

1 GALENA WEST
Chief of Enforcement
2 THERESA GILBERTSON
Commission Counsel
3 Fair Political Practices Commission
1102 Q Street, Suite 3000
4 Sacramento, CA 95811
Telephone: (916) 323-6421
5 Email: tgilbertson@fppc.ca.gov

6 Attorneys for Complainant
7 Enforcement Division of the Fair Political Practices Commission

8
9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

10
11 In the Matter of:

12 INLAND FARMERS POLITICAL
ALLIANCE, JESSICA MACKENZIE,
13 AND DEBORAH THARP,

14 Respondents.

FPPC Case No. 2017/01222

STIPULATION, DECISION AND ORDER

15
16 INTRODUCTION

17 Respondent Inland Farmers Political Alliance (“Committee”) was a primarily formed committee
18 operating in Butte County and was active during the 2016 Primary and General Elections. Deborah Tharp
19 (“Tharp”) served as the treasurer until after the Primary Election. Jessica MacKenzie (“MacKenzie”) served as the principal officer and took over as treasurer starting on August 19, 2016. The Committee,
20 MacKenzie, and Tharp violated the Political Reform Act¹ (“Act”) by failing to designate the committee as
21 a primarily formed ballot measure committee. The Committee and MacKenzie violated the Act by failing
22 to timely file a 24-hour contribution report.
23

24
25 //

26
27 _____
28 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 All statutory references and discussions of law pertain to the Act’s provisions as they existed at the
3 time of the violations.

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 previous
6 laws regulating political practices suffered from inadequate enforcement by state and local authorities.²
7 Thus, it was decreed that the Act “should be liberally construed to accomplish its purposes.”³

8 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in
9 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
10 practices are inhibited.⁴ Along these lines, the Act includes a comprehensive campaign reporting system.⁵
11 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be
12 “vigorously enforced.”⁶

13 **Primarily Formed Committees**

14 A “committee” is defined in the Act to include any person or combination of persons who directly
15 or indirectly receives contributions totaling two thousand dollars (\$2,000) or more in a calendar year. This
16 is referred to as a recipient committee.⁷

17 A “primarily formed committee” means a recipient committee which is formed or exists primarily
18 to support or oppose either a single candidate; a single measure; a group of specific candidates being voted
19 upon in the same city, county, or multicounty election; or two or more measures being voted upon in the
20 same city, county, multicounty, or state election.⁸ A primarily formed committee includes those that are
21 created for the purpose of or are involved in running the principal campaign for or against the candidate(s)
22 or measure(s).⁹ A newly formed committee that files its initial statement of organization within six months
23 of an election in which the committee makes contributions and expenditures must determine whether it is
24

25 ² Section 81001, subdivision (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subdivision (a).

28 ⁵ Sections 84200, *et seq.*

⁶ Section 81002, subdivision (f).

⁷ Section 82013.

⁸ Section 82047.5.

⁹ Regulation 18247.5, subdivision (d).

1 primarily formed at the end of each month, unless the committee has not made any contributions and/or
2 expenditures of \$1,000 or more to support or oppose candidates or measures during that month.¹⁰

3 After an election, if the committee continues to exist to support or oppose different candidates or
4 measures in the future, the committee may change its status following the election, as long as the committee
5 is not raising funds to pay debt from the election.¹¹ A committee that has reason to know it is close to
6 triggering the applicable threshold for changing status because its spending is concentrated on candidate(s)
7 or measure(s), shall determine whether it is primarily formed quarterly at the end of March, June,
8 September, and December.¹²

9 A primarily formed committee has special requirements, including the requirement to file pre-
10 election campaign statements; if supporting or opposing measures, the committee must include the ballot
11 designation in the name of the committee; and the committee must file reports of contributions received
12 within the 90-days prior to the election.¹³

