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

10  
11 In the Matter of ) FPPC No. 2017-00125  
12 )  
13 CITY OF CAMPBELL ) **STIPULATION, DECISION, AND ORDER**  
14 ) Date Submitted to Commission: November 2023  
15 Respondent. )  
16 )  
17 )

18 **INTRODUCTION**

19 Respondent City of Campbell (the “City”) is a city in the County of Santa Clara. The City  
20 engaged in communications, including newspaper advertisements and mass mailings that qualified as  
21 an expenditure under the Political Reform Act (the “Act”)<sup>1</sup> in support of Measure A and Measure C and  
22 in opposition to Measure B in the April 25, 2017 Special Election. In doing so, the City qualified as a  
23 committee and had resulting filing obligations that it failed to fulfill timely.

24 Under the Act, a local government agency is prohibited from sending campaign-related mass  
25 mailings at public expense. Additionally, a local government agency that spends \$1,000 or more in

26 <sup>1</sup> 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 18104 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 public funds to advocate for or against a ballot measure qualifies as a campaign committee and must  
2 comply with all provisions of the Act related to campaign committees, such as including a proper  
3 advertisement disclosure statement on its advertisements and filing campaign statements and reports.  
4 The City violated the Act by failing to include a proper advertisement disclosure statement in its  
5 newspaper advertisements, sending prohibited mass mailings at public expense, failing to timely file  
6 three late independent expenditure reports, and failing to timely file one semi-annual campaign  
7 statement.

### 8 **SUMMARY OF THE LAW**

9 The Act and its regulations are amended from time to time. Unless otherwise noted, all legal  
10 references and discussions of law pertain to the Act’s provisions as they existed at the time of the  
11 violations in this case.

#### 12 Need for Liberal Construction and Vigorous Enforcement of the Act

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

16 One purpose of the Act is to promote transparency by ensuring that expenditures made in  
17 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper  
18 practices are inhibited.<sup>4</sup> In furtherance of this purpose, the Act establishes a comprehensive campaign  
19 reporting system.<sup>5</sup> Another purpose of the Act is to provide adequate enforcement mechanisms so the  
20 Act will be “vigorously enforced.”<sup>6</sup>

#### 21 Government Agency as a Campaign Committee

22 A “committee” is any person or combination of persons who, in a calendar year, receives  
23 contributions totaling \$2,000 or more; makes independent expenditures totaling \$1,000 or more; or  
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25 <sup>2</sup> Section 81001, subdivision (h).

26 <sup>3</sup> Section 81003.

27 <sup>4</sup> Section 81002, subdivision (a).

28 <sup>5</sup> Sections 84200, *et seq.*

<sup>6</sup> Section 81002, subdivision (f).

1 makes contributions totaling \$10,000 or more to or at the behest of candidates or other committees.<sup>7</sup>  
2 When a state or local governmental agency uses public moneys for a communication that (1) expressly  
3 advocates for or against a clearly identified candidate or ballot measure or (2) unambiguously urges a  
4 particular result in an election, the Act identifies that payment as an independent expenditure.<sup>8</sup>

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

15 The Commission adopted Regulation 18420.1 based on the California Supreme Court’s decision  
16 in *Vargas v. City of Salinas, et. al.* (2009) 46 Cal. 4th 1.<sup>11</sup> In *Vargas*, the Court relied heavily on its  
17 decision in *Stanson v. Mott* (1976) 17 Cal. 3d 206. *Stanson* established the analysis for determining  
18 when communications by a governmental agency that do not contain express advocacy still constitute  
19 campaign activity. The Court went on to conclude that certain publicly financed literature that is not  
20 clearly campaign material and that purports to contain only relevant factual information can be  
21 prohibited campaign activity depending on the “style, tenor and timing of the publication.”<sup>12</sup>

22 The California Supreme Court expounded on the style, tenor, and timing factors in *Keller v.*  
23 *State Bar* (1989) 47 Cal. 3d 1152. In *Keller*, the Court determined that an education packet sent by the  
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25 <sup>7</sup> Section 82013.

