

AMENDED PROPOSED STIPULATION,
DECISION, AND ORDER

IN THE MATTER OF NORMAN HSU

FPPC CASE NO. 13/1108

1 GALENA WEST
Acting Chief of Enforcement
2 MILAD DALJU
Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant

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

10
11 In the Matter of) FPPC No. 13/1108
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

NORMAN HSU,
Respondent.

STIPULATION, DECISION AND ORDER

STIPULATION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondent Norman Hsu agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission (Commission) at its next regularly scheduled meeting.

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

Norman Hsu understands, and hereby knowingly and voluntarily waives, any and all procedural rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to, the right to personally appear at any administrative hearing held in this matter, to be

1 represented by an attorney at his own expense, to confront and cross-examine all witnesses testifying at
2 the hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law
3 judge preside over the hearing as a hearing officer, and to have the matter judicially reviewed. It is
4 further stipulated and agreed that Norman Hsu violated Government Code section 84305, subdivision
5 (b), on September 6, 2011, July 13, 2013, August 21, 2013, and October 11, 2013, by sending mass
6 mailings without disclosing his name and address on the outside of each piece of mail (2 counts). Each
7 count is described in Exhibit 1, which is attached hereto and incorporated by reference as though fully
8 set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

9 Norman Hsu agrees to the issuance of the Decision and Order, which is attached hereto.
10 Norman Hsu also agrees to the Commission imposing upon him an administrative penalty in the
11 amount of \$5,500. A cashier's check from Norman Hsu in said amount, made payable to the "General
12 Fund of the State of California," is submitted with this Stipulation as full payment of the administrative
13 penalty, to be held by the State of California until the Commission issues its decision and order
14 regarding this matter. The parties agree that in the event the Commission refuses to accept this
15 Stipulation, it shall become null and void, and within fifteen business days after the Commission
16 meeting at which the Stipulation is rejected, all payments tendered by Norman Hsu in connection with
17 this Stipulation shall be reimbursed to him. Norman Hsu further stipulates and agrees that in the event
18 the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission becomes
19 necessary, neither any member of the Commission, nor the Executive Director, shall be disqualified
20 because of prior consideration of this Stipulation.

21
22 Dated: _____

Galena West, Acting Chief of Enforcement on behalf of the
Enforcement Division of the Fair Political Practices Commission

23
24
25 Dated: _____

Norman Hsu, Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Norman Hsu” FPPC No. 13/1108,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chair.

5 IT IS SO ORDERED.

6 Dated: _____

7 Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Norman Hsu was a member of the Hacienda La Puente Unified School District Board of Directors (the “Board”), and thereby also a candidate under the Political Reform Act¹ (the “Act”), until December 9, 2011. In 2011, while still a candidate, Hsu sent a mass mailing that did not disclose his name and address, in violation of Section 84305, subdivision (b). In 2013, Hsu qualified as a committee and sent three mass mailings that did not disclose his name and address, in violation of Section 84305, subdivision (b).

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.

Candidate

The definition of “candidate” includes any individual who is listed on a ballot for election to any elective office.² A candidate retains his or her status as a candidate until he or she has filed a statement of termination for his or her candidate-controlled committee and has left office.³

Independent Expenditure Committee

The definition of a “committee” includes any person or combination of persons who makes independent expenditures totaling \$1,000 or more in a calendar year.⁴ This type of committee is commonly referred to as an “independent expenditure committee.”

The definition of “independent expenditure” includes any expenditure made by any person in connection with a communication that expressly advocates the election or defeat of a clearly identified candidate but which is not made to or at the behest of the affected candidate or committee.⁵

“Expenditure” is defined as a payment, a 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 circumstances that it is not made for a political purpose.⁶

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² Section 82007

³ Sections 82007 and 84214; Regulation 18404, subd. (d).

⁴ Section 82013, subd. (b).

⁵ Section 82031.

⁶ Section 82025.

Mass Mailing Sender Identification

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.⁷

A “mass mailing” is defined as over two hundred substantially similar pieces of mail sent in a single calendar month, but not including a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry.⁸

SUMMARY OF THE FACTS

On or about September 6, 2011, Hsu sent a mass mailing to approximately 3,000 households. According to Hsu, he sent the mass mailing to residents of Hacienda Heights and La Puente that he believed were Chinese-speaking. The outside of the mass mailing stated “Community News” and included a post office box address, but did not disclose any other sender information. The mass mailing was a total of eight pages, and written mostly in first-person by Hsu and in Chinese. Inside the mass mailing, Hsu asked readers to support Jay Chen and Gino Kwok, who were candidates for the Board in the November 8, 2011, election. Hsu paid approximately \$1,482 to print and send the mass mailing.

On November 8, 2011, both Chen and Kwok were elected to the Board.

