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

12 In the Matter of

13 EL MONTE UNION HIGH SCHOOL
14 DISTRICT,

15 Respondent.
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17

) FPPC No. 16/465

) STIPULATION, DECISION and
) ORDER

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
19 Respondent the El Monte Union High School District agree that this Stipulation will be submitted for
20 consideration by the Fair 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 the Respondent, pursuant to Section 83116 of the Government Code.

24 The El Monte Union High School District understands, and hereby knowingly and voluntarily
25 waives, any and all procedural rights set forth in Sections 83115.5, 11503 and 11523 of the
26 Government Code, and in Sections 18361.1 through 18361.9 of Title 2 of the California Code of
27 Regulations. This includes, but is not limited to, the right to personally appear at any administrative
28 hearing held in this matter, to be represented by an attorney at the El Monte Union High School

1 District's 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 the El Monte Union High School District violated the
5 Political Reform Act by producing and sending copies of a district booklet at public expense, in the fall
6 of 2015, which featured quotations, with credits to, two members of the governing board, in violation
7 of Government Code Section 89001 (1 count). This count is described in Exhibit 1, which is attached
8 hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate
9 summary of the facts in this matter.

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

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25 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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Dated: 6/15/16

~~EDWARD ZUNIGA INTERAM~~

Irella Perez, Superintendent, on behalf of
the El Monte Union High School District, Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties "In the Matter of El Monte Union High School District,"
3 FPPC No. 16/465, including all attached exhibits, is hereby accepted as the final decision and order of
4 the Fair Political Practices Commission, effective upon execution below by the Chair.

5
6 **IT IS SO ORDERED.**

7
8 Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent is the El Monte Union High School District (the “District”), located in Los Angeles County.

This case was opened as the result of a complaint concerning a mass mailing, sent at public expense, which included the names, and quotations from, two members of the governing board of the District.

The Political Reform Act¹ (the “Act”) prohibits the sending of any mass mailing, featuring an elected official, at public expense.

SUMMARY OF THE LAW

Mass Mailing at Public Expense

A “mass mailing” is defined by the Act 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.²

No mass mailing may be sent at public expense.³ A mailing is prohibited if all of the following criteria are met:⁴

- (1) Any item sent is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box. The item delivered must be a tangible item, such as a written document.
- (2) Features an elected officer affiliated with the agency which produces or sends the mailing. An item features an elected officer when the item includes, among other things, the elected officer’s photograph or signature.⁵ 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.
- (3) Costs of design production and printing exceeding \$50.00 are paid with public moneys, and the design, production or printing is done with the intent of sending the item other than as permitted by this regulation, and
- (4) More than two hundred substantially similar items are sent, in a single calendar month.⁶

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. The Regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations.

² Section 82041.5.

³ Section 89001.

⁴ Regulation 18901, subdivision (a).

⁵ Regulation 18901, (c)(2).

⁶ Regulation 18901, subdivision (b), contains numerous exceptions to the mass mailing prohibition, none of which apply in this instance.

SUMMARY OF THE FACTS

In the fall of 2015, the District prepared and sent a mass mailing, at public expense, consisting of a booklet, the “Community Annual Report 2015-2016,” which included a quotation from Board Vice President Esthela Torres de Siegrist and a quotation from Board President Salvador Ramirez. These quotations were specifically solicited from them for use in this publication. The mailer was prepared by staff and mailed to all households within the District. The costs for the design, printing, and postage exceeded \$50, and were paid for by the District.

VIOLATION

The El Monte Union High School District produced and sent approximately 5,000 copies of a booklet, at public expense, which contained quotations from, with credits to, two members of the governing board, obtained for the purpose of inclusion in the mailer, in violation of Government Code Section 89001.

CONCLUSION

This matter consists of one count of violating the Act carrying a maximum administrative penalty of \$5,000.

In determining the appropriate penalty for a particular violation of the Act, the Fair Political Practices Commission (“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 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): 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 the Respondent, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

The Commission also considers penalties in prior cases involving similar violations. Recent penalties for sending a newsletter or mass mailing featuring an elected officer at public expense include:

In the *City of Rocklin*, FPPC No. 14/346, the city sent a publication, “Inside Rocklin” to residents that included a message from the mayor along with a photograph and his name and title. The other members of the city council were also featured. The Commission approved a penalty of \$2,000 for this violation on June 19, 2014.

Using public funds to pay for the design and production of a mass mailing that includes reference to an elected officer who consults or acts in concert with the agency to prepare or send the mailing uses public funds for prohibited purposes. The District cooperated with the

investigation and has no prior history with the Enforcement Division. In addition, District staff initiated contact with the board members in order to supplement two articles created by staff.

PROPOSED PENALTY

After considering the factors listed above, a penalty of \$2,000 for the violation is recommended.