26 <sup>8</sup> Regulation 18420.1, subdivision (a).

27 <sup>9</sup> Regulation 18420.1, subdivision (b).

28 <sup>10</sup> Regulation 18420.1, subdivision (d).

<sup>11</sup> Fair Political Practices Commission, Minutes of Meeting, Public Session, Sept. 10, 2009, item no. 25, page 3.

<sup>12</sup> *Stanson*, at 222.

1 California State Bar to its members concerning an election to confirm six appellate justices was a form  
2 of campaigning because it was sent a month before the election, was the kind of material that state  
3 election committees send to local committees to aid in a campaign, and was informative and factual but  
4 not impartial.<sup>13</sup> The *Vargas* court made an exception to this rule when the City of Salinas mailed out a  
5 newsletter that discussed the upcoming election for a ballot measure. It was significant that this  
6 particular newsletter was a regular edition of Salinas' quarterly newsletter and not a special edition, the  
7 topic of the newsletter was obvious and a natural subject to be reported, the style and tenor were  
8 consistent with an ordinary municipal newsletter, and the articles in the newsletter were objective and  
9 nonpartisan.<sup>14</sup>

10 Neither *Vargas* nor *Stanson* directly concerned any provisions of the Act. They were decided  
11 based on the constitutional prohibition against unauthorized use of public funds. But since in those  
12 cases the California Supreme Court had defined when government agencies are prohibited from using  
13 public moneys to pay for communications related to ballot measures, the Commission adopted the  
14 parameters described in *Vargas* for determining when a government agency makes contributions and  
15 independent expenditures under the Act.<sup>15</sup> That being the case, while *Vargas* and *Stanson* were  
16 instructive in determining when communications by a public agency constitute campaign activity,  
17 Regulation 18420.1 is the authority for determining when a payment of public money qualifies as an  
18 "independent expenditure" under the Act.

19 Campaign Related Mass Mailing Sent at Public Expense

20 The Act prohibits sending a newsletter or other mass mailing at public expense if (1) the item is  
21 a tangible item; (2) the item expressly advocates the qualification, passage, or defeat of a clearly  
22 identified measure, or unambiguously urges a particular result in an election; (3) public moneys are  
23 paid to distribute the item, or to prepare the item, for more than \$50, with the intent of sending the item;  
24 and (4) more than 200 substantially similar items are sent during the course of an election.<sup>16</sup> In this  
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26 <sup>13</sup> *Keller*, at 1172.

27 <sup>14</sup> *Vargas*, at 38-39.

28 <sup>15</sup> Fair Political Practices Commission, Minutes of Meeting, Public Session, Sept. 10, 2009, item no. 25, page 3.

<sup>16</sup> Section 89001; Regulation 18901.1, subdivision. (a).

1 context, an item is “substantially similar” to another item if both expressly advocate or unambiguously  
2 urge the election or defeat of the same candidate or measure.<sup>17</sup>

3 Advertisement Disclosure Statement

4 An advertisement is any general or public advertisement which is authorized and paid for by a  
5 committee for the purpose of supporting or opposing one or more candidates or ballot measures.<sup>18</sup> Such  
6 an advertisement, that is paid for by an independent expenditure, must include a disclosure statement  
7 that identifies the name of the committee.<sup>19</sup> “Paid for by” should immediately precede the committee’s  
8 name, and all of the disclosure statement must be printed clearly and legibly in no less than 14-point  
9 bold, sans serif type font.<sup>20</sup> Any person who violates the advertisement disclosure requirements of the  
10 Act is liable in a civil or administrative action brought by the Commission for a fine up to three times  
11 the cost of the advertisement, including placement cost.<sup>21</sup> This fine also applies to any person who  
12 purposely causes any other person to violate the advertisement disclosure requirements or who aids and  
13 abets any other person in a violation.<sup>22</sup>

