candidate or committee by the closing date of any campaign statement that the candidate or committee is required to file.

BuzzGalaxy is acting as an agent of its Campaign Users by soliciting in-kind contributions on the Campaign User's behalf. As such, BuzzGalaxy is subject to the reporting requirements set forth in Section 84306.

The Commission has advised that "a person making an in-kind contribution to a candidate or committee must notify the receiving candidate or committee of the date, name, and address of the payee and amount paid so the candidate or committee can properly report receipt of the in-kind contribution." (*Jung Advice Letter*, FPPC No. M-84-104.)<sup>9</sup>

You indicated during our telephone discussion that once a Donor User pays to place an advertisement via the Platform, BuzzGalaxy will instantly provide the relevant Campaign User with information sufficient to report the in-kind contribution on its campaign statements and reports. This information includes the date and value of the in-kind contribution and the contact information for the payor (i.e., name, address, employer/occupation).

The instantaneous notification system you described would satisfy the Act's reporting requirements listed above for both Donor Users and BuzzGalaxy.

**Question 4: Is BuzzGalaxy making contributions to Campaign Users that chose to join the Platform and accept its terms of use? Would the answer change if BuzzGalaxy required Campaign Users to provide a nominal fee to use the Platform?**

For purposes of the Act, the term "contribution" is defined as "any payment made for political purposes for which a donor does not receive full and adequate consideration." This definition of contribution includes the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office. (Section 82015(b)(1).) "Payment" includes the "rendering of... property, services or anything else of value, whether tangible or intangible." (Section 82044.)

BuzzGalaxy is a for-profit business that offers the use of its Platform for free to any Campaign User. Moreover, it allows Campaign Users to use the Platform regardless of their

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<sup>9</sup> A candidate or committee that makes a late contribution that is an in-kind contribution must notify the recipient in writing of the value of the in-kind contribution within 24 hours of the contribution being made. (Section 84203.3.) The term "late contribution" is defined, in relevant part, as "[a] contribution... that totals in the aggregate one thousand dollars (\$1,000) or more and is made to or received by a candidate, controlled committee, or a committee formed or existing primarily to support or oppose a candidate or measure during the 90-day period preceding the date of the election [including election day]." (Section 82036(a).)

political party affiliation or issue-area. Therefore, BuzzGalaxy is not providing Campaign Users with a contribution by allowing them to use the Platform. This conclusion would not change if BuzzGalaxy chose to charge Campaign Users a flat nominal fee for use.<sup>10</sup>

**Question 5: Would operating the Platform qualify BuzzGalaxy as a recipient committee?**

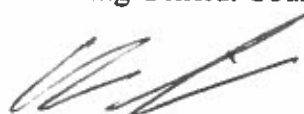
BuzzGalaxy receives payments from one source, Donor Users. These payments are made to compensate for its placement of Campaign Users' advertisements on social media.

We view BuzzGalaxy's relationship with Donor Users to be essentially identical to that of a commercial vendor who receives payments in exchange for providing a service (e.g., campaign consultants, print houses, etc.) Therefore, payments made to BuzzGalaxy in connection with the Platform are considered to be in-kind contributions to the Campaign User and not a contribution to BuzzGalaxy, and thus would not trigger qualification as a recipient committee.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Brian G. Lau  
Acting General Counsel



Adam E. Silver  
By: Counsel, Legal Division

AES:jgl

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<sup>10</sup> You also inquired as to whether our answer would change if the Platform allowed a Campaign User to match a payment made by a Donor User to BuzzGalaxy for placement of the Campaign User's ad on social media. So long as the nature and operation of the Platform remain the same (e.g., non-partisan, reasonable fees for all users, etc.), allowing a Campaign User to match payments made by a Donor User via the Platform would not constitute a contribution to the Campaign User from BuzzGalaxy.