

LEONARD CARDER, LLP

VICTORIA CHIN
LYNN ROSSMAN FARIS
SHAWN GROFF
KATE R. HALLWARD
CHRISTINE S. HWANG
JENNIFER KEATING
ARTHUR A. KRANTZ
ARTHUR LIQU
PHILIP C. MONRAD
ELIZABETH MORRIS
ELEANOR I. MORTON
ISAAC S. NICHOLSON
ROBERT REMAR
MARGOT A. ROSENBERG
BETH A. ROSS
MATTHEW D. ROSS
JACOB F. RUKEYSER
PETER W. SALTZMAN
PHIL A. THOMAS

ATTORNEYS
1330 BROADWAY, SUITE 1450
OAKLAND, CA 94612

TELEPHONE: (510) 272-0169
FAX (510) 272-0174
www.leonardcarder.com

NORMAN LEONARD
(1914 - 2006)

OF COUNSEL

WILLIAM H. CARDER
SANFORD N. NATHAN
RICHARD S. ZUCKERMAN

SAN FRANCISCO OFFICE
1188 FRANKLIN ST., SUITE 201
SAN FRANCISCO, CA 94109
TELEPHONE: (415) 771-6400
FAX: (415) 771-7010

REFER TO OUR FILE NO.

December 6, 2010

BY OVERNIGHT MAIL AND FACSIMILE (916-322-6440)

Dan Schnur
Chairman Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Re: Yes on Proposition B, FPPC No. 10/932

Dear Chairman Schnur:

I write on behalf of Stand Up For Working Families, a coalition of employee groups representing teachers, firefighters, police, nurses and other workers in the City and County of San Francisco, in regard to the proposed stipulated settlement of the above entitled matter. The agenda for the FPPC meeting scheduled for December 9, 2010, describes a proposed penalty of \$2,000 for a one count violation of Government Code Section 84503. We write to object to this proposed penalty on three grounds. First, as explained further below, the description on the agenda conflicts with the attachments included with the agenda, and those attachments themselves contain conflicting provisions, so that the public has no way of knowing the terms of the proposed stipulated settlement. Second, the amount of the proposed penalty, even under the most expansive of the several conflicting provisions, does not comport with the requirements of the Political Reform Act, and is so low as to completely undermine the purposes of the Act. Third and finally, the FPPC has not named either Jeff Adachi (the controlling candidate) or Craig Weber (the committee treasurer) in the notice of the violations and proposed stipulation, as is done in nearly all other such cases.

The November 1, 2010, letter to Mr. Craig Weber (the treasurer of Yes on Proposition B, the "committee"), which is attached to the agenda, clearly states that the committee committed *two* violations of the Political Reform Act. The first violation concerns the failure of the committee to properly amend its statement of organization or include in its advertisements information about top donors and economic or other special interests, in violation of Code Section 84504. The second violation concerns the committee's failure to include adequate written disclosure of the committee name and economic or other special interests in their

Dan Schnur, Chairman Fair Political Practices Commission
December 6, 2010
Page 2 of 3

television advertisements, in violation of Code Section 84503. The letter then proposes a settlement in which the committee would “admit to two violations of the Act and agree to pay an administrative penalty of \$4,000.”

The Stipulation, which is included as Exhibit 1 to the November 1 letter and which is also attached to the agenda, describes the same two separate violations of the Act under the section entitled “Summary of the Facts”, and further states that the “matter consists of *two* counts of violating the Act, carrying a maximum administrative penalty of \$10,000” (“Conclusion”, first sentence, emphasis added). In all other sections, however, the Stipulation refers to only *one* violation (“Count 1”), namely the violation of Code Section 84503 related to the committee’s television advertisements. The Stipulation then assesses the aggravating and mitigating factors with respect to that count and concludes that they “justify imposition of the agreed upon penalty of Two Thousand Dollars (\$4,000) [sic].”

As a result of these several conflicting statements, the public has no way of knowing if this proposed stipulation is intended to cover just one violation or both of the violations identified by the Enforcement Division, nor does the public have any way of knowing whether the proposed penalty is for \$2,000 or \$4,000. We nevertheless will assume, without knowing, that the intent is to propose a stipulated settlement in which the committee would “admit to two violations of the Act and agree to pay an administrative penalty of \$4,000”, as suggested in the November 1 letter. For the following reasons, we urge the Commissioners to reject such a stipulation.

Section 91005.5 of the Act imposes civil monetary penalties of up to \$5,000 for each violation of the Act. In addition to these penalties, Section 84509 imposes a fine “up to three times the cost of the advertisement, including placement costs” for violations of Section 84503. We understand that the cost of the advertisement in question was \$140,000, making the maximum penalties and fines \$430,000. The proposed settlement is less than *one percent* of this amount. Even if the “typical administrative penalty for a failure to provide proper written disclosure, depending on the facts of the case, has been in the low to middle range of available penalties”, as stated in the Stipulation (“Conclusion”, third paragraph), here the proposed settlement is so low as to trivialize the seriousness of the offenses and undermine the purposes of the Act. In particular, the Stipulation does not include any fine under Section 84509 at all (“Penalty”, first paragraph), even though the Act mandates such a fine.

The “mitigating” factors in this case (that the respondents have no history of violating the Act, corrected their statement of organization on October 25, 2010 and pulled their advertisements once notified by the Enforcement Division) simply do not justify such a drastic reduction in penalties and fines. As the Division found, Messrs. Weber and Adachi failed to provide the public with highly significant financial support information, either in their statement of organization or in their advertisements. As a result, heading into the November 2 election the

LEONARD CARDER, LLP

Dan Schnur, Chairman Fair Political Practices Commission
December 6, 2010
Page 3 of 3

public was not informed about the fact that American Foods executives George Hume and William Hume, Google owner Eric Schmidt and business executive Richard Beleson were all top donors to the committee, nor was the public informed about the economic and special interests of other top donors backing a ballot initiative of enormous importance. The Act is designed to prevent omissions of such critical information, and the extremely low proposed penalty in this case would serve no preventative function at all.

For these reasons, we strongly urge the Commissioners to remit this matter to the Enforcement Division with instructions to determine an appropriate fine under Section 84509, in addition to the administrative penalties under Section 91005.5, as the basis of any proposed settlement of this matter, and to name the controlling candidate and committee treasurer in the proposed stipulation.

Thank you for your consideration.

Very truly yours,

LEONARD CARDER, LLP



Peter W. Saltzman