14 When discussing the distinction between campaign activities and informational activities, the  
15 *Vargas* court cited opinions of the California Attorney General to state that while public agencies may  
16 generally publish a “fair presentation of facts,” there have been instances when publicly financed  
17 newspaper advertisements which claim to contain only relevant factual information have been found to  
18 be campaign literature.<sup>23</sup>

19 Campaign Statements and Reports

20 If a local government agency makes expenditures and qualifies as a committee, it must file  
21 campaign statements.<sup>24</sup> The Act requires independent expenditure committees to file a 24-hour  
22 independent expenditure report within 24 hours of making an expenditure of \$1,000 or more during the  
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24 <sup>17</sup> Regulation 18901.1, subd. (d)

25 <sup>18</sup> Section 84501, subdivision (a); Regulation 18450.1, subd. (a)(2).

26 <sup>19</sup> Section 84506, subdivision (a)(1).

27 <sup>20</sup> Section 84507; Regulation 18450.4, subd. (b).

28 <sup>21</sup> Section 84510, subdivision (a).

<sup>22</sup> Section 84510, subdivision (b).

<sup>23</sup> *Vargas*, at 25.

<sup>24</sup> Regulation 18420, subdivision (d).

1 90 days prior to an election.<sup>25</sup> The report must include the committee’s name, committee’s address,  
2 number or letter of the measure, jurisdiction of the measure, amount, date, and description of goods or  
3 services for which the late independent expenditure was made.<sup>26</sup> The 90-day period for the 2017  
4 Special Election began on January 25, 2017.

5 A committee also must file semi-annual campaign statements each year for the periods ending  
6 June 30 and December 31 if they made independent expenditures during the 6-month period prior to  
7 those dates.<sup>27</sup> Requiring local government agencies to file campaign reports and statements furthers the  
8 Act’s purpose in disclosing expenditures made in election campaigns so that voters are fully informed  
9 and improper practices are inhibited.<sup>28</sup>

10 Liability

11 Any person who violates any provision of the Act, who purposely or negligently causes any  
12 other person to violate any provision of the Act, or who aids and abets any other person in the violation  
13 of the Act is liable under the Act if the person has filing or reporting obligations under the Act, or is  
14 paid to provide services regulated by the Act.<sup>29</sup>

15 **SUMMARY OF THE FACTS**

16 A successful citizen’s initiative campaign placed Measure B on the ballot for a special election.  
17 Measure B proposed that the City relax a citywide ban against the cultivation, delivery, and dispensing  
18 of medical marijuana. In response to the certification of the ballot measure petition, the City Council  
19 voted to call for a special election to be held on April 25, 2017. At the same time, the City Council  
20 directed staff to prepare language for a competing measure and a separate marijuana gross receipts tax  
21 measure.

22 On January 17, 2017, the City Council voted via consent calendar unanimously to authorize the  
23 City Manager to execute a consultant services contract with TBWB Strategies, LLC (“TBWB”) for the  
24 stated purpose of “assist[ing] with the development and implementation of a public awareness strategy

25 <sup>25</sup> Sections 84200.6, subdivision (b), and 84204.

26 <sup>26</sup> Section 84204.

27 <sup>27</sup> Section 84200, subdivision (b).

28 <sup>28</sup> Section 81002, subdivision (a).

29 <sup>29</sup> Section 83116.5.

1 to ensure that voters understand the direct and indirect impacts that Measure B would have on the  
2 community.” Additionally, the City Council voted unanimously to place Measures A and C on the  
3 special election ballot. Measure A levied a gross receipts tax on future medical marijuana businesses.  
4 Measure C directly opposed Measure B, the citizens’ initiative measure, by proposing a moratorium on  
5 having dispensaries in the City until April 1, 2019. Measures A and C passed with 84.5 percent and  
6 63.1 percent of the votes, respectively. Measure B failed with 36.5 percent of the votes.

