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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of:

FPPC Case No. 16/19873

BREA OLINDA UNIFIED SCHOOL
DISTRICT SCHOOL FACILITIES
IMPROVEMENT MEASURE 2016 IN
SUPPORT OF MEASURE K, DAVID
HALE, AND GAIL LYONS,

STIPULATION, DECISION AND ORDER

Respondents.

INTRODUCTION

Respondent, Brea Olinda Unified School District School Facilities Improvement Measure 2016 in Support of Measure K (the “Committee”), is a primarily formed local ballot measure committee to support Measure K. Measure K was defeated in the November 8, 2016, General Election. David Hale (“Hale”) is the Committee’s treasurer and Gail Lyons (“Lyons”) is the Committee’s principal officer.

The Political Reform Act (the “Act”)¹ requires committees and treasurers to comply with disclosure requirements for mass mailings and advertisements. The Committee, Hale, and Lyons violated the Act by failing to comply with disclosure requirements for mass mailings and advertisements produced by the Committee.

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 are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source.

1 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. The violations in this case occurred
3 in 2016. For this reason, all legal references and discussions of law pertain to the Act’s provisions as
4 they existed at that time.

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

6 When enacting the Act, the people of California found and declared that previous laws regulating
7 political practices suffered from inadequate enforcement by state and local authorities.² Thus, it was
8 decreed the Act “should be liberally construed to accomplish its purposes.³ A central purpose of the Act
9 is to promote transparency by ensuring that receipts and expenditures in election campaigns are fully
10 and truthfully disclosed so that voters are fully informed and improper practices are inhibited.⁴ Another
11 purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously
12 enforced.”⁵

13 **Statement of Organization**

14 A recipient committee shall file the original of the statement of organization with the Secretary
15 of State and shall also file a copy of the statement of organization with the local filing officer within 10
16 days after the committee has qualified as a committee.⁶ A committee shall use only one name on its
17 statement of organization and whenever identification of a committee is required by law; the
18 identification shall include the full name of the committee as required in the statement of organization.⁷

19 **Mass Mailing**

20 Under the Act, “mass mailing” means over 200 substantially similar pieces of mail.⁸

21 **Mass Mailing Disclosure**

22 No committee shall send a mass mailing unless the name, street address, and city of the
23 committee are shown on the outside of each piece of mail in the mass mailing in no less than 6-point

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26 ² Section 81001, subdivision (h).

27 ³ Section 81003.

28 ⁴ Section 81002, subdivision (a).

⁵ Section 81002, subdivision (f).

⁶ Section 84101.

⁷ Regulation 18402, subdivision (a) and (c).

⁸ Section 82041.5.

1 type which shall be in a color or print which contrasts with the background so as to be easily legible.⁹
2 Also, the required disclosure must be preceded by the words, “Paid for by.”¹⁰ Under the Act, “street
3 address” means the street name and building number, and the city, state, and zip code.¹¹

4 **Advertisement**

5 Under the Act, an “advertisement” means any general or public advertisement which is
6 authorized and paid for by a person or committee for the purpose of supporting or opposing a ballot
7 measure.¹²

8 **Advertisement Disclosure**

9 Any committee which supports or opposes a ballot measure, shall print or broadcast its name as
10 part of any advertisement.¹³ Disclosures shall include “paid for by” in the same manner as, and
11 immediately adjacent to and above, or immediately adjacent to and in front of, the required
12 identification.¹⁴ All disclosure statements on printed materials designed to be distributed personally shall
13 be printed in type no less than 14-point, bold, sans serif type font and printed in a contrasting color to the
14 background on which it appears.¹⁵ All disclosure statements for audio advertisements shall be spoken in
15 a clearly audible and intelligible manner at the beginning or end of the communication and shall last at
16 least three seconds.¹⁶

17 **Joint and Several Liability of Committee and Treasurer**

18 It is the duty of a committee treasurer to ensure the committee complies with the Act.¹⁷ A
19 treasurer may be held jointly and severally liable, along with the committee and candidate, for violations
20 committed by the committee.¹⁸

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24 ⁹ Section 84305, subdivision (a).

25 ¹⁰ Regulation 18435, subdivision (d).

