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8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**
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11 In the Matter of) FPPC No. 18/868
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PERALTA COMMUNITY COLLEGE
DISTRICT,

Respondent.

STIPULATION, DECISION, AND ORDER

18 **INTRODUCTION**

19 Respondent Peralta Community College District (the "PCCD") comprises four colleges serving
20 northern Alameda County. The Political Reform Act (the "Act")¹ prohibits the sending of a mass mailing
21 featuring an elected official at public expense. The PCCD violated the Act by producing and distributing
22 over 200 copies of a holiday postcard, which featured its Board of Trustees, at public expense.

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24 _____
25 ¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the
26 Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in
27 Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2,
28 Division 6 of the California Code of Regulations, unless otherwise indicated.

1 **SUMMARY OF THE LAW**

2 The violation in this case occurred in 2017, so all legal references and discussions of the law
3 pertain to the Act’s provisions as they existed at that time.

4 Need for Liberal Construction and Vigorous Enforcement of the Act

5 When enacting the Political Reform Act, the people of California found and declared that previous
6 laws regulating political practices suffered from inadequate enforcement by state and local authorities.²
7 For this reason, the Act must be construed liberally to accomplish its purposes.³

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

12 Mass Mailing Sent at Public Expense

13 No mass mailing may be sent at public expense.⁶ Specifically, a mailing is prohibited if all of the
14 following criteria are met:⁷

- 15 (1) Any item sent is delivered, by any means, to the recipient at his or her residence, place of
16 business, or post office box. The item delivered to the recipient must be a tangible item, such
17 as a written document.
18 (2) The item sent features an elected officer affiliated with the agency which produces or sends
19 the mailing. An item features an elected officer when it includes, among other things, the
20 elected officer’s photograph or singles out the elected officer by the manner of display of her
21 name or office in the layout of the document, such as by captions.⁸ A mailing containing the
22 name, office, photograph, or any other reference to an elected officer who consults or acts in
23 concert with the agency to prepare or send the mailing also fulfills the second criteria.

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23 ² Section 81001, subd. (h).
24 ³ Section 81003.
25 ⁴ Section 81002, subd. (a).
26 ⁵ Section 81002, subd. (f).
27 ⁶ Section 89001.
28 ⁷ Regulation 18901, subd. (a).
⁸ Regulation 18901, subd. (c)(2).

1 (3) Any of the costs of distribution is paid for with public moneys or costs of design, production,
2 and printing exceeding \$50 are paid with public moneys and is done with the intent of sending
3 the item other than as permitted by Regulation 18901.

4 (4) More than 200 substantially similar items are sent in a calendar month.

5 The Act provides an exception when the elected officer's name appears only in a roster listing
6 containing the names of all elected officers of the agency as long as it does not include the elected
7 officer's photograph, signature, or any other reference to the elected officer.⁹

8 **SUMMARY OF THE EVIDENCE**

9 On or around December 21, 2017, the PCCD prepared and distributed a holiday postcard from its
10 Board of Trustees (the "Board"), all elected officers. The postcard contained a holiday greeting, pictures
11 related to the four schools in the district, and reminders about the first day of classes. Additionally, the
12 postcard included a group picture of Board members and listed the Board members by name, title, and
13 representative district in the order of appearance in the picture. A total of 394,000 copies were printed
14 but only 392,118 copies were mailed. The PCCD spent \$14,694.13 on printing and \$24,100.00 on
15 postage, bringing the total cost to \$38,794.13. PCCD staff were unaware of the prohibition against
16 sending mass mailing at public expense

17 **VIOLATION**

18 Count 1: Mass Mailing Sent at Public Expense

19 The Peralta Community College District designed, printed, and distributed over 200 copies of a
20 holiday postcard at public expense, featuring a photograph of elected officials, in violation of
21 Government Code section 89001 and Regulation 18901, subdivision (a).

22 **PROPOSED PENALTY**

23 This matter consists of one count. The maximum penalty that may be imposed is \$5,000.¹⁰

24 In determining the appropriate penalty for a particular violation of the Act, the Commission
25 considers the facts of the case, the public harm involved, and the purpose of the Act. Also, the

26 ⁹ Regulation 18901, subd. (b)(1).

27 ¹⁰ Section 83116, subd. (c).

1 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
2 any intention to conceal, deceive, or mislead; (c) whether the violation was deliberate, negligent, or
3 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective amendments
4 voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior record of
5 violations.¹¹

6 The PCCD used public funds to pay for the design, production, and distribution of a mass mailing
7 that featured elected officers. No evidence indicated an intent to deceive the public, and instead showed
8 that the PCCD staff were unaware of the prohibition against sending mass mailing at public expense. The
9 evidence also does not show a pattern of violations, and the PCCD does not have a prior record of
10 violating the Act.

11 The Commission also considers penalties in prior cases with comparable violations. Recent cases
12 with a similar violation include the following:

13 *In the Matter of West Valley Water District*; FPPC No. 17/549. (The Commission approved a
14 stipulated decision on June 21, 2018.) The District prepared and sent over 200 copies of a newsletter at
15 public expense, featuring a photograph and a caption of a member of the District's Board of Directors.
16 The Commission approved a penalty of \$2,000 for this violation.

17 As in *West Valley Water District*, the PCCD sent over 200 copies of the holiday postcard at public
18 expense, featured Board members in a picture, and listed them by name, title, and representative district.
19 For the foregoing reasons, a penalty of \$2,000 for the violation is recommended.

20 CONCLUSION

21 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
22 Respondent Peralta Community College District hereby agree as follows:

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

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26 ¹¹ Regulation 18361.5, subd. (d).

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

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

6 4. Respondent has consulted with its attorneys Nitasha Sawhney and Gorev Ahuja of Garcia
7 Hernandez Sawhney, LLP and understands, and hereby knowingly and voluntarily waives, any and all
8 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
9 This includes, but is not limited to the right to appear personally at any administrative hearing held in
10 this matter, to be represented by an attorney at the Respondent’s own expense, to confront and cross-
11 examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an
12 impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter
13 judicially reviewed.

14 5. Respondent agrees to the issuance of the decision and order set forth below. Also, the
15 Respondent agrees to the Commission imposing against it an administrative penalty in the amount of
16 \$2,000. One or more cashier’s checks or money orders totaling said amount—to be paid to the General
17 Fund of the State of California—is/are submitted with this stipulation as full payment of the
18 administrative penalty described above, and same shall be held by the State of California until the
19 Commission issues its decision and order regarding the matter.

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

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

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6 Dated: _____ Galena West, Chief of Enforcement
7 Fair Political Practices Commission

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9 Dated: _____ _____, on behalf of the Peralta
10 Community College District

1 The foregoing stipulation of the parties “In the Matter of Peralta Community College District,” FPPC
2 No. 18/868, is hereby accepted as the final decision and order of the Fair Political Practices Commission,
3 effective upon execution below by the Chair.

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5 IT IS SO ORDERED.

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7 Dated: _____

_____ Alice T. Germond, Chair
8 Fair Political Practices Commission
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