7 On or around February 8, 2017, the City and TBWB entered into a contract “for the purpose of  
8 assisting with the development and implementation of a public awareness strategy regarding medical  
9 marijuana dispensaries.” This contract stated that the consultants would provide the following services  
10 and advertisements: consulting services, newspaper advertisements, mailers, and online digital  
11 advertising. TBWB is no longer in business. City staff, including the City Attorney, worked with  
12 TBWB to produce the materials.

13 The Enforcement Division has reviewed the materials and determined that the newspaper  
14 advertisements and mailers unambiguously urged voters to support Measures A and C and to oppose  
15 Measure B. The legal analysis to determine when a communication from a public agency qualifies as an  
16 expenditure under the Act is discussed below. In addition, the Enforcement Division has determined  
17 from its investigation that the online digital advertising did not meet the Act’s definition of  
18 “advertisement.” In total, the City paid \$57,418.78 for campaign related communications at public  
19 expense

#### 20 Newspaper Advertisements

21 The City purchased two advertisement spaces in the *Campbell Express*, a weekly local  
22 newspaper that distributes approximately 2,200 copies to Campbell and Cambrian neighborhoods. The  
23 newspaper advertisements were first published in the February 8, 2017 issue and then reprinted in the  
24 February 15, 2017 issue.

25 The style, tenor, and timing of the newspaper advertisements establish that they are campaign  
26 materials that unambiguously urged a vote in favor of Measures A and C and against Measure B. The  
27 City had placed announcements in the *Campbell Express* in the past to communicate with its residents,  
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1 but those examples differed significantly in tone and style from these newspaper advertisements.  
2 Previous examples consisted of public notices inviting construction bids, announcing scheduled public  
3 hearings, and printing adopted local ordinances and resolutions – all published to fulfill ministerial and  
4 administrative duties of the City’s officials. The format of these prior notices was standardized and read  
5 as technical writing to fulfill a legal obligation.

6 In contrast, the article, appearing in the newspaper on February 8 and February 15, was titled,  
7 “Important Information from the City of Campbell” and read like a long-form opinion piece aimed to  
8 discourage readers from voting for Measure B (the citizen-led petition) but instead to vote for the  
9 Measures placed by the City. (See Exhibit A). For example, the article pointed out that the City had to  
10 call for a special election because of the citizen-led initiative and included the cost of that election. The  
11 article contrasted Measure B with Measures A and C, pointing out that Measure B “did not include...  
12 safety and quality of life protections,” whereas Measure C would allow the city to “study the feasibility  
13 of introducing medical marijuana sales to our community without negatively affecting our quality of  
14 life.” The article was not consistent with the City’s normal communication pattern or style and instead,  
15 the style was consistent with writing used in campaigns to urge voters towards a particular outcome.

16 The newspaper advertisement was informational in nature, which is permissible government  
17 speech, but the advertisement also contained inflammatory and argumentative language. Examples of  
18 this language include, “Nearly 95% of residents say they are satisfied with the quality of life in our  
19 city,” “the City is legally required to hold a Special Municipal Election at a cost of \$463,400,” “does  
20 not include many of the safety and quality of life protections enforced by other California cities,” “[i]n  
21 response to Measure B,” “without negatively affecting our quality of life,” “additional quality of life  
22 protections for local residents,” and “any negative community impacts.” This use of inflammatory and  
23 argumentative language establishes that the article was not merely an informational piece but crossed  
24 the line into campaign material and was an expenditure under the Act.

25 The City made two independent expenditures of \$450 each to place the newspaper  
26 advertisements, for a total cost of \$900. The City qualified as an independent expenditure committee as  
27 soon as the payment for the first newspaper ad was made on February 3, 2017, as the costs associated  
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1 with producing the advertisement exceed the \$1,000 threshold. The City failed to include a disclosure  
2 statement identifying the name of the City with “Paid for by” immediately preceding its name on both  
3 its newspaper advertisements. However, the advertisement included a city logo and enough information  
4 in the copy of the advertisement to allow a reader to infer that the advertisement was paid for by the  
5 City.