26 ¹¹ Regulation 18421.2, subdivision (a).

27 ¹² Section 84501, subdivision (a).

28 ¹³ Section 84504, subdivision (c).

¹⁴ Regulation 18450.4, subdivision (b)(1).

¹⁵ Regulation 18450.4, subdivision (b)(3)(C).

¹⁶ Regulation 18450.4, subdivision (b)(3)(B).

¹⁷ Sections 81004, 84100, and Regulation 18427.

¹⁸ Sections 83116. 5 and 91006.

1 **Liability for Violations**

2 Any person who violates any provision of the Act, who purposely or negligently causes any
3 other person to violate any provision of the Act, or who aids and abets any other person in the violation
4 of any provision of the Act, is liable for administrative penalties up to \$5,000 per violation.¹⁹

5 **SUMMARY OF THE FACTS**

6 The Committee, Hale, and Lyons were unsuccessful in their campaign to support a Brea Olinda
7 city ballot measure which was defeated in the November 8, 2016, General Election. In 2016, the
8 Committee reported receiving approximately \$64,675 in contributions and spent approximately \$52,770
9 in expenditures. This case was opened in response to several sworn complaints alleging the Committee
10 violated provisions of the Act by failing to include the proper disclosure on mass mailers and robocalls.

11 **Failure to Comply with Disclosure Requirements for Mass Mailings**

12 The Committee produced four mailers during its campaign to support Measure K. These mailers
13 were produced and purchased by the Committee throughout October 2016. During investigation, Brad
14 Mason (“Mason”) provided Enforcement with copies of the four mailers and the associated invoices
15 from the printing shop. Mason worked in support of Measure K and is the Superintendent of the Brea
16 Olinda Unified School District.

17 The Committee’s first mailer supporting Measure K was a two-sided postcard. The Committee
18 purchased approximately 10,500 copies of this postcard and distributed them to voters via mail. The first
19 mailer contained the following disclosure statement, “Paid for by BOUSD School Facilities
20 Improvement Measure 2016 in support of Measure K – FPPC# 1390201”. The disclosure statement was
21 white on a green background and the size of the text appears to be at least 6-point. The disclosure
22 statement should have read, “Paid for by Brea Olinda Unified School District School Facilities
23 Improvement Measure 2016 in Support of Measure K – 1007 Glen Canyon Way, Brea, CA 92821.”

24 The Committee’s second mailer supporting Measure K was a two-sided postcard. The
25 Committee purchased approximately 9,000 copies of this postcard and distributed them to voters via
26 mail. The second mailer contained the following disclosure statement, “Paid for by BOUSD School
27 Facilities Improvement Measure 2016 in support of Measure K – FPPC# 1390201”. The disclosure

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¹⁹ Sections 83116 and 83116. 5.

1 statement was white on a green background and the size of the text appears to be at least 6-point. The
2 disclosure statement should have read, “Paid for by Brea Olinda Unified School District School
3 Facilities Improvement Measure 2016 in Support of Measure K – 1007 Glen Canyon Way, Brea, CA
4 92821.”

5 The Committee’s third mailer supporting Measure K was a two-sided postcard. The Committee
6 purchased approximately 9,000 copies of this postcard and distributed them to voters via mail. The third
7 mailer contained the following disclosure statement, “Paid for by BOUSD School Facilities
8 Improvement Measure 2016 in support of Measure K – FPPC# 1390201”. The disclosure statement was
9 white on a green background and the size of the text appears to be at least 6-point. The disclosure
10 statement should have read, “Paid for by Brea Olinda Unified School District School Facilities
11 Improvement Measure 2016 in Support of Measure K – 1007 Glen Canyon Way, Brea, CA 92821.”

12 The Committee’s fourth mailer supporting Measure K was a two-sided postcard. The Committee
13 purchased approximately 9,500 copies of this postcard and distributed them to voters via mail. The
14 fourth mailer contained the following disclosure statement, “Paid for by BOUSD School Facilities
15 Improvement Measure 2016 in support of Measure K – FPPC# 1390201 PO Box 9368 Brea, CA 92822-
16 9368”. The disclosure statement was black on a white background and the size of the text appears to be
17 at least 6-point. The disclosure statement should have read, “Paid for by Brea Olinda Unified School
18 District School Facilities Improvement Measure 2016 in Support of Measure K – 1007 Glen Canyon
19 Way, Brea, CA 92821.”

