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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA
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10 In the Matter of:

11 DAN ROUNDTREE FOR THOUSAND
OAKS CITY COUNCIL 2015, DAN
12 ROUNDTREE, AND DARBY LEVIN,

13 Respondents.

FPPC Case No. 15/701

STIPULATION, DECISION AND ORDER

14
15 **INTRODUCTION**

16 This matter arose from a sworn complaint submitted to the Enforcement Division of the Fair
17 Political Practices Commission. Dan Roundtree for Thousand Oaks City Council 2015 (the “Committee”)
18 is the candidate-controlled committee to elect Dan Roundtree (“Roundtree”). Darby Levin was the
19 campaign manager for the Roundtree campaign. Roundtree was not successful in the 2015 election. The
20 Political Reform Act (the “Act”)¹ requires a candidate-controlled committee to include its name, street
21 address, and city on the outside of each piece of mass mailing. The Committee violated the act by failing
22 to include this required information a mass mailer during the June 2, 2015 election.

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25 **SUMMARY OF THE LAW**

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27 ¹ The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections
81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission
28 are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references
are to this source.

1 The Act and its regulations are amended from time to time. The violations in this case occurred in
2 2015. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they
3 existed at that time—unless otherwise noted.

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

5 When enacting the Political Reform Act, the people of California found and declared that
6 previous laws regulating political practices suffered from inadequate enforcement by state and local
7 authorities.² Thus, it was decreed that the Act “should be liberally construed to accomplish its
8 purposes.”³ Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act
9 will be “vigorously enforced.”⁴

10 **Requirements for Mass Mailing**

11 The Act prohibits candidates or committees from sending a mass mailing without the name, street
12 address, and city of the candidate or committee on the outside of each piece of mail.⁵ Additionally, the
13 identification required in Section 84305 shall be preceded by the words “paid for by.”⁶

14 **Joint and Several Liability of Committee and Campaign Manager**

15 A committee’s candidate can be held jointly and severally liable with the committee for any
16 violations of the Act.⁷ Also, any person who is compensated for services involving the planning,
17 organizing, or directing any activity regulated by this title shall be liable for violating the Act or for
18 purposefully or negligently causing another person to violate the Act.⁸

19 **SUMMARY OF THE FACTS**

20 The Committee, qualifying on or about December 12, 2014, was the candidate-controlled
21 committee to support Roundtree’s run for City Council of Thousand Oaks in the June 2, 2015 Special
22 Municipal Vacancy Election. The Committee reported paying Levin for consulting services on two
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25 ² Section 81001, subdivision (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subdivision (f).

28 ⁵ Section 84305, subdivision (a).

⁶ Cal. Code Regs. 18435 subdivision (d).

⁷ Sections 83116.5 and 91006.

⁸ Section 83116.5.

1 campaign statements. Levin identified himself to Enforcement Division Investigators as the campaign
2 manager and reported that he had designed and overseen the distribution of mailers on behalf of the
3 Committee.

4 In this matter, the Committee paid for and mailed four different campaign mailers on or about
5 May 18, May 20, May 21, and May 27 of 2015. Three of the four mailers were similar in design. Though
6 they failed to include the address or correct name, they could reasonably be read so as to trace the mailer
7 to the Committee.

8 The fourth mailer was a different design from the first three. The Committee mailed 14,700
9 pieces of this fourth mailer on or around May 27, 2015. The mailer was a white envelope with black and
10 red writing with a single page insert. The front of the envelope reads, in official looking script, “Urgent
11 Message – New Polling Place Information,” “Vote, Exercise Your Sacred American Right,” and “Please
12 Open Immediately.” The insert is titled, “Thousand Oaks Election Notice.” Underneath the title is an
13 address, presumably, the recipient’s polling place. The body of the mailer includes language advocating
14 for the candidate, including, “Dan Roundtree deserves your vote” and a purported endorsement from the
15 Ventura County Star.

16 On this mailer, the only sender identification is located on the back of the envelope and the back
17 of the insert and references the committee ID number and “Susan Herrera, Treasurer.” The mailer does
18 not include the Committee name, or even an approximation, and it does not include the Committee’s
19 street address. The mailer does not include the “paid for by” or give any clear indication as to the sender.

