

1 GALENA WEST  
Chief of Enforcement  
2 RUTH YANG  
Commission Counsel  
3 **FAIR POLITICAL PRACTICES COMMISSION**  
1102 Q Street, Suite 3000  
4 Sacramento, CA 95811  
Telephone: (916) 322-7771  
5 Email: ryang@fppc.ca.gov

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

8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

9 **STATE OF CALIFORNIA**

10  
11 In the Matter of ) FPPC No. 16/19813  
12 )  
13 MESA WATER DISTRICT, ) **STIPULATION, DECISION, AND ORDER**  
14 )  
15 Respondent. )  
16 )  
17 )

18 **INTRODUCTION**

19 Respondent Mesa Water District (the “District”) is a special district in the County of Orange that  
20 provides water to Costa Mesa, parts of Newport Beach, and some unincorporated areas. Under the  
21 Political Reform Act (the “Act”),<sup>1</sup> a local government agency that spends \$1,000 or more in public funds  
22 to advocate for or against a ballot measure qualifies as a campaign committee and must comply with all  
23 provisions of the Act related to campaign committees, including disclosing itself on advertisements and  
24 filing campaign statements and reports. As set forth herein, the FPPC concluded that the District violated  
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26 <sup>1</sup> The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the  
27 Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in  
28 Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2,  
Division 6 of the California Code of Regulations, unless otherwise indicated.

1 the Act by sending prohibited campaign related mass mailings at public expense, failing to include a  
2 disclosure statement on advertisements, failing to timely file eight 24-hour independent expenditure  
3 reports, and failing to timely file one semi-annual campaign statement. The District asserts it made good  
4 faith effort to act lawfully by studying the ballot measure in question, taking a position on it, and  
5 subsequently taking action to educate the public regarding its position after receiving advise from counsel  
6 on the issue. Rather than litigate the facts and law of this matter, the District has agreed to settle the  
7 matter by entering this Stipulation, Decision and Order.

### 8 **SUMMARY OF THE LAW**

9 The violations in this case occurred in 2016, so all legal references and discussions of the law  
10 pertain to the Act’s provisions as they existed at that time.

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

12 When enacting the Political Reform Act, the people of California found and declared that previous  
13 laws regulating political practices suffered from inadequate enforcement by state and local authorities.<sup>2</sup>  
14 For this reason, the Act is to be construed liberally to accomplish its purposes.<sup>3</sup>

15 One purpose of the Act is to promote transparency by ensuring that expenditures made in election  
16 campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are  
17 inhibited.<sup>4</sup> In furtherance of this purpose, the Act establishes a comprehensive campaign reporting  
18 system<sup>5</sup> and requires any committee that supports or opposes a ballot measure to print its name as part of  
19 any advertisement.<sup>6</sup> Another purpose of the Act is to provide adequate enforcement mechanisms so the  
20 Act will be “vigorously enforced.”<sup>7</sup>

#### 21 **Government Agency as a Campaign Committee**

22 A committee is any person or combination of persons who, in a calendar year, receives  
23 contributions totaling \$2,000 or more; makes independent expenditures totaling \$1,000 or more; or makes

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24 <sup>2</sup> Section 81001, subd. (h).

25 <sup>3</sup> Section 81003.

26 <sup>4</sup> Section 81002, subd. (a).

27 <sup>5</sup> Sections 84200, *et seq.*

28 <sup>6</sup> Section 84506.

<sup>7</sup> Section 81002, subd. (f).

1 contributions totaling \$10,000 or more to or at the behest of candidates or other committees.<sup>8</sup> When a  
2 state or local governmental agency uses public moneys for a communication that (1) expressly advocates  
3 for or against a clearly identified candidate or ballot measure or (2) unambiguously urges a particular  
4 result in an election, the Act identifies that payment as an independent expenditure.<sup>9</sup>

5 If a communication does not contain express language it still may unambiguously urge a particular  
6 result if: (1) it clearly is campaign material or campaign activity, such as bumper stickers, billboards,  
7 door-to-door canvassing, or other mass media advertising; or (2) when considering the style, tenor, and  
8 timing of the communication, it can be reasonably characterized as campaign material and is not a fair  
9 representation of fact serving only an informational purpose.<sup>10</sup> Some factors to consider when assessing  
10 style, tenor, and timing include, but are not limited to whether the communication is (1) funded from a  
11 special appropriation related to the measure as opposed to a general appropriation; (2) consistent with the  
12 normal communication pattern for the agency; (3) consistent with the style of other communications  
13 issued by the agency; and (4) using inflammatory or argumentative language.<sup>11</sup>

14 The Commission adopted Regulations 18420.1 and 18901.1 based on the California Supreme  
15 Court’s decision in *Vargas v. City of Salinas, et. al.* (2009) 46 Cal. 4<sup>th</sup> 1.<sup>12</sup> In *Vargas*, the Court relied  
16 heavily on its decision in *Stanson v. Mott* (1976) 17 Cal. 3d 206. *Stanson* established the analysis for  
17 determining when communications by a governmental agency that do not contain express advocacy still  
18 constitute campaign activity. The Court concluded that certain publicly financed literature that is not  
19 clearly campaign material and that purports to contain only relevant factual information can be prohibited  
20 campaign activity depending on the “style, tenor