13 **Changes Requiring Amendment of Statement of Organization**

14 If there is a change to any of the information contained in a statement of organization, including
15 but not limited to the name of the committee, an amendment shall be filed within 10 days to reflect the
16 change.¹⁴

17 **24-Hour Contribution Reports**

18 Each committee that makes or receives a late contribution shall report the late contribution within
19 24-hours of making or receiving the contribution.¹⁵ A late contribution means a contribution, including a
20 loan, that totals in the aggregate one thousand dollars (\$1,000) or more and is made to or received by a
21 candidate, a controlled committee, or a committee formed or existing primarily to support or oppose a
22 candidate or measure during the 90-day period preceding the date of the election, or on the date of the
23 election, at which the candidate or measure is to be voted on.¹⁶

24
25 _____
26 ¹⁰ Regulation 18247.5, subdivision (e)(2).

27 ¹¹ Regulation 18247.5, subdivision (g)(4).

28 ¹² Regulation 18247.5, subdivision (e)(1).

¹³ Section 84107, Regulation 18247.5, subdivision (c).

¹⁴ Section 84103.

¹⁵ Section 84203.

¹⁶ Section 82036.

1 For the June 7, 2016 Primary Election, the 90-day reporting period started on March 9, 2016. For
2 the November 8, 2016 General Election, the 90-day reporting period started on August 10, 2016. Whenever
3 the deadline falls on a Saturday, Sunday, or official state holiday, the filing deadline for a statement shall
4 be extended to the next regular business day.¹⁷

5 **Candidate and Treasurer Liability**

6 Every committee must have a treasurer.¹⁸ Committees must also identify a principal officer.¹⁹ This
7 individual is primarily responsible for approving the political activities of the committee, including, but
8 not limited to, authorizing the content of communications, authorizing expenditures, including
9 contributions, on behalf of the committee, and determining the committee’s campaign strategy.²⁰ It is the
10 duty of the treasurer and the principal officer to ensure that the committee complies with all the
11 requirements of the Act.²¹ The treasurer and the principal officer may be held jointly and severally liable,
12 along with the committee, for violations committed by the committee.²²

13 **SUMMARY OF THE FACTS**

14 On February 24, 2016, proponents, led by MacKenzie, filed a Referendum Protest Petition to
15 challenge the adoption of two ordinances recently passed by the Board of Supervisors of Butte County.
16 The proponents gathered signatures in the county and were successful in putting the two ordinances on the
17 ballot to be voted upon by the county electorate. On March 8, 2016, the two ballot measures were
18 designated Measure G and Measure H and were set on the ballot for the June 7, 2016 Primary Election. If
19 passed, Measure G would exclude the cultivation of marijuana from being considered an agricultural
20 operation that is protected under the county’s “right to farm” ordinance and Measure H would amend the
21 county’s restrictions on medical marijuana. Both measures passed.

22
23
24 //

25
26 _____
27 ¹⁷ Regulation 18116, subdivision (a).

28 ¹⁸ Section 84100.

¹⁹ Section 84102, subdivision (c).

²⁰ Section 82047.6.

²¹ Sections 81004, 84100, 84104, and 84213, and Regulation 18427.

²² Sections 83116.5 and 91006.

1 **Failure to Designate as a Primarily Formed Committee**

2 The Committee filed as a county general purpose committee with an initial statement of
3 organization on March 24, 2016. At that time, Tharp served as treasurer. The Committee filed an
4 amendment on April 20, 2016 to indicate that the committee qualified on April 19, 2016.

5 In anticipation of the Primary Election, the Committee’s principal activity was to oppose the
6 passage of Measures G and H. The only non-ballot measure expenditures were administrative fees, such
7 as bank fees and paying for the services of the treasurer. The Committee served as the principal campaign
8 against the measures. Based on the timing of when the Committee was formed, it’s activities, and the fact
9 that it was the principal campaign, the Committee should have been designated a primarily formed
10 committee and renamed to include reference to their position opposing Measures G and H. By failing to
11 properly file as a primarily formed committee, the Committee’s statement of organization and
12 advertisements did not conform with the naming requirements for a primarily formed committee.