20 **Failure to Comply with Disclosure Requirements for Advertisements**

21 The Committee produced and distributed doorhangers and made robocalls during its campaign to
22 support Measure K. The doorhangers were purchased and distributed in October 2016, and the robocalls
23 were made in October 2016.

24 The doorhangers produced by the Committee to support Measure K were two-sided doorhangers.
25 The Committee purchased approximately 11,000 copies of this doorhanger and hung them on voter’s
26 doors throughout the City of Brea. The doorhangers contained the following disclosure statement, “Paid
27 for by BOUSD School Facilities Improvement Measure 2016 in support of Measure K – FPPC#
28 1390201”. The disclosure statement was white on a green background and the size of the text appears to

1 be approximately 6-point. The disclosure statement should have read, "Paid for by Brea Olinda Unified
2 School District School Facilities Improvement Measure 2016 in Support of Measure K."

3 The Committee had four spokespersons record scripts to use for robocalls to the City of Brea
4 voters. An outside agency was used to place the calls. It is unclear as to how many voters were contacted
5 by the robocalls as no records were maintained for who received the robocalls. Mason admitted, in an
6 email to the Enforcement investigator, more than 200 robocalls were made, none of which included a
7 disclosure statement. The spokespeople and scripts used were as follows:

- 8 1. Nancy Lee, Brea Realtor: This is Brea Realtor Nancy Lee calling about Measure K to support
9 our schools. So many of my clients choose Brea because of our excellent schools, but our
10 buildings are aging and need repair. Our neighboring school districts have recently passed bonds
11 and are improving their schools. Don't let Brea fall behind. Measure K is a good investment in
12 our children and our schools that will protect property values and make sure our area remains a
13 desirable place to live. Please join local Brea Realtors in Voting YES on Measure K!
- 14 2. Bev Perry, Former Brea City Mayor: This is Former Brea Mayor Bev Perry calling about
15 Measure K to support Brea schools. People choose to live in Brea because it offers a high quality
16 of life, which includes good neighborhood schools. YES on K is ACCOUNTABLE and includes
17 a list of authorized Measure K projects, independent annual audits, and a Citizens' Oversight
18 Committee to monitor funds. All funds stay local to improve OUR local Brea schools.
19 Remember to find Measure K on your ballot and vote YES on K for KIDS!"
- 20 3. Lynn Daucher, Former Assemblywoman: This is former Assemblywoman Lynn Daucher calling
21 about Measure K. Don't be misled by the anti-public school message from Downtown Developer
22 Special Interests and the "No on K" campaign. Measure K is a smart investment in our kids, our
23 community, and our property values. Don't be fooled, Measure K is a Fiscally Responsible Plan
24 with Accountability and Oversight.
- 25 4. Deana Miller, PTA: This is Brea Olinda Parent and CH PTA President Deana Miller calling
26 about Measure K for Brea Kids. Don't be misled by the negative campaigning. Brea Kids need
27 your help. Local schools are outdated and not equipped to prepare students for the 21st Century.
28 YES on K is needed to bring Brea schools up to health and safety codes and 21st Century

1 learning standards. Make sure you find Measure K on your ballot and vote YES on K for Brea
2 KIDS November 8th!”

3 A disclosure statement should have been spoken at the beginning or end of each communication
4 stating, “Paid for by Brea Olinda Unified School District School Facilities Improvement Measure 2016
5 in Support of Measure K.”

6 VIOLATIONS

7 **Count 1: Failure to Comply with Disclosure Requirements for Mass Mailings**

8 In or around October, 2016, the Committee, Hale, and Lyons failed to include the Committee’s
9 full name and street address in its disclosure statement on four separate mass mailings, in violation of
10 Government Code Section 84305, subdivision (a), and Regulation 18402, subdivision (c).

