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3 **FAIR POLITICAL PRACTICES COMMISSION**
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
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12 In the Matter of) FPPC No. 12/880
13 HADDON LIBBY and LIBBY FOR INDIAN)
14 WELLS CITY COUNCIL 2012) STIPULATION, DECISION and
15 Respondent.) ORDER
16)
17)

18 Complainant Gary S. Winuk, Enforcement Chief of the Fair Political Practices Commission, and
19 Respondents Haddon Libby and Libby for Indian Wells City Council 2012 agree that this Stipulation
20 will be submitted for consideration by the Fair Political Practices Commission at its next regularly
21 scheduled meeting.

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

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

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

4 It is further stipulated and agreed that Respondents Haddon Libby and Libby for Indian Wells
5 City Council 2012 violated the Political Reform Act by (1) failing to display required sender
6 identification on a mass mailing, in violation of Government Code Section 84305, subdivision (a). (1
7 count). This count is described in Exhibit 1, which is attached hereto and incorporated by reference as
8 though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

9 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
10 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
11 of Three Thousand Five Hundred Dollars (\$3,500). A cashier's check from Respondents in said
12 amount, made payable to the "General Fund of the State of California," is submitted with this
13 Stipulation as full payment of the administrative penalty, to be held by the State of California until the
14 Commission issues its decision and order regarding this matter. The parties agree that in the event the
15 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)
16 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered
17 by Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents
18 further stipulate and agree that in the event the Commission rejects the Stipulation, and a full evidentiary
19 hearing before the Commission becomes necessary, neither any member of the Commission, nor the
20 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

21
22 Dated: _____
23 Gary S. Winuk, Chief of Enforcement
24 Fair Political Practices Commission

25 Dated: _____
26 Respondent Haddon Libby Individually and
27 on behalf of Libby for Indian Wells City
28 Council 2012, Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Haddon Libby and Libby for Indian
3 Wells City Council 2012,” FPPC No. 12/880, including all attached exhibits, is hereby accepted as the
4 final decision and order of the Fair Political Practices Commission, effective upon execution below by
5 the Chair.

6
7 IT IS SO ORDERED.

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9 Dated: _____

Sean Eskovitz, Vice Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Haddon Libby (“Respondent Libby”) was an unsuccessful candidate for the Indian Wells City Council, receiving 596 votes in the November 6, 2012 election. Respondent Libby for Indian Wells City Council 2012 (“Committee”) was Respondent Libby’s candidate controlled committee. Prior to the 2012 election, Respondents designed, paid for, and caused to be sent four mass mailers which opposed the election of several other candidates to the Indian Wells City Council. However, the mailers failed to identify the sender, in violation of the Political Reform Act (the “Act”).¹

For the purposes of this Stipulation, Respondent’s violations of the Act are stated as follows:

COUNT 1: On or about October 9, 2012 and October 23, 2012, Respondents Haddon Libby and Libby for Indian Wells City Council 2012 caused to be sent four separate mass mailers opposing the election of Dana Reed, Larry “Bear” Bonafide, Ted Mertens, Ty Peabody, Bill Powers, and Mitchell Blumberg to the Indian Wells City Council, which failed to display required sender identification, in violation of Government Code Section 84305, subdivision (a).

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that receipts and expenditures affecting election campaigns are fully disclosed to the public, so that voters may be better informed, and improper practices may be inhibited. To that end, the Act sets forth a comprehensive campaign reporting system designed to accomplish this purpose of disclosure.

Section 82013, subdivision (a), defines a “committee” to include any person who receives contributions totaling \$1,000 or more in a calendar year. This type of committee is commonly known as a “recipient committee.” A committee controlled directly or indirectly by a candidate, or that acts jointly with a candidate, is known as a candidate-controlled committee. (Section 82016.)

Section 82015 defines a “contribution” as a payment made for political purposes. Section 82025 defines “expenditure” as a payment, forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding

¹The 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.

circumstances that it is not made for political purposes. An expenditure includes monetary and nonmonetary contributions made by committees. (See Sections 82015, 82025, and 82044.)