#### 6 Mass Mailers

7 The City sent registered voters mass mailings to unambiguously urge a vote for Measures A and  
8 C and against Measure B, and the mailings were not consistent with the City’s normal communication  
9 pattern or style. Prior to these mass mailings, the City had mailed recreation guides to its residents. In  
10 addition, the inclusion of inflammatory and argumentative language shows that the two mass mailings  
11 were campaign material that unambiguously urged a vote in favor of Measures A and C and against  
12 Measure B.

13 On or around March 22, 2017, the City mailed a 4-page, full-color mailer titled “Information for  
14 Voters” (“Information Mailer”). (See Exhibit B). The Information Mailer was informative but it was  
15 not unbiased. The content of the mailer included long-form writing similar to the newspaper  
16 advertisement. Examples of the inflammatory and argumentative language include, “the City was  
17 legally required to hold a Special Municipal Election at a cost of \$463,400,” “Measure B does not have  
18 any similar protections,” “[i]n response to Measure B, Measure C was placed on the ballot by the  
19 Campbell City Council,” “without negatively affecting our quality of life,” “[c]ost the City an estimated  
20 \$968,537 in staff costs annually to regulate,” “study the safest way to regulate medical marijuana  
21 dispensaries,” “[h]elp ensure residents’ quality of life is not negatively affected by medical marijuana  
22 dispensaries,” and “Measure C also includes quality of life protections if medical marijuana  
23 dispensaries were to open.” 13,972 registered voter households received copies of the Information  
24 Mailer, which cost the City \$13,444.68 to print and mail.

25 On or around April 13, 2017, the City mailed a 3-page, full-color mass mailing titled “Voter  
26 Information Guide” (“Guide Mailer”). (See Exhibit C). Examples of the inflammatory and  
27 argumentative language include, “94.6% of Campbell residents are satisfied with the quality of life in  
28

1 our city,” “\$968,537 Estimated annual cost of regulating 3 dispensaries in Campbell,” “City-supported  
2 medical marijuana measure with additional protections,” and “study the safest way to: Regulate  
3 medical marijuana dispensaries in Campbell[,] Address potential traffic, neighborhood and safety  
4 issues[,] Implement additional protections for Campbell residents.” 13,443 registered voter households  
5 received copies of the Guide Mailer, which cost the City \$13,249.60 to print and mail.

#### 6 Campaign Statement and Report

7 Based on the determination that the aforementioned materials constituted campaign materials:  
8 The City exceeded the \$1,000 threshold and qualified as an independent expenditure committee on or  
9 around February 3, 2017. As a result, it was required to file campaign statements and reports to disclose  
10 its activities related to the special election.

11 The City should have filed a 24-hour independent expenditure report by February 4, 2017 to  
12 disclose independent expenditures it made to purchase a newspaper advertisement on February 3, 2017  
13 and associated consulting fees.

14 The City should have filed a 24-hour independent expenditure report by March 23, 2017 to  
15 disclose independent expenditures made to send the Information Mailer on or around March 22, 2017.

16 The City should have filed a 24-hour independent expenditure report by April 14, 2017 to  
17 disclose independent expenditures made to send the Guide Mailer on or around April 13, 2017.

18 The City failed to timely file any 24-hour independent expenditure reports to disclose these  
19 campaign activities. Additionally, the City failed to timely file a semi-annual campaign statement to  
20 itemize its campaign activities for the period covering January 1, 2017 through June 30, 2017 by  
21 July 31, 2017.

### 22 **VIOLATIONS**

#### 23 Count 1: Failure to Include Advertisement Disclosure Statement

24 The City failed to include a proper advertisement disclosure statement in two newspaper  
25 advertisements that were published on February 8, 2017 and February 15, 2017, in violation of  
26 Government Code sections 84506, subdivision (a)(1), and 84507; and Regulation 18450.4, subdivision  
27 (b)(1).

1 Count 2: Prohibited Campaign Related Mass Mailings Sent at Public Expense

2 The City sent a prohibited campaign related mass mailing titled “Information for Voters” at  
3 public expense on or around March 22, 2017, in violation of Government Code section 89001 and  
4 Regulation 18901.1.