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21 **VIOLATION**

22 **Count 1: Failure to Include Proper Sender Identification on Mass Mailers**

23 Respondents Committee, Roundtree, and Levin failed to include the proper sender identification
24 on a mass mailer sent out in connection with the campaign, in violation of Government Code Section
25 84305, subdivision (a) and Reg. 18435 subdivision (d).

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1 **PROPOSED PENALTY**

2 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per
3 count. Thus, the maximum penalty that may be imposed is \$5,000.⁹

4 In determining the appropriate penalty for a particular violation of the Act, the Commission
5 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
6 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
7 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
8 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
9 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
10 record of violations.¹⁰ Here, there appears to be some intent to deceive or mislead with the fourth mailer
11 designed to avoid the appearance of a political ad, but rather to look like official election mail. The four
12 mailers taken as a whole constitute a pattern of repeated failure to provide full disclosure on the mailers.

13 Additionally, the Commission considers penalties in prior cases with comparable violations.

14 Recent similar cases include the following:

- 15 • *In the Matter of Margie L. Rice for Mayor 2016, Margie Rice, Anita Rice, and Committee to Elect*
16 *Anita Rice to the Sanitary Board of Midway City 2016*, FPPC No. 16/19818 (The Commission
17 approved a stipulated decision on December 15, 2016.) The respondents sent one mass mailer and
18 failed to disclose that the mailing was paid for by the Committee and failed to include the name,
19 street address, and city of the Committee. The Committee mitigated the violation by self-
20 reporting the lack of disclosure and cooperating with the Enforcement Division. The mailers were
21 also written in a way that could lead a reasonable reader to assume the Committee was the
22 probable sender. The Commission imposed a \$2,000 penalty.
- 23 • *In the Matter of Citizens for Yes on Measure B, Kevin Berger, and Jim L. Theis*, FPPC No.
24 14/1147 (The Commission approved a stipulated decision on November 17, 2016.) The
25 respondents sent a single mass mailer that failed to include the required sender identification. The
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27 ⁹ See Section 83116, subdivision (c).

28 ¹⁰ Regulation 18361.5, subdivision (d).

1 mailer included a website and was clearly supportive of the measure that the committee was
2 primarily formed to support. The Commission imposed a typical \$2,500 penalty.

3 In the present matter, the Committee sent four mass mailers. For purposes of settlement, only the
4 fourth mailer is charged for the failure to include the committee name or other logo indicative that the
5 Committee paid for the mailer but, in aggravation, the Enforcement Division took into consideration the
6 pattern of partial disclosure on the other three mailers the Committee also produced. As to the other three
7 mailers, though the Committee failed to include the complete street address, the mailers did include the
8 committee identification number and the name of the treasurer. The mailers also had a general
9 appearance that suggested that the Committee paid for the mailer. This indicates that the Committee
10 knew or should have known the sender identification requirements and did not to include them on the
11 fourth mailer. The design of the fourth mailer suggests an official or government piece of mail, rather
12 than a mailer paid for by a candidate. The name of the committee, or even an approximation of the name,
13 does not appear on the mailers. The inclusion of “Urgent Message – Find Polling Place Information –
14 Please Open Immediately” is suggestive of a piece of electoral communication, as opposed to a paid,
15 candidate mailer.

16 The typical penalty for failure to include sender identification on a mass mailer is \$2,500. Here,
17 there are several aggravating factors that justify a higher penalty. After considering the factors listed in
18 Regulation 18361.5, prior similar cases, and other relevant facts, a penalty of \$3,500 is recommended.

20 CONCLUSION

21 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
22 Respondents Dan Roundtree For Thousand Oaks City Council 2015, Dan Roundtree, and Darby Levin
23 hereby agree as follows:

- 24 1. Respondents violated the Act as described in the foregoing pages, which are a true and
25 accurate summary of the facts in this matter.
- 26 2. This stipulation will be submitted for consideration by the Fair Political Practices
27 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

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

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

11 5. Respondents agree to the issuance of the decision and order set forth below. Also,
12 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
13 \$3,500. One or more cashier’s checks or money orders totaling said amount—to be paid to the General
14 Fund of the State of California—is/are submitted with this stipulation as full payment of the
15 administrative penalty described above, and same shall be held by the State of California until the
16 Commission issues its decision and order regarding this matter.

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

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