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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of) FPPC No. 11/472
13)
14) STIPULATION, DECISION and
SAN BERNARDINO COMMUNITY) ORDER
COLLEGE DISTRICT,)
15)
16 Respondent.)
17

18 Complainant, the Fair Political Practices Commission, and Respondent the San Bernardino
19 Community College District agree that this stipulation will be submitted for consideration by the Fair
20 Political Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of Respondent, pursuant to Section 83116 of the Government Code.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent San Bernardino Community College District
4 violated the Political Reform Act when it sent a prohibited mass mailing at public expense, in violation
5 of Government Code Section 89001 (1 count). All counts are described in Exhibit 1. Exhibit 1 is
6 attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and
7 accurate summary of the facts in this matter.

8 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
9 Respondent also agrees to the Commission imposing upon it an administrative penalty in the amount of
10 Two Thousand Dollars (\$2,000). A cashier's check from Respondent San Bernardino Community
11 College District in said amount, made payable to the "General Fund of the State of California," is
12 submitted with this Stipulation as full payment of the administrative penalty, to be held by the State of
13 California until the Commission issues its decision and order regarding this matter. The parties agree
14 that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and
15 within fifteen (15) business days after the Commission meeting at which the Stipulation is rejected, all
16 payments tendered by Respondents in connection with this Stipulation shall be reimbursed to
17 Respondents. Respondents further stipulate and agree that in the event the Commission rejects the
18 Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither any
19 member of the Commission, nor the Executive Director, shall be disqualified because of prior
20 consideration of this Stipulation.

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22 Dated: _____
23 Gary Winuk, Enforcement Chief,
24 on behalf of the
Fair Political Practices Commission

25 Dated: _____
26 Bruce Baron, on behalf of
27 Respondent San Bernardino Community College District
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DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of the San Bernardino Community College District,” FPPC No. 11/472, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____

Anne Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent is the San Bernardino Community College District (“Respondent San Bernardino”), located in southern California in San Bernardino County. In this matter, on or about March 15, 2011, Respondent sent, at public expense, the Spring 2011 edition of its newsletter, entitled “Community News” which included the names and color photographs of all elected members of the college district’s board of trustees across the bottom of the front page of the mailer. The mailer also contained a letter from the president on the front page, and included a photograph of him appearing next to the heading.

For the purposes of this stipulation, Respondent’s violation of the Political Reform Act (the “Act”)¹ is stated as follows:

COUNT 1: Respondent San Bernardino Community College District produced and sent a newsletter at public expense, on or about March 15, 2011, which featured elected board members, in violation of section 89001.

SUMMARY OF THE LAW

Prohibition Against Sending a Newsletter or Mass Mailing at Public Expense

Government Code section 89001 of the Act prohibits the sending of a newsletter or mass mailing at public expense. Section 82041.5 defines a “mass mailing” as more than 200 substantially similar pieces of mail, not including a form letter or other mail sent in response to an unsolicited request, letter or other inquiry.

A mailing is prohibited by section 89001 if four criteria are met. First, the item is “delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box.” (Regulation 18901, subd. (a)(1).) The item may be any tangible item, such as a videotape, record, button, or written document. (*Ibid.*)

Second, the item features an elected officer affiliated with the agency that produces or sends the mailing. (Regulation 18901, subd. (a)(2)(A).) An item features an elected officer when the item includes, among other things, the elected officer’s photograph or signature. (Regulation 18901, subd. (c)(2).) A mailing containing the name, office, photograph or any other reference to an elected officer who consults or acts in concert with the agency to prepare or send the mailing also fulfills the second criteria.

¹ 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.

Third, any of the cost of distributing the item is paid for with public moneys. (Regulation 18901, subd. (a)(3)(A).) In the alternative, the cost of designing, producing, and printing the item exceeding \$50 is paid for with public moneys and the design, production, or printing is done with the intent of sending the item other than as permitted by the Act's mass mailing rules. (Regulation 18901, subd. (a)(3)(B).)

Fourth, more than 200 substantially similar items are sent, in a single calendar month, excluding any item sent in response to an unsolicited request.² (Regulation 18901, subd. (a)(4).) Under Regulation 18901 subd. (b)(4), only those who subscribe to newspapers shall be deemed to have made unsolicited requests for materials published in those subscription publications.

DISCUSSION

COUNT 1 - Sending a Prohibited Mass Mailing at Public Expense

The San Bernardino Community College District is governed by a seven member board of trustees. These trustees are elected by voters that reside within the boundaries of the district. The district includes two colleges, San Bernardino Valley College and Crafton Hills College, as well as the Professional Development Center; and encompasses portions of San Bernardino and Riverside Counties.

A mailer was printed in house by the San Bernardino Community College District Printing Services, and processed for mailing and delivered to the post office by an third party vendor. The Spring 2011 edition of the newsletter, entitled "Community News" which included the names and color photographs of all elected members of the college district's board of trustees, was delivered by mail to approximately 202,000 households. The Fall 2010 edition of the newsletter followed the same format; it featured the names and color photographs of all elected members of the college district's board of trustees across the bottom of the front page of the mailer, and a letter from the president with a photograph of him appearing next to the heading.

Respondents caused to be sent, in a calendar month, approximately 202,000 substantially similar newsletters, on or about March 15, 2011, to residents in portions of San Bernardino County and Riverside County, California. The newsletter featured the names and photographs of all members of the board of trustees across the bottom of the front page of the mailer and included a letter from the president appearing alongside his photograph. The newsletter's pick-up, folding, processing and mailing costs were \$24,025.66, which has been paid from the money designated from the San Bernardino Community College District's General Fund.

² Subdivision (b) of Regulation 18901 contains numerous exceptions to the mass mailing prohibition, none of which apply in this instance.

By producing and distributing the Fall 2008 newsletter, featuring San Bernardino Community College District board members and the president of the board, to approximately 202,000 recipients within San Bernardino and Riverside Counties, at a public expense of \$24,025.66, Respondent violated Section 89001.

CONCLUSION

This matter consists of one count of violating Section 89001, and carries a maximum possible administrative penalty of \$5,000 per violation, for a total administrative penalty of \$5,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. The Enforcement Division also considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6), which include: the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the Respondent voluntarily filed amendment to provide full disclosure. Additionally, liability under the Act is governed in significant part by the provisions of Section 91001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

Other similar cases regarding a violation of Section 89001 that have been recently approved by the Commission include:

In the Matter of Santa Paula Union High School District and David Gomez, FPPC No. 08/554. Respondents violated the Political Reform Act by sending a newspaper insert, at public expense, which featured an incumbent school board member. The featured board member was not involved in the production of the mailer. Respondents in this matter did not have an enforcement history. A \$2,000 penalty was approved by the Commission on January 14, 2010.

In the Matter of City of Yuba City and Rory Ramirez, FPPC No. 08/510. Respondents are the City of Yuba City and Rory Ramirez, who was, at the time of the violation, an elected city councilmember and appointed mayor of Yuba City. Respondent City of Yuba City used public funds to send two mass mailings, which featured Mayor Ramirez. A third party consultant assembled the mailings, and made the decision to feature the mayor, who was not running for reelection. A penalty of \$3,000 per count was approved by the commission on January 15, 2009.

In this case, Respondent's actions were similar to the cases above in that none of these cases appear to include anything more than negligent behavior. Respondent has

fully cooperated with this investigation and taken responsibility for the violation that occurred, and have no enforcement history.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the Respondent's pattern of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Two Thousand Dollars (\$2,000) is recommended.