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

11  
12 In the Matter of ) FPPC No. 14/774  
13 )  
14 TRUCKEE TAHOE AIRPORT DISTRICT, ) STIPULATION, DECISION and  
15 Respondent. ) ORDER  
16 )  
17 )

18 Complainant, the Fair Political Practices Commission, and respondent Truckee Tahoe Airport  
19 District (“Respondent”), 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 Respondent’s 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 used public funds to mail two newsletters that  
4 featured an elected member of its board of directors to approximately 21,000 households, in violation of  
5 Government Code section 89001 (2 counts).

6 All counts are described in Exhibit 1, which is attached hereto and incorporated by reference as  
7 though fully set forth herein. Exhibit 1 is a true and 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 \$4,000. A cashier's check from Respondent in said amount, made payable to the "General Fund of the  
11 State of California," is submitted with this Stipulation as full payment of the administrative penalty, to  
12 be held by the State of California until the Commission issues its decision and order regarding this  
13 matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall  
14 become null and void, and within 15 business days after the Commission meeting at which the  
15 Stipulation is rejected, all payments tendered by Respondent in connection with this Stipulation shall be  
16 reimbursed to Respondent. Respondent further stipulates and agrees that in the event the Commission  
17 rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither  
18 any member of the Commission, nor the Executive Director, shall be disqualified because of prior  
19 consideration of this Stipulation.

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22 Dated: \_\_\_\_\_

\_\_\_\_\_  
Gary Winuk, Enforcement Chief,  
On behalf of  
Fair Political Practices Commission

23  
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25  
26 Dated: \_\_\_\_\_

\_\_\_\_\_  
Kevin Smith, General Manager  
On behalf of  
Truckee Tahoe Airport District, Respondent

**DECISION AND ORDER**

The foregoing Stipulation of the parties “In the Matter of Truckee Tahoe Airport District” FPPC No. 14/774, 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: \_\_\_\_\_

\_\_\_\_\_  
Joann Remke, Chair  
Fair Political Practices Commission

## EXHIBIT 1

### INTRODUCTION

On or about December 9, 2013, and again on or about June 10, 2014, Respondent Truckee Tahoe Airport District (“Respondent”) used public funds to design, produce, and mail a newsletter that featured an elected member of Respondent’s Board of Directors to approximately 21,000 households, in violation of the Political Reform Act (the Act”).<sup>1</sup>

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

**COUNT 1:** On or about December 9, 2013, Respondent Truckee Tahoe Airport District used public funds to mail a newsletter that featured an elected member of its board of directors to approximately 21,000 households, in violation of Government Code section 89001.

**COUNT 1:** On or about June 10, 2014, Respondent Truckee Tahoe Airport District used public funds to mail a newsletter that featured an elected member of its board of directors to approximately 21,000 households, in violation of Government Code section 89001.

### SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violations.

#### Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

#### Prohibition Against Sending a Newsletter or Mass Mailing at Public Expense

Section 89001 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.

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<sup>1</sup> 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.

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. (*Id.*)

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.

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 sent in response to an unsolicited request.<sup>2</sup> (Regulation 18901, subd. (a)(4).)

### **SUMMARY OF THE FACTS**

Respondent is a public agency that is governed by a board of directors. Respondent’s Board of Directors consists of five elected members.

On or about December 9, 2013, Respondent mailed a newsletter to approximately 21,000 households within its district. The newsletter included a picture and an interview of Tom Van Berkem, a member of Respondent’s Board of Directors. Respondent used public funds totaling approximately \$12,400 to design, produce, and mail the newsletter.

On or about June 10, 2014, Respondent mailed another newsletter to approximately 21,000 households within its district. The newsletter included a picture and interview of James Morrison, a member of Respondent’s Board of Directors. Respondent used public funds totaling approximately \$14,500 to design, produce, and mail the newsletter.

Accordingly, Respondent committed the following violations of the Act:

#### Count 1

#### **Sending a Newsletter or Mass Mailing Featuring an Elected Officer at Public Expense**

On or about December 9, 2013, Respondent used public funds to mail a newsletter that featured an elected officer to approximately 21, 000 households, in violation of Section 89001.

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

Count 2

**Sending a Newsletter or Mass Mailing Featuring an Elected Officer at Public Expense**

On or about June 10, 2014, Respondent used public funds to mail a newsletter that featured an elected officer to approximately 21,000 households, in violation of Section 89001.

**CONCLUSION**

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

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. Additionally, the Enforcement Division 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 respondent(s) demonstrated good faith in consulting with the Fair Political Practices Commission's staff; whether there was a pattern of violations; and whether upon learning of the violation the respondent voluntarily filed amendments to provide full disclosure. The facts are required to be considered by the Fair Political Practices Commission (the "Commission") under Regulation 18361.5.

On April 17, 2014, the Commission fined the City of Temecula and one of its elected city council members \$2,000 per count, totaling \$4,000, for violating Section 89001 by producing and mailing two brochures, at public expense, featuring the elected city council member, to approximately 15,000 households, at a cost of approximately \$26,000 and \$19,000, to the City of Temecula. Both brochures included a picture of, a message by, and the signature of the elected city council member. The respondents cooperated with the investigation, had no prior enforcement actions, and agreed to an early settlement. (*In the Matter of the City of Temecula and Jeff Comerchero*, FPPC No. 13/924.)

On June 19, 2014, the Commission fined the City of Rocklin \$2,000 for violating Section 89001 by sending a mass mailing featuring its elected mayor and an elected member of its city council to approximately 30,000 households, at a cost of approximately \$20,000 to the City of Rocklin. The respondent cooperated with the investigation, had no prior enforcement actions, and agreed to an early settlement. (*In the Matter of City of Rocklin*, FPPC No. 14/346.)

In this matter, Respondent spent approximately \$12,400 and \$14,500 to design, produce, and mail the newsletters, and each newsletter was mailed to approximately 21,000 households. However, Respondent was fully cooperative with the investigation, has no prior enforcement actions, and agreed to an early settlement. Therefore a \$2,000 fine per count for Counts 1 and 2 is recommended.

## **PROPOSED DECISION**

After consideration of the factors of Regulation 18361.5, and consideration of penalties in prior enforcement actions, the imposition of a \$4,000 penalty is recommended.

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