13 On August 3, 2016, after the Primary Election, proponents, led by Jessica MacKenzie, filed a
14 Proposed Initiative. The proponents gathered signatures in the county and were successful in putting their
15 proposed initiative on the ballot to be voted upon by the county electorate. On August 3, 2016, the ballot
16 measure was designated Measure L and was set for the November 8, 2016 General Election. If passed,
17 Measure L would repeal the county’s existing marijuana regulations and enact new rules designed to relax
18 restrictions on medical marijuana cultivation and distribution. Measure L did not pass.

19 The Committee filed an amendment on August 19, 2016 to indicate that MacKenzie was the
20 treasurer. By the end of the third quarter, the Committee had made over \$5,000 in expenditures that
21 supported passage of Measure L. From July 1, 2016 through December 30, 2016, approximately 99% of
22 the Committee’s activity was related to Measure L. The Committee should have been designated as a
23 primarily formed committee and renamed to include reference to their position supporting Measure L by
24 the end of September 2016. By failing to properly file as a primarily formed committee, the Committee’s
25 statement of organization and advertisements did not conform with the naming requirements for a primarily
26 formed committee.

27
28 //

1 **Failure to File a 24-Hour Contribution Report**

2 The Committee timely filed five other 24-hour contribution reports for late contributions it received
3 from contributors. However, the Committee failed to file a 24-hour contribution report for a loan of \$7,600
4 received on or around October 28, 2016 from Inland Cannabis Farmers Association. A 24-hour
5 contribution report was not filed and the loan was not disclosed until after the election. This report was due
6 on October 31, 2016, the first business day after the Committee reported receiving the loan.

7 **VIOLATIONS**

8 Count 1: Failure to Designate as Primarily Formed Ballot Measure Committee

9 The Committee, MacKenzie, and Tharp failed to include identification of the pertinent ballot
10 measures and failed to designate the committee as being primarily formed on its statement of organization
11 before both the Primary and the General Elections, in violation of Government Code sections 84103 and
12 84107.

13 Count 2: Failure to File a 24-hour Contribution Report

14 The Committee and MacKenzie failed to timely file a 24-hour contribution report for a loan of
15 \$7,600 received on October 28, 2016 by the deadline of October 31, 2016 in violation of Government Code
16 section 84203.

17 **PROPOSED PENALTY**

18 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per
19 count.²³ Thus, the maximum penalty that may be imposed here is \$10,000.

20 In determining the appropriate penalty for a particular violation of the Act, the Commission
21 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission
22 considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention
23 to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d)
24 whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were
25 filed to provide full disclosure; and (f) whether the violator has a prior record of violations.²⁴

26
27
28

²³ Section 83116, subdivision (c).

²⁴ Regulation 18361.5, subdivision (d).

1 MacKenzie, Tharp, and the Committee have no prior history with the Enforcement Division. The
2 Committee raised and spent over \$40,000 in 2016. However, the Committee largely complied with the
3 requirements of the Act and lost on all three measures, with the community voting opposite to how the
4 Committee advocated. The errors appear to be negligent and resulted in some, but not egregious public
5 harm. The errors do not appear to be part of a pattern, but rather isolated errors. The Enforcement Division
6 has also considered other violations that are not being charged for settlement purposes but are considered
7 aggravating when taken as a whole. These other violations include, failure to timely file a pre-election
8 campaign statement (5 days late) and semiannual campaign statement (56 days late), failure to timely report
9 some contributions and expenditures, failure to keep records with respect to accepting cash contributed to
10 a “donation can,” and accepting two money orders of \$700 each.

11 With respect to Count 1 against the Committee, MacKenzie, and Tharp, the failure to designate as
12 a primarily formed committee could result in serious public harm because it could cause confusion for the
13 voters as to the purpose of the committee and could lead to reporting violations as primarily formed
14 committees have additional reporting obligations compared to a general purpose committee.