5 Count 3: Prohibited Campaign Related Mass Mailings Sent at Public Expense

6 The City sent a prohibited campaign related mass mailing titled “Voter Information Guide” at  
7 public expense on or around April 13, 2017, in violation of Government Code section 89001 and  
8 Regulation 18901.1.

9 Count 4: Failure to Timely File a 24-Hour Independent Expenditure Report

10 The City failed to timely file a 24-hour independent expenditure report to disclose independent  
11 expenditures totaling \$8,677.00 by February 4, 2017, in violation of Government Code section 84204.

12 Count 5: Failure to Timely File a 24-Hour Independent Expenditure Report

13 The City failed to timely file a 24-hour independent expenditure report to disclose independent  
14 expenditures totaling \$27,242.18 by or around March 23, 2017, in violation of Government Code  
15 section 84204.

16 Count 6: Failure to Timely File a 24-Hour Independent Expenditure Report

17 The City failed to timely file a 24-hour independent expenditure report to disclose independent  
18 expenditures totaling \$21,499.60 by or around April 14, 2017, in violation of Government Code section  
19 84204.

20 Count 7: Failure to Timely File a Semi-Annual Campaign Statement

21 The City failed to timely file a semi-annual campaign statement to disclose independent  
22 expenditures totaling \$57,418.78 for the period covering January 1, 2017 through June 30, 2017 by  
23 July 31, 2017, in violation of Section 84200, subdivision (b).

24 **PROPOSED PENALTY**

25 This matter consists of seven proposed counts. The maximum penalty that may be imposed is  
26 \$5,000 per count. Thus, the maximum penalty that may be imposed for the counts charged here is  
27 \$35,000. The Enforcement Division has not dropped violations for settlement purposes.

1 In determining the appropriate penalty for a particular violation of the Act, the Enforcement  
2 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with  
3 an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division  
4 considers the facts and circumstances of the violation in the context of the following factors set forth in  
5 Regulation 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused  
6 by the specific violation; (2) The level of experience of the violator with the requirements of the Act;  
7 (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence or absence  
8 of any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate, negligent or  
9 inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission staff or  
10 any other governmental agency in a manner not constituting complete defense under Government Code  
11 Section 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the violator  
12 has a prior record of violations of the Political Reform Act or similar laws; and (8) Whether the  
13 violator, upon learning of a reporting violation, voluntarily filed amendments to provide full  
14 disclosure.<sup>30</sup>

15 The public harm at issue concerns the prohibited mass mailings at public expense, the failure of  
16 the City to timely file campaign statements, and the failure to comply with the Act's advertisement  
17 disclosure provisions. The mass mailings at public expense violations resulted in the public subsidy of a  
18 political campaign, unfairly weighing the City's view against a competing citizen initiative. The Act  
19 has directly prohibited this behavior. The remaining violations, including failing to timely file  
20 campaign statements and failing to include an advertisement disclosure statement compliant with the  
21 Act's requirements, if viewed independently, arguably caused less public harm. The City's spending  
22 was publicly noticed by agenda and meeting minutes. The information about the spending was  
23 available but did not conform to the Act's requirements regarding format or timing. However, this  
24 disclosure did not include the additional notice to the voters that the city's spending caused the creation  
25 of a committee and that the spending was political in nature. Therefore, there was delayed transparency  
26 regarding the City's campaign activities as it related to the ballot measures. The advertisements

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27 <sup>30</sup> Regulation 18361.5, subdivision (e).

1 themselves included information that would allow a reader to conclude that the City was responsible,  
2 though the disclosure did not conform to the Act's requirements regarding the format of the disclosure  
3 statement. Nevertheless, the violations are intertwined and stem from the utilization of public money to  
4 engage in political communication, making the entirety of its actions of significant public harm.

