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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

12 SAVE PUBLIC PARKING, NO ON H;
13 YES ON I AND MICHAEL POWERS,

14 Respondents.

FPPC Case No. 16/652

STIPULATION, DECISION AND ORDER

15 **INTRODUCTION**

16 Respondent Save Public Parking, No on H; Yes on I (the “Committee”) is a committee primarily
17 formed to oppose Measure H and support Measure I, two competing measures on the June 7, 2016 ballot
18 in Dana Point. Respondent Michael Powers (“Powers”) is the Committee’s principal officer.

19 This case arose from a sworn complaint. Under the Political Reform Act (the “Act”),¹ a primarily
20 formed ballot measure committee must print its name on any advertisement. On yard signs, this
21 disclosure statement must be at least five percent of the height of the advertisement. The Committee and
22 Powers violated the Act by failing to include a disclosure statement on advertising banners and failing to
23 print a disclosure statement of at least five percent of the height of 300 yard signs.

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27 ¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the
28 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.

1 **SUMMARY OF THE LAW**

2 All statutory references and discussions of law pertain to the Act’s provisions as they existed in
3 2016.

4 An express purpose of the Act is to ensure that campaign contributions and expenditures are fully
5 and truthfully disclosed so that voters are fully informed and improper practices are discouraged.² In
6 furtherance of this purpose, the Act requires any committee that supports or opposes a ballot measure to
7 print its name as part of any advertisement.³ Advertisements include any advertisement paid for by a
8 committee for the purpose of supporting or opposing a ballot measure or ballot measures.⁴
9 Advertisements include yard signs produced in quantities of more than 200 and other oversize print
10 media, such as banners.⁵ The Commission has been clear and consistent with its advice through both
11 email and telephone regarding when an advertisement is too large to be considered a “yard sign” thus
12 requiring disclosure without requiring more than 200 to be purchased. The Commission has never been
13 asked for formal written advice on the subject, although that is available. The disclosure on an
14 advertisement must include “paid for by” immediately adjacent to and above or in front of the committee
15 name.⁶ On yard signs, the disclosure statement must constitute at least five percent of the height of the
16 advertisement.⁷

17 **SUMMARY OF THE FACTS**

18 The Committee first qualified as a primarily formed local ballot measure committee on March 25,
19 2016. The Committee opposed Measure H, which required voter approval for development changes in
20 Dana Point’s Lantern District, and supported Measure I, which ratified an existing development plan for
21 that district. On June 7, 2016, Dana Point voters approved Measure H and defeated Measure I.

22 On April 22, 2016, the Committee purchased two 3 foot by 6 foot PVC-coated banners that said,
23 “No on H, Yes on I,” and included the Committee’s website but not the Committee name. On June 6,
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25 ² Section 81002, subd. (a).

26 ³ Section 84504, subd. (c).

27 ⁴ Section 84501, subd. (a).

28 ⁵ Regulations 18450.1, subd. (a), and 18450.4, subd. (b)(3)(D).

⁶ Regulation 18450.4, subd. (b)(1).

⁷ Regulation 18450.4, subd. (b)(3)(D).

1 2016, the Committee purchased three similar vinyl banners that measured 2 feet by 2½ feet. These five
2 advertising banners did not include any disclosure statement. The cost of these banners was
3 approximately \$243.30.

4 The Committee purchased 300 yard signs on April 26, 2016 and May 12, 2016. These “No on H;
5 No Vacant Lots” yard signs included the disclosure statement “Paid for by: Save Public Parking, No on
6 H, Yes on I,” with the Committee’s ID number and address. The disclosure was required to be 5% of the
7 height of the advertisement. The signs were 15 inches tall and a proper disclosure statement of 5% of the
8 height of the advertisement would be .75 inches tall. However, the signs’ disclosure statements measured
9 approximately .25 inches tall. The cost of these yard signs was approximately \$847.50.

10 VIOLATION

11 Failure to Comply with Advertising Disclosure Requirements

12 The Committee and Powers failed to include a disclosure statement on five advertising banners
13 and failed to include a disclosure statement of at least 5% of the height of the advertisement on 300 yard
14 signs, in violation of Section 84504, subdivision (c), and Regulation 18450.4, subdivision (b).

15 PROPOSED PENALTY

16 This matter consists of one count of violating the Act, which carries a maximum administrative
17 penalty of five thousand dollars (\$5,000).