15 A comparable case is, *In the Matter of Citizens for Oakland, Harold Smith, and Robert Spears*;
16 FPPC No. 16/20098. Citizens for Oakland was primarily formed committee to support and oppose certain
17 candidates. The Committee, Spears and Smith failed to identify the Committee as primarily formed and
18 failed to fulfill naming requirements for as a primarily formed committee on its Statement of Organization.
19 On May 16, 2019, the Commission approved a penalty of \$2,500 for this violation. Therefore, a penalty of
20 \$2,500 is recommended here.

21 With respect to Count 2 against the Committee and MacKenzie, a comparable case is *In the Matter*
22 *of Apple Valley Professional Firefighters Association Local 4742, James Peratt, and Larry Soper*, FPPC
23 Case No. 16/19935. The committee failed to file two 24-hour contribution reports to disclose making
24 contributions totaling \$4,000 and failed to file six 24-hour independent expenditure reports to disclose
25 making independent expenditures totaling \$21,843. On August 15, 2019, the Commission imposed a
26 penalty of \$2,500.

27 Here, the Committee and MacKenzie failed to disclose a loan of \$7,600 in the final 16 days prior
28 to an election. The loan was timely reported on a semiannual campaign statement filed after the election.

1 The Committee timely filed five 24-hour reports. As the total not reported is less than the comparable and
2 the Committee had much less experience than compared to the comparable case and the Committee timely
3 filed other reports, a penalty of \$1,500 is recommended.

4 After considering the factors listed in Regulation 18361.5 and penalties in prior similar cases, the
5 following penalty upon the Committee, MacKenzie, and Tharp is recommended:

6 Count	Respondents	Description	Penalty
7 1	Committee, MacKenzie, and 8 Tharp	Failure to designate as primarily formed	\$2,500
9 2	Committee and MacKenzie	Failure to file a 24-hour contribution report	\$1,500
10		TOTAL	\$4,000

11 **CONCLUSION**

12 Respondents Inland Farmers Political Alliance, Jessica Mackenzie, and Deborah Tharp hereby
13 agree as follows:

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

16 2. This stipulation will be submitted for consideration by the Fair Political Practices
17 Commission at 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 determine the
20 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 18361.9.
23 This includes, but is not limited to the right to appear personally at any administrative hearing held in this
24 matter, to be represented by an attorney at Respondents' own expense, to confront and cross-examine all
25 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
26 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
27 reviewed.
28

1 5. Respondents agree to the issuance of the decision and order set forth below. Also,
2 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
3 \$4,000. One or more payments totaling said amount—to be paid to the General Fund of the State of
4 California—is/are submitted with this stipulation as full payment of the administrative penalty described
5 above, and same shall be held by the State of California until the Commission issues its decision and order
6 regarding this matter.

7 6. If the Commission declines 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 stipulation is
9 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to
10 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing before
11 the Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
12 shall be disqualified because of prior consideration of this Stipulation.

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

16
17 Dated: _____
18 Galena West, Chief of Enforcement
19 Fair Political Practices Commission

20 Dated: _____
21 Jessica MacKenzie, individually and on behalf of the
22 Committee, Inland Farmers Political Alliance

23 Dated: _____
24 Deborah Tharp, individually and on behalf of the
25 Committee, Inland Farmers Political Alliance
26
27
28

1 The foregoing stipulation of the parties “In the Matter of Inland Farmers Political Alliance, Jessica
2 Mackenzie, and Deborah Tharp,” FPPC Case No. 2017/01222 is hereby accepted as the final decision and
3 order of the Fair Political Practices Commission, effective upon execution below by the Chair.

4
5 IT IS SO ORDERED.

6
7 Dated: _____

_____ Richard C. Miadich, Chair
Fair Political Practices Commission