Under Section 85500(b)(1), an expenditure may not be considered independent, and shall be treated as a contribution from the person making the expenditure to the candidate on whose behalf, or for whose benefit, the expenditure is made, if the expenditure is made with the cooperation of, or in consultation with, the candidate on whose behalf, or for whose benefit, the expenditure is made, or any controlled committee or any agent of the candidate.

Sender Identification Requirements

Section 84305, subdivision (a), requires candidates and committees to properly identify themselves when sending a mass mailing. Specifically, the statute provides that no candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing.

Section 82041.5 defines a “mass mailing” as over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry. Regulation 18435, subdivision (a), clarifies this section, and further defines a mass mailing as over two hundred substantially similar pieces of mail sent in a calendar month. Regulation 18435, subdivision (b), defines the term “sender,” as used in Section 84305, as the candidate or committee who pays for the largest portion of expenditures attributable to the designing, printing or posting of the mailing.

SUMMARY OF THE FACTS

On or about October 10, 2012 and October 24, 2012, residents of Indian Wells received four different mailers that opposed the election of six of the ten candidates for Indian Wells City Council. Two mailers were sent on or about October 10, 2012; one targeting Dana Reed and the other Larry “Bear” Bonafide. The two other mailers were sent on or about October 24, 2012; one targeting Ted Mertens and Ty Peabody, and the other Bill Powers and Mitchell Blumberg. All four of the mailers lacked any sender identification. This case was opened as the result of multiple complaints regarding the anonymous mailers.

After an investigation, it was determined that Respondent Libby, working in conjunction with Edwin “Ed” Carter, assisted in the design of the four mailers, which were printed and shipped to his home, at a total printing cost of \$1,580.09. Respondents were required to provide the name, street address, and city of the committee on the outside of each piece of mail in a mass mailing. Approximately 2,500 pieces were sent for each of the four mailers. In addition, Respondents received non-monetary contributions from Ed Carter, who paid postage costs totaling \$1,421.15, and delivered the mailers to the Palm Desert Post Office.

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COUNT 1

Failure to Include Sender Identification on Mass Mailings

On or about October 9, 2012 and October 23, 2012, Respondents Haddon Libby and Libby for Indian Wells City Council 2012 caused to be sent four separate mass mailers opposing the election of Dana Reed, Larry “Bear” Bonafide, Ted Mertens, Ty Peabody, Bill Powers, and Mitchell Blumberg to the Indian Wells City Council.

By causing to be sent mass mailings which failed to display required sender identification, Respondents violated, Section 84305, subdivision (a) of the Government Code.

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of Five Thousand Dollars (\$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 amendments 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.

The failure to provide proper sender identification on a mass mailer is a serious violation of the Act, as it deprives the public of important information regarding the sponsor of the mailing.

Another similar case regarding a violation of Section 84305, subdivision (a) that have been recently approved by the Commission includes:

In the Matter of Protect Burlingame and Kevin Osborne, FPPC No. 09/804. This case involved two separate mailers in a local election campaign, sent to approximately 7,000 households, which lacked proper sender identification. Respondent in this matter did not have an Enforcement history. A \$2,500 penalty was approved by the Commission on April 11, 2011.

The public harm inherent in this type of violation, where pertinent information is not disclosed on campaign mailers, is that the public is deprived of a means to discover the identity of sender. Respondent Libby contends that he contacted Steffani Miller, campaign consultant to

Respondent Committee, prior to sending the mailers, and relied on inaccurate third party advice when preparing the mail pieces. Respondent Libby further contends that he alone was responsible for the preparation of the mailer targeting Bloomberg and Powers, but that the other mailers were created at the request of Ed Carter. Respondents do not have any prior Enforcement history and cooperated fully with the investigation into this matter.

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 Three Thousand Five Hundred Dollars (\$3,500) is recommended.

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