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

10
11 In the Matter of:

12 FULLERTON TAXPAYERS FOR
13 REFORM, TONY BUSHALA, and JACK
14 DEAN,

15
16 Respondents.

FPPC No. 16/422

STIPULATION, DECISION, AND ORDER

17
18 **STIPULATION**

19 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
20 respondents Fullerton Taxpayers for Reform, Tony Bushala, Jack Dean (Respondents) hereby agree that
21 this Stipulation will be submitted for consideration by the Fair Political Practices Commission
22 (Commission) at its next regularly-scheduled meeting.

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

26 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
27 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
28 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to, the right to

1 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
2 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
3 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
4 the hearing as a hearing officer, and to have the matter judicially reviewed.

5 It is further stipulated and agreed that Respondents violated the Political Reform Act by failing
6 to include adequate disclosure on campaign signs in violation of Government Code sections 84506 and
7 84506.5, as described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference as though
8 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 an administrative penalty in the amount of Two
11 Thousand Five Hundred Thousand Dollars (\$2,500). Respondents submitted with this Stipulation a
12 cashier's check in said amount, made payable to the "General Fund of the State of California," as full
13 payment of the administrative penalty that shall be held by the State of California until the Commission
14 issues its Decision and Order regarding this matter. The parties agree that in the event the Commission
15 refuses to accept this Stipulation, the checks shall become null and void, and within fifteen (15) business
16 days after the Commission meeting at which the Stipulation is rejected, all payments tendered by
17 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.

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22 Dated: _____
23 Galena West, Chief, on behalf of the Enforcement
24 Division of the Fair Political Practices Commission

25 Dated: _____
26 Tony Bushala, Principal Officer, individually and on
27 behalf of Fullerton Taxpayers for Reform, Respondents
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Dated: _____
Jack Dean, Principal Officer, individually and on behalf
of Fullerton Taxpayers for Reform, Respondents

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Fullerton Taxpayers for Reform, Tony Bushala, and Jack Dean,” FPPC No. 15/1162, 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

Respondent Fullerton Taxpayers for Reform (the “Committee”) is a city general purpose committee. At all times relevant to this matter, Tony Bushala and Jack Dean served as the Committee’s Principal Officers. The Committee made independent expenditures for the production and display of campaign signs opposing State Senate candidate Sukhee Kang in Orange County. The disclosure statements for these signs did not meet the minimum size requirements under the Political Reform Act (the “Act”)¹ and failed to include the required disclaimer that the advertisement was not authorized or paid for by a candidate.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed in 2016.

Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

When enacting the Political Reform Act, the people of the State of California found and declared the previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.² To that end, the Act must be liberally construed to achieve its purpose.³

Advertisement Disclosure

An “advertisement” under the act means any general or public advertisement which is authorized and paid for by a person or committee for the purpose of supporting or opposing a candidate for elective office or a ballot measure(s).⁴

Under the Act, an independent expenditure advertisement that supports or opposes a candidate must include a disclosure statement identifying the committee making the independent expenditure⁵ with the words, “paid for by” adjacent to the committee name.⁶ In addition, disclosure statements on oversized print media advertisements must be at least 5% of the height of the advertisement and printed in a contrasting color.⁷

¹ The 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 (“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.

² § 81001, subd. (h).

³ § 81003.

⁴ § 84501.

⁵ §84506, subd. (a)(1)

⁶ Regulation 18450.4, subd. (b)(1).

⁷ Regulation 18450.4, subds. (b)(1) and (b)(3)(D).

Further, an advertisement supporting or opposing a candidate or ballot measure that is paid for by an independent expenditure must include a disclosure statement that the advertisement is “not authorized or paid for by a candidate for [that] office.”⁸

Independent Expenditure

An “independent expenditure” under the Act means an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate.”⁹ A communication “expressly advocates” the election or defeat of a candidate if it contains words of advocacy such as “vote for,” “elect,” “support,” “cast your ballot,” “vote against,” “defeat,” “reject,” “sign petitions for.”¹⁰ Alternatively, a communication also “expressly advocates” the election or defeat of a candidate if it refers to a clearly identified candidate such that the communication, taken as a whole, unambiguously urges a particular result in an election.¹¹

SUMMARY OF THE FACTS

The Committee displayed signs in Orange County opposing State Senate candidate Sukhi Kang in the June 7, 2016 primary election. The Committee produced 500 22” by 30” campaign signs, which read “NO KANG [-] IRVINE CARPETBAGGER.” The signs included a disclosure statement that said, “Paid for by Fullerton Taxpayers for Reform, major funding by Tony Bushala ID #1346685,” but the disclosure statement was smaller than 5% of the height of the advertisement, as required for large print media under the Act. The signs also lacked a disclaimer indicating that they were not authorized or paid for by a candidate for State Senate.

On May 24, 2016, the Enforcement Division contacted Bushala about the Committee’s deficient disclosure statements. On June 1, Bushala and the Committee agreed to remove all of the noncompliant signs and replace them with new signs featuring proper disclosure statements. On June 7, 2016, Bushala provided the Enforcement Division with photo evidence that he and the Committee had taken down all 200 noncompliant signs and replaced them with 200 new signs with proper disclosure statements by June 5, 2016.

VIOLATION

The Committee included a disclosure statement on its campaign signs that failed to meet the Act’s requirements that disclosure statements on large print media must be at least 5% of the height of the advertisement, and did not include a disclaimer that they were “not authorized or paid

⁸ §84605.5.

⁹ § 82031.

¹⁰ Regulation 18225, subd. (b)(2).

¹¹ Regulation 18225, subd. (b)(2).

for by a candidate for this office,” in violation of Sections 84506, subdivision (a)(1), 84506.5, subdivision (a). and Regulation 18450.4, subdivision (b)(3)(D).

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. Additionally, the Commission considers the facts and circumstances of the violation in the context of the following factors set forth in Regulation 18361.5 subdivision (d): (1) The seriousness of the violation; (2) The presence or absence of any intent to deceive the voting public; (3) Whether the violation was deliberate, negligent or inadvertent; (4) Whether the Respondent demonstrated good faith by consulting the Commission staff; (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and (6) Whether the violator, upon learning of the violation, voluntarily provided amendments to provide full disclosure.

Recent penalties approved by the Commission for failure to include proper disclosure statements on campaign advertisements include:

- *In the Matter of Southern California Taxpayers Association, Sponsored and with Major Funding from Milan Rei IV, LLC, Barrett Garcia, and Ann Garrett*; FPPC No. 12/782. Respondents failed to include proper committee identification on 750 of its yard signs in support of a local ballot measure. The Commission approved a penalty of \$2,500 at its November 20, 2014 meeting.

Here, like in *Sothern California Taxpayers Association*, the Committee authorized and paid for campaign advertisements that, despite containing disclosure statements, failed to meet the height requirements of the Act and did not include a statement indicating they were not authorized by a candidate or a committee controlled by a candidate. Furthermore, Bushala has entered into stipulated settlement agreements for previous violations, including failure to display required sender identification on a mass mailer (see *In the Matter of Tony Bushala*, FPPC No. 14/055, February 18, 2016 Commission meeting).

However, in mitigation, Bushala and the Committee provided evidence that they took down all 200 noncompliant signs and replaced them with new signs with proper disclosure by June 5, 2016, two days before the election.

PROPOSED PENALTY

Thus, in consideration of the factors of Regulation 18361.5, it is respectfully requested that a penalty of \$2,500 be imposed.