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

10
11 In the Matter of) FPPC Case No. 17/1176
12)
13 IMPERIAL IRRIGATION DISTRICT,) **STIPULATION, DECISION AND ORDER**
14)
15 Respondent.)
16)
17)

18 **INTRODUCTION**

19 Respondent is the Imperial Irrigation District (the “District”), a public agency providing water
20 and energy to all of Imperial County along with parts of Riverside and San Diego counties in Southern
21 California.

22 This case was self-reported by the General Counsel for the District, who stated that the District
23 produced and sent approximately 152,000 copies of a mass mailing, at public expense, which included
24 the name and photograph of a member of the governing board of the District.

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1 The Political Reform Act (Act),¹ prohibits the sending of any mass mailing featuring an elected
2 official at public expense.

3 SUMMARY OF THE LAW

4 All legal references and discussions of the law refer to the Act's provisions as they existed in
5 2017.

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

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

10 There are many purposes of the Act. One purpose is to ensure that receipts and expenditures in
11 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
12 practices are inhibited.⁴ Another is to provide adequate enforcement mechanisms so that the Act will be
13 "vigorously enforced."⁵

14 Mass Mailing at Public Expense

15 A "mass mailing" is defined in the Act as over two hundred substantially similar pieces of mail,
16 but does not include a form letter or other mail which is sent in response to an unsolicited request, letter
17 or other inquiry.⁶

18 No mass mailing may be sent at public expense.⁷ A mailing is prohibited if all of the following
19 criteria are met:⁸

- 20 (1) Any item sent is delivered, by any means, to the recipient at his or her residence, place
21 of employment or business, or post office box. The item delivered must be a tangible
22 item, such as a written document.

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

25 ² § 81001, subd. (h).

26 ³ § 81003.

27 ⁴ § 81002, subd. (a).

28 ⁵ § 81002, subd. (f).

⁶ § 82041.5.

⁷ § 89001.

⁸ Reg. 18901, subd. (a).

- 1 (2) Features an elected officer affiliated with the agency which produces or sends the
2 mailing. An item features an elected officer when the item includes, among other
3 things, the elected officer’s photograph or signature.⁹ A mailing containing the name,
4 office, photograph or any other reference to an elected officer who consults or acts in
5 concert with the agency to prepare or send the mailing also fulfills the second criteria.
6 (3) Costs of design production and printing exceeding \$50.00 are paid with public
7 moneys, and the design, production or printing is done with the intent of sending the
8 item other than as permitted by this regulation, and
9 (4) More than two hundred substantially similar items are sent, in a single calendar
10 month.¹⁰

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SUMMARY OF THE FACTS

In or about September 2017, the District prepared and sent a mass mailing, at public expense – a publication entitled “Circuit” which was a monthly newsletter accompanying the ratepayers’ monthly bills. The District has approximately 152,000 ratepayers. The monthly newsletter featured a newly-elected Director of the District, Ms. Juanita Salas, where she invited residents to come to town hall meetings in early October. One side of the newsletter was in English, one was in Spanish, and it featured a photograph of Ms. Salas on each side. The newsletter was prepared by District staff who were unaware of the restrictions regarding elected officers and mass mailings. The costs for the design, printing, and postage exceeded \$50, and were paid for by the District.

VIOLATION

Count 1: Mass Mailing at Public Expense

The Imperial Irrigation District produced and sent approximately 152,000 copies of the “Circuit” newsletter in or about September 2017, at public expense, which featured the photograph and name of a member of the governing board, in violation of Government Code section 89001.

PROPOSED PENALTY

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of \$5,000.¹¹

⁹ Reg. 18901, subd. (c)(2).

¹⁰ Reg. 18901, subd. (b), contains numerous exceptions to the mass mailing prohibition, none of which apply in this instance.

¹¹ § 83116, subd. (c).

1 In determining the appropriate penalty for a particular violation of the Act, the Commission
2 considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis
3 on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and
4 circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d):
5 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3)
6 whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated
7 good faith in consulting with Commission staff; 5) whether there was a pattern of violations and whether
8 the violator has a prior record of violations of the Act or similar laws; and 6) whether, upon learning of
9 the violation, the violator voluntarily provided amendments to provide full disclosure.¹²

10 Applying the factors to this case, using public funds to pay for the design and production of a
11 mass mailing featuring an elected officer uses public funds for prohibited purposes. No evidence
12 indicated an intent to deceive the voting public. And the evidence suggests that the violations were
13 inadvertent – the newsletter was prepared by District staff who were unaware of the restrictions regarding
14 elected officers and mass mailings. The evidence does not show a pattern of violations, and the District
15 does not have a prior record of violations of the Act. The violations included in this settlement agreement
16 are not reporting violations that can be remedied with amendments.