11 **Count 2: Failure to Comply with Disclosure Requirements on Doorhangers**

12 In or around October, 2016, the Committee, Hale, and Lyons failed to include the Committee’s
13 full name in its disclosure statement and the disclosure statement did not meet the size requirements on
14 the doorhangers, in violation of Government Code Section 84504, subdivision (c), and Regulations
15 18450.4, subdivision (b)(3)(C), and 18402, subdivision (c).

16 **Count 3: Failure to Comply with Disclosure Requirements on Robocalls**

17 In or around October, 2016, the Committee, Hale, and Lyons failed to include a disclosure
18 statement in its robocalls, in violation of Government Code Section 84504, subdivision (c), and
19 Regulation 18450.4, subdivision (b)(3)(B).

20 **PROPOSED PENALTY**

21 This matter consists of three counts. The maximum penalty that may be imposed is \$5,000 per
22 count. Thus, the maximum penalty that may be imposed here is \$15,000.²⁰

23 In determining the appropriate penalty for a particular violation of the Act, the Commission
24 considers the facts of the case, the public harm involved, and the purposes of the Act. Further, the
25 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
26 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
27 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective

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²⁰ Section 83116, subdivision (c).

1 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
2 record of violations.²¹

3 In this case, the evidence supports there was no intent to conceal, deceive or mislead the public
4 as to who produced the mass mailings released by the Committee, Hale, and Lyons because the mass
5 mailings included an abbreviated version for part of the Committee's name that is likely easily
6 understood by voters of the City of Brea, BOUSD, as well as the Committee's identification number.
7 Further, the evidence supports there was no intent to conceal, deceive or mislead the public as to who
8 produced the advertisements released by the Committee, Hale, and Lyons because the doorhanger
9 advertisement included the Committee's identification number so voters could find out who produced
10 the advertisement. Here, the violations do not appear to be deliberate as Hale and Lyons were not
11 sophisticated with the Act. The violations committed here were isolated as the Committee, Hale and
12 Lyons have not had prior enforcement history.

13 The Commission considers penalties in prior cases with the same or similar violations and
14 comparable facts.

15 **Count 1: Failure to Comply with Disclosure Requirements for Mass Mailings**

16 *In the Matter of Al Bairos and Committee to Re-elect Al D. Bairos OID Director District #4*
17 *2015*; FPPC Case No. 15/1876. Respondents, an unsuccessful candidate and his controlled committee,
18 failed to identify the committee as the source of a mass mailing. Bairos and his committee sent
19 approximately 991 mailers at a total cost of \$3,574.43. These mailers did not include the phrase "paid
20 for by," nor did they include the name and address of the Committee. Bairos was sophisticated with the
21 Act as he had campaign experience. Bairos was first appointed to his position in 2006, was elected for
22 another term in 2011 and ran for re-election in 2015. On July 19, 2018, the Committee approved a
23 penalty of \$1,500 for this count.

24 A similar penalty than that approved in the *Bairos* case is recommended. Unlike *Bairos*, the
25 Committee here included the phrase "paid for by," along with an abbreviated version of the Committee's
26 name and the Committee's identification number. In aggravation, the Committee here purchased and
27 distributed approximately 38 times more mailers in support of Measure K than that distributed in *Bairos*.

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²¹ Regulation 18361. 5, subdivision (d).

1 In mitigation, it appears Hale, and Lyons were not sophisticated with the Act like the Respondents in
2 *Bairos*. Therefore, a penalty of \$1,500 is recommended.

3 **Count 2: Failure to Comply with Disclosure Requirements on Doorhangers**

4 *In the Matter of R4: Redondo Residents for Responsible Revitalization*; FPPC No. 15/112.
5 Respondent, a city general purpose committee that later met the requirements to be a primarily formed
6 ballot measure committee to oppose local ballot Measure B, failed to include the full name of the
7 committee on its advertisements. The committee produced 4,700 flyers; 30,000 doorhangers; and 4,949
8 mailers. The flyers failed to include the name of the committee or the phrase “paid for by.” The flyers
9 did include a reference to “R4” as well as the Committee’s website address. The doorhangers and
10 mailers failed to include the full name of the committee. On September 21, 2017, the Commission
11 approved a penalty of \$3,000.