5 The Enforcement Division found that the violations were negligent and that the evidence  
6 supports an absence of any intention to conceal, deceive, or mislead the public. Each of the newspaper  
7 advertisements and mass mailings showed the City's seal, which would suggest to the public that the  
8 City paid for those communications. The City Attorney reviewed the advertisements and letters before  
9 they were published and distributed to the public. While the City demonstrated good faith in consulting  
10 with the City Attorney, the City did not consult the Commission staff regarding the issues present in  
11 this matter. The City's position is that the advertisements, created in collaboration with a professional  
12 consulting service and reviewed and approved by city staff, were intended to be informational only and  
13 not political expenditures. City staff hired a consultant who had experience working with municipalities  
14 on public finance ballot measures. The Enforcement Division has not found evidence to suggest that the  
15 City knowingly violated the Act or that City staff or officials knew or understood that the materials  
16 would cross the line into political speech. The City contends that the communications are informational  
17 in nature but has agreed to conclude this matter with this finding and settlement.

18 The violations in this matter were isolated, as the City does not have a known history of  
19 campaigning for or against other ballot measures. The City does not have a prior record of violating the  
20 Act or similar laws. Furthermore, the City filed a semi-annual campaign statement to provide full  
21 disclosure of campaign activities that occurred during the reporting period of January 1, 2017 through  
22 June 30, 2017.

23 The Commission also considers penalties in prior cases with comparable violations. At the  
24 February 18, 2021 Commission Meeting, the Commission directed the Enforcement Division to pursue  
25 penalties at or above 90 percent of the maximum penalty when governmental agencies engage in  
26 activities prohibited by the Act or fail to properly disclose or report campaign activities. Recent similar  
27 cases include the following: *In the Matter of City of Fountain Valley*; FPPC No. 2016-20109. (The  
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1 Commission approved a stipulated decision on March 18, 2021.) The City of Fountain Valley placed  
2 Measure HH on the November 8, 2016 General Election ballot. The City of Fountain Valley paid for  
3 two magazine advertisements and sent two prohibited mass mailings that unambiguously urged voters  
4 to vote in favor of Measure HH. These campaign activities qualified the City of Fountain Valley as an  
5 independent expenditure committee, but it failed to include a proper advertisement disclosure statement  
6 in its magazine advertisements. As an independent expenditure committee, the City of Fountain Valley  
7 also failed to timely file a 24-hour independent expenditure report and a semi-annual campaign  
8 statement to disclose to the public its campaign activities, totaling approximately \$1,780. The  
9 Commission approved a penalty of \$4,500 each for failing to include a proper advertisement disclosure  
10 statement, sending prohibited campaign related mass mailings at public expense, failing to timely file a  
11 24-hour independent expenditure report, and failing to timely file a semi-annual campaign statement.  
12 The total penalty was \$18,000.

13 As in *Fountain Valley*, the City sent two prohibited mass mailings at public expense, purchased  
14 two mass media advertisements, and failed to timely report all campaign activities on 24-hour  
15 independent expenditure reports and a semi-annual campaign statement. However, unlike *Fountain*  
16 *Valley*, the City engaged in campaign activities totaling \$57,418.78, which is more than 32 times the  
17 amount that was not reported in *Fountain Valley*.

18 For the foregoing reasons, a penalty of \$5,000 for each of Counts 1 through 7, for a total in the  
19 amount of \$35,000, is recommended.

## 20 CONCLUSION

21 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
22 Respondent City of Campbell hereby agree as follows:

23 1. Respondent violated the Act as described in the foregoing pages, which are a true and  
24 accurate summary of the facts in this matter.

25 2. This stipulation will be submitted for consideration by the Fair Political Practices  
26 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.  
27







1 The foregoing stipulation of the parties “In the Matter of City of Campbell” FPPC No. 2017-  
2 00125, is hereby accepted as the final decision and order of the Fair Political Practices Commission,  
3 effective upon execution below by the Chair.

4  
5 IT IS SO ORDERED.

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7 Dated: \_\_\_\_\_  
8 Richard C. Miadich, Chair  
9 Fair Political Practices Commission  
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