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7
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**

10
11 In the Matter of:

FPPC No. 12/507

12
13 **DEMOCRATIC CLUB OF VENTURA**
and SANFORD BOTHMAN

STIPULATION, DECISION, AND ORDER

14 Respondents.
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17 **STIPULATION**

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
19 respondents Democratic Club of Ventura and Sanford Bothman (Respondents) hereby agree that this
20 Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next
21 regularly scheduled meeting.

22 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this
23 matter and to reach a final disposition without the necessity of holding an additional administrative
24 hearing to determine the liability of Respondents.

25 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
26 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
27 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
28 personally appear at any administrative hearing held in this matter, to be represented by an attorney at

1 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
2 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
3 the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondents violated the Political Reform Act by sending
5 a slate mailer that did not display the required "Notice to Voters" nor indicate which of the candidates
6 and/or ballot measure committees paid to appear on the mailer in violation of Government Code section
7 84305.5, subdivisions (a)(2) and (4) as described in Exhibit 1. Exhibit 1 is attached hereto and
8 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of
9 the facts in this matter.

10 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
11 Respondents also agree to the Commission imposing an administrative penalty in the total amount of
12 One Thousand Two Hundred Fifty Dollars (\$1,250). Respondents submitted with this Stipulation a
13 cashier's check from Respondents in said amount, made payable to the "General Fund of the State of
14 California," as full payment of the administrative penalty that shall be held by the State of California
15 until the Commission issues its Decision and Order regarding this matter. The parties agree that in the
16 event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen
17 (15) business days after the Commission meeting at which the Stipulation is rejected, all payments
18 tendered by Respondents in connection with this Stipulation shall be reimbursed to Respondents.
19 Respondents further stipulate and agree that in the event the Commission rejects the Stipulation, and a
20 full evidentiary hearing before the Commission becomes necessary, neither any member of the
21 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this
22 Stipulation.

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24 Dated: _____ Gary S. Winuk, on behalf of the Enforcement Division
25 Fair Political Practices Commission

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27 Dated: _____ Sanford Bothman, individually, and on behalf of
28 Democratic Club of Ventura, Respondents

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2 **DECISION AND ORDER**

3 The foregoing Stipulation of the parties “In the Matter of Democratic Club of Ventura and
4 Sanford Bothman” FPPC No. 12/507, including all attached exhibits, is hereby accepted as the final
5 decision and order of the Fair Political Practices Commission, effective upon execution below by the
6 Chair.

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8 IT IS SO ORDERED.

9 Dated: _____

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11 Ann Ravel, Chair
12 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent Democratic Club of Ventura (“Respondent Committee”) is a general purpose committee. Respondent Sanford Bothman (“Respondent Treasurer”) was the treasurer for Respondent Committee at all times at issue in this case. Respondent Committee also qualified as a slate mailer organization in October of 2009. Under the Political Reform Act (the “Act”)¹, a slate mailer organization must include a “Notice to Voters” containing specific language regarding the source of the mailer on any slate mailer the organization sends out and must indicate on the slate mailer which candidates and ballot measure committees paid to appear on the mailer. As set forth below, Respondents violated the Act by failing to include the required “Notice to Voters” on a slate mailer they sent out.

For purposes of this Stipulation, the proposed violations of the Act are as follows:

COUNT 1: Respondents sent out a slate mailer in October of 2009 that did not contain the “Notice to Voters” language required by Section 84305.5, subdivision (a)(2) and did not include asterisks to indicate those candidates and committees that paid to appear on the slate mailer in violation of Section 84305.5, subdivision (a)(4).

SUMMARY OF THE LAW

Definition of Slate Mailer

A “slate mailer” is a mass mailing that supports or opposes a total of four or more candidates or ballot measures. (Section 82048.3.) A “mass mailing” is 200 or more substantially similar pieces of mail. (Section 82041.5.)

Definition of Slate Mailer Organization

Section 82048.4 defines a “slate mailer organization” as any person who directly or indirectly (1) is involved in the production of one or more slate mailers and exercises control over the selection of the candidates and measures to be supported or opposed in the mailer, and (2) receives or is promised payments totaling \$500 or more in a calendar year for the production of one or more slate mailers. A committee is included within the definitions of a “person” under the Act (Section 82047).