12 A lesser penalty than that approved in the *R4* case is recommended. Unlike *R4*, the Committee
13 included the required “paid for by” language as well as an abbreviated version of the Committee’s name.
14 In mitigation, the Committee purchased and distributed only 11,000 copies of the doorhangers compared
15 to *R4*’s 30,000. Further, in mitigation, the Committee is being charged separately for the mass mailing
16 violations. Therefore, a penalty of \$1,500 is recommended.

17 **Count 3: Failure to Comply with Disclosure Requirements on Robocalls**

18 *In the Matter of Citizens for Orange County Ethics Commission – Yes on Measure A*; FPPC No.
19 16/0562. Respondent, a primarily formed local ballot measure committee, failed to include a disclosure
20 statement in its robocalls. The committee made 200,000 robocalls and failed to include a disclosure
21 statement on each. The committee self-reported its violations to the Enforcement Division and reported
22 the expense for the robocalls on the applicable campaign statements. On January 19, 2017, the
23 Commission approved a penalty of \$1,500.

24 A similar penalty than that approved in *Citizens for Orange County Ethics Commission* case is
25 recommended. Like *Citizens for Orange County Ethics Commission*, the Committee here admitted more
26 than 200 calls were made by the robocalls, all of which failed to include a disclosure statement. Similar
27 to *Citizens for Orange County Ethics Commission*, Hale and Lyons did not fail to include a disclosure
28 statement deliberately. Instead, a supporter of the Committee here coordinated and paid for the robocalls

1 and was later reimbursed by the Committee. The supporter was not familiar with the disclosure
2 requirements of the Act and Hale and Lyons failed to confirm a disclosure statement was included in the
3 robocall scripts. Therefore, a penalty of \$1,500 is recommended.

4 Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty
5 in the amount of \$4,500 is justified, as reflected in the chart below:

Count	Violation	Penalty
1	Failure to Comply with Disclosure Requirements for Mass Mailings	\$1,500
2	Failure to Comply with Disclosure Requirements on Doorhangers	\$1,500
3	Failure to Comply with Disclosure Requirements on Robocalls	\$1,500
	TOTAL	\$4,500

CONCLUSION

11 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
12 Respondents, Brea Olinda Unified School District School Facilities Improvement Measure 2016 in
13 Support of Measure K, David Hale, and Gail Lyons hereby agrees as follows:

- 14 1. Respondents violated the Act as described in the foregoing pages, which are a true and accurate
15 summary of the facts in this matter.
- 16 2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at
17 its next regularly scheduled meeting – or as soon thereafter as the matter may be heard.
- 18 3. This stipulation resolves all factual and legal issues raised in this matter – for the purpose
19 of reaching a final disposition without the necessity of holding an administrative hearing to
20 determine the liability of Respondents pursuant to Section 83116.
- 21 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all
22 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through
23 18361.9. This includes, but is not limited to the right to appear personally at any administrative
24 hearing held in this matter, to be represented by an attorney at Respondents’ own expense, to
25 confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to
26 testify at the hearing, to have an impartial administrative law judge preside over the hearing as a
27 hearing officer, and to have the matter judicially reviewed.

1 5. Respondents agree to the issuance of the decision and orders set forth below. Also,
2 Respondents agree to the Commission imposing against them an administrative penalty in the
3 amount of \$4,500. One or more cashier's checks or money orders totaling said amount – to be
4 paid to the General Fund of the State of California – is/are submitted with this stipulation as full
5 payment of the administrative penalty described above, and same shall be held by the State of
6 California until the Commission issues its decision and order regarding this matter.

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

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

Galena West, Chief of Enforcement
Fair Political Practices Commission

21 Dated: _____

David Hale, individually and on behalf of
Brea Olinda Unified School District School Facilities
Improvement Measure 2016 in Support of Measure K,
Respondents

25 Dated: _____

Gail Lyons, Treasurer

1 The foregoing stipulation of the parties “In the Matter of Brea Olinda Unified School District
2 School Facilities Improvement Measure 2016 in Support of Measure K, David Hale, and Gail Lyons,”
3 FPPC Case No. 16/19873, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

Richard C. Miadich, Chair
Fair Political Practices Commission

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