On or about July 13, 2013, Hsu sent a mass mailing to approximately 3,250 residents of Hacienda Heights and La Puente that Hsu believed were Chinese-speaking. The outside of the mass mailing stated “Community News” and included a post office box address, but did not disclose any other sender information. The mass mailing was a total of eight pages, and written mostly in first-person by Hsu and in Chinese. Inside the mass mailing, Hsu asked readers to support Dr. Joseph Chang, who was a candidate for the Board in the November 5, 2013, election. Hsu paid approximately \$2,156 to print and send the mass mailing.

On or about August 21, 2013, Hsu sent a mass mailing to approximately 3,210 residents of Hacienda Heights and La Puente that Hsu believed were Chinese-speaking. The outside of the mass mailing stated “Community News” and included a post office box address, but did not disclose any other sender information. The mass mailing was a total of eight pages, and written mostly in first person by Hsu and in Chinese. Inside the mass mailing, Hsu discussed Anthony Duarte, Henry E. Gonzalez, and Jeffrey De La Torre, who were candidates for the Board in the November 5, 2013, election. Hsu paid approximately \$1,777 to print and mail the mass mailing.

On or about October 11, 2013, Hsu sent a mass mailing to approximately 3,299 residents of Hacienda Heights and La Puente that Hsu believed were Chinese-speaking. The outside of the mass mailing stated “Community News” and included a post office box address, but did not disclose any other sender information. The mass mailing was a total of eight pages, and written

⁷ Section 84305, subd. (b).

⁸ Section 84041

mostly in first person by Hsu and in Chinese. Hsu paid approximately \$1,734 to print and mail the mass mailing.

On November 5, 2013, Dr. Chang and Duarte were elected to the Board, but Gonzalez and De La Torre were not elected to the Board.

VIOLATIONS

Count 1: Failure to include required sender information on a mass mailing

On or about September 6, 2011, Hsu was still in office and therefore a candidate. By sending a mass mailing without disclosing his name and address on the outside of each piece of mail, Hsu violated Section 84305, subdivision (b).

Count 2: Failure to include required sender information on mass mailing

On or about July 13, 2013, Hsu spent approximately \$2,156 to print and send a mass mailing that included express advocacy, and therefore made an expenditures totaling approximately \$2,156. Because Hsu made an expenditure of \$1,000 or more, he qualified as a committee.

As a committee, Hsu was required to include his name and address on all mass mailings he sent. On or about July 13, August 21, and again on October 11, 2013, Hsu sent a mass mailing without disclosing his name and address on the outside of each piece of mail, in violation of Section 84305, subdivision (b).

CONCLUSION

This matter consists of two counts of violating the Act, which carry a maximum administrative penalty of \$10,000.

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) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether, upon learning of the violation, the violator voluntarily provided amendments to provide full disclosure.

Recent penalties imposed by the Fair Political Practices Commission (the “Commission”) for failing to include the required sender information on a mass mailing include:

- *In the Matter of Jerald “Jerry” Hyde*, FPPC No. 12/927. In August 2013, the Commission imposed a \$2,500 penalty on an individual who qualified as an independent expenditure committee for his failure to include his name and

address on a mass mailing he sent to approximately 4,400 households. The mass mailing cost \$1,350 to design, print, and mail, expressed advocated for the defeat of a local ballot measure, misidentified the sender as an organization, and did not include an address. However, the individual had no history of violating the Act and was fully cooperative with the Enforcement Division's investigation.

- *In the Matter of Chris Prentiss*, FPPC No. 08/534. In August 2010, the Commission imposed a \$3,000 penalty on an individual who qualified as an independent expenditure committee for his failure to include his name and address on a mass mailing he sent to approximately 2,700 recipients. The mass mailing cost approximately \$4,200 to design, print, and mail, expressed advocated for the election of a local candidate, misidentified the sender as an organization, and did not include an address.

In this matter, the seriousness of the violations is aggravated by the fact that Hsu failed to include the required sender information on four different mass mailings, each sent to over 3,000 households. Additionally, there was a clear pattern of violations because Hsu violated Section 84305, subdivision (b), multiple times and over the course of several years.

However, the seriousness of the violations is mitigated by the fact that all the mass mailings were written by Hsu in the first-person and referred to Hsu several times. It is unlikely that Hsu intended to mislead the voting public because any individual who read the newsletter likely realized that the newsletter was sent by Hsu. Additionally, Hsu cooperated with the Enforcement Division's investigation into this matter.

For the aforementioned reasons, a penalty of \$2,500 for Count 1 and \$3,000 for Count 2 is recommended. A higher penalty is recommended for Count 2 because it includes three mass mailings rather than one.

PROPOSED PENALTY

After considering the factors listed in Regulation §18361.5, prior similar cases, and other relevant factors, a total penalty of \$5,500 is recommended.

* * * * *