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.

Slate Mailer Organization Identification Requirements

A slate mailer organization must include on each slate mailer it sends out the “Notice to Voters” language detailed at Section 84305.5, subdivision (a)(2) on the top or bottom of one side of a mailer in the format described. A slate mailer organization also must identify each candidate and ballot measure that paid to appear on the mailer by designating the candidate or ballot measure with an asterisk on the mailer. (Section 84305.5, subd. (a)(4).)

Treasurer Liability

Section 84108 requires slate mailer organizations to comply with Section 84100, which requires the entity to have a treasurer. Sections 83116.5 and 91006 provide that a treasurer may be held jointly and severally liable, along with the organization, for any violations of the Act.

SUMMARY OF THE FACTS

Respondent Committee is a general purpose committee. In October of 2009, Respondents produced and mailed a mass mailer printed on cardstock that endorsed Ed Summers and Brian Brennan for Ventura City Council. The mailer included a picture of the two men. On the other side, the mailer urged recipients to vote “yes” on Measure A and Measure C, which were on the November 3, 2009 ballot. It also again expressed support for Brennan and Summers for city council. The mailer was sent via bulk rate U.S. Mail. The mailer did not have the “Notice to Voters” required by Section 84305.5, subdivision (a)(2) printed on it.

Respondent Committee’s preelection statement (Form 460) for the July 1, 2009 through October 10, 2009 period indicates that the Respondent Committee received as “Payment for Joint Mailer” the following payments: \$600 from Venturans for Local Control – Committee for Measure A on October 14, 2009; \$500 from Friends of Breenan 4 Council 2009 on October 20, 2009; \$500 from Ed Summers for City Council 2009 on October 23, 2009; and \$100 from William Fulton on October 27, 2009. The mailer did not have any asterisks on it to indicate those candidates and committees who paid to appear on the mailer.

COUNT 1

Failure to include Identifying Information on Slate Mailer

Respondents sent out a slate mailer in October of 2009 that did not contain the “Notice to Voters” language required by Section 84305.5, subdivision (a)(2) and did not include asterisks to indicate those candidates and committees that paid to appear on the slate mailer in violation of Section 84305.5, subdivision (a)(4).

CONCLUSION

This matter consists of two counts of violating the Act, which carry a maximum administrative penalty of five thousand dollars (\$5,000) per count.

In determining the appropriate penalty for a particular violation of the Act, the Commission 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. Additionally, the Commission considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): 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 Respondents demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

Recent cases before the Commission involving violations of Section 84305.5 include the following:

- *In the Matter of Paul Fickas and Decline to State Voter Guide, FPPC No. 10/959:* Respondents improperly identified all candidates as having contributed to pay for a slate mailer when in fact one candidate had not contributed. The respondents had no prior experience with producing slate mailers. The Commission approved a penalty of \$1,500 on September 22, 2011 for this violation.
- *In the Matter of California Voter Guide and Gary Crummitt, FPPC No. 12/374:* Respondent, a slate mailer organization, sent out two slate mailers that did not include the address and city of the organization. Respondents stipulated to two counts for violating the Act and on September 13, 2012, the Commission approved a penalty of \$1,500 per count for a total penalty of \$3,000.

In the case now before the Commission, Respondents failed to include the “Notice to Voters” which is required by the Act to ensure voters are not mistaken or confused regarding the source of a slate mailer. Respondents also did not indicate on the slate mailer which candidate and ballot measures paid to appear on the mailer. These violations cause public harm by denying voters information regarding the source of the mailers they receive.

Mitigating circumstances do exist in this case. While the mailer did not have the “Notice to Voters,” it did have identifying information that would allow voters to identify the source of the mailer. Further, Respondents have no history of violating the Act and do not appear to be in the business of producing slate mailers for profit. The violations appear inadvertent and the result of Respondents not knowing the law, not an intent to deceive or mislead voters.

PROPOSED PENALTY

After considering the factors of Regulation 18361.5, including whether the violations in question were inadvertent, negligent or deliberate and the Respondent’s history of compliance, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of \$1,250 for count 1 recommended. Total recommended penalty: \$1,250.