18 In determining the appropriate penalty for a particular violation of the Act, the Commission
19 considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis
20 on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and
21 circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d):
22 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3)
23 whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated
24 good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6)
25 whether, upon learning of the violation, the violator voluntarily provided amendments to provide full
26 disclosure.

27 The Commission also considers penalties in prior cases involving similar violations. A recent
28 similar case includes the following:

- 1 • *In the Matter of Southern California Taxpayers Association, Sponsored by and with Major*
2 *Funding from Milan Rei IV, LLC, Barrett Garcia, and Ann Garrett.* FPPC No. 12/782. (The
3 Commission approved a stipulated decision on November 20, 2014.) The committee failed to
4 include any required committee identification on 750 yard signs the committee paid for to support
5 a local ballot measure. However, all other campaign advertisements correctly identified the
6 committee and they had no history of violating the Act. No evidence was found that the non-
7 disclosure was intentional. The Commission imposed a penalty of \$2,500.
- 8 • *In the Matter of Citizens for a Safer Butte County,* FPPC No. 16/432. (The Commission approved
9 a stipulated decision on August 18, 2016.) The committee failed to place a disclosure statement
10 on its thirty 4 foot x 8 foot campaign signs and fifty 4 foot x 4 foot campaign signs of at least five
11 percent of the height of the advertisements. The committee issued a press release prior to the
12 election that identified it as the source of the signs. The Commission imposed a penalty of \$2,000.

13 A central purpose of the Act is to ensure voters are fully informed about those who make
14 contributions and expenditures during a campaign. The Committee and Powers failed to include proper
15 disclosure statements on their advertisements and the public was deprived of important, time-sensitive
16 information about the source of these advertisements.

17 In mitigation, like the *Citizens for a Safer Butte County* case, the Committee included some
18 disclosure. The yard signs disclosure was present, just not large enough to be easily read. The banners
19 had no disclosure at all. The Committee and Powers cooperated with the Enforcement Division,
20 providing proofs of their advertisements and invoices from the printers, and cooperating in reaching this
21 stipulated settlement. The Committee and Powers were also unsuccessful with their efforts, as Measure H
22 was approved and Measure I was defeated. However, this case is different that the two earlier cases in
23 that it has violations regarding both over-sized print media and yard signs, not just one type of
24 advertisement.

25 Therefore, an administrative penalty \$2,500 is recommended for this violation.

26 CONCLUSION

27 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
28 Respondents Save Public Parking, No on H; Yes on I and Michael Powers hereby agree as follows:

1 1. Respondents violated the Act as described in the foregoing pages, which are a true and
2 accurate summary of the facts in this matter.

3 2. This stipulation will be submitted for consideration by the Fair Political Practices
4 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

5 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
6 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
7 liability of Respondents pursuant to Section 83116.

8 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all
9 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
10 This includes, but is not limited to the right to appear personally at any administrative hearing held in this
11 matter, to be represented by an attorney at Respondents' own expense, to confront and cross-examine all
12 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
13 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
14 reviewed.

15 5. Respondents agree to the issuance of the decision and order set forth below. Also,
16 Respondents agrees to the Commission imposing against it an administrative penalty in the amount of
17 \$2,500. One or more cashier's checks or money orders totaling said amount—to be paid to the General
18 Fund of the State of California—is/are submitted with this stipulation as full payment of the
19 administrative penalty described above, and same shall be held by the State of California until the
20 Commission issues its decision and order regarding this matter.

21 6. If the Commission refuses to approve this stipulation—then this stipulation shall become
22 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
23 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to
24 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing
25 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
26 Director, shall be disqualified because of prior consideration of this Stipulation.

27 7. The parties to this agreement may execute their respective signature pages separately. A
28 copy of any party's executed signature page including a hardcopy of a signature page transmitted via fax

1 or as a PDF email attachment is as effective and binding as the original.

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Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

Dated: _____

Michael Powers, individually and on behalf of the Save
Public Parking, No on H; Yes on I, Respondent

1 The foregoing stipulation of the parties “In the Matter of the Save Public Parking, No on H; Yes on I and
2 Michael Powers,” FPPC Case No. 16/652 is hereby accepted as the final decision and order of the Fair
3 Political Practices Commission, effective upon execution below by the Chair.

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5 IT IS SO ORDERED.

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7 Dated: _____

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9 Joann Remke, Chair
10 Fair Political Practices Commission

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