17 The Commission also considers penalties in prior cases involving similar violations. Recent cases
18 with similar violations include:

19 Count 1: Mass Mailing at Public Expense

20 *In the Matter of Centinela Valley Union High School District*, FPPC No. 15/1343, the district
21 produced and sent approximately 58,000 copies of the spring/summer 2015 newsletter at public expense,
22 which featured the photographs and names of the members of the governing board, in violation of
23 Government Code section 89001 (1 count). The violation was self-reported. The Commission approved
24 a penalty of \$2,000 for this violation on December 17, 2015.

25 *In the Matter of the City of Redlands*, FPPC No. 15/767, the city produced and sent a mailer at
26 public expense, in the summer of 2015, which featured a message from and photograph of the mayor,

27 ¹² Reg. 18361.5, subd. (d).

1 in violation of Government Code section 89001 (1 count). The violation was self-reported. The
2 Commission approved a penalty of \$2,000 for this violation on October 15, 2015.

3 This case is similar to the *Centinela Valley Union High School District* and *City of Redlands*
4 cases. The newsletters in those cases were prepared by local government agencies for the purpose of
5 providing residents with information about district school achievements or agency services. The
6 *Centinella* newsletter featured the photographs and names of the members of the governing board, but
7 contained no message from the board members. The *City of Redlands* newsletter included a message
8 from the mayor and the mayor's photograph, which is similar to the facts of this case. The number of
9 copies sent in this case is much higher than in the comparable cases. But as in the *Centinella* and *City*
10 *of Redlands* cases, the violations in this case were self-reported. And as with the comparable cases, there
11 is no evidence here of deliberate conduct. The District cooperated with the investigation, has no prior
12 history with the Enforcement Division

13 For the foregoing reasons, a penalty in the amount of \$2,000 is recommended.

14 CONCLUSION

15 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
16 Respondent Imperial Irrigation District, hereby agree as follows:

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

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

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

24 4. Respondent understands, and hereby knowingly and voluntarily waives, any and all
25 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
26 This includes, but is not limited to the right to appear personally at any administrative hearing held in
27 this matter, to be represented by an attorney at Respondent's own expense, to confront and cross-examine

1 all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
2 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
3 reviewed.

4 5. Respondent agrees, with the advice of counsel, Imperial Irrigation District General
5 Counsel, Frank A. Oswald, III, to the issuance of the decision and order set forth below. Also, Respondent
6 agrees to the Commission imposing against it an administrative penalty in the amount of \$2,000. One or
7 more cashier's checks or money orders totaling said amount—to be paid to the General Fund of the State
8 of California—is/are submitted with this Stipulation as full payment of the administrative penalty
9 described above, and same shall be held by the State of California until the Commission issues its decision
10 and order regarding this matter.

11 6. If the Commission refuses to approve this Stipulation, this Stipulation shall become null
12 and void, and within fifteen business days after the Commission meeting at which the Stipulation is
13 rejected, all payments tendered by Respondent in connection with this Stipulation shall be reimbursed to
14 Respondent. If this Stipulation is not approved by the Commission, and if a full evidentiary hearing before
15 the Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
16 shall be disqualified because of prior consideration of this Stipulation.

17 7. The parties to this agreement may execute their respective signature pages separately. A
18 copy of any party's executed signature page including a hardcopy of a signature page transmitted via fax
19 or as a PDF email attachment is as effective and binding as the original.

20 Dated: _____
21 Galena West, Chief, on Behalf of the Enforcement Division
22 Fair Political Practices Commission

23 Dated: _____
24 Kevin E. Kelley, General Manager, on behalf of Imperial
25 Irrigation District, Respondent

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1 The foregoing Stipulation of the parties “In the Matter of Imperial Irrigation District,” FPPC Case
2 No. 17/1176 is hereby accepted as the final decision and order of the Fair Political Practices Commission,
3 effective upon execution below by the Chair.

4 IT IS SO ORDERED.

5 Dated: _____
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7 Joann Remke, Chair
8 Fair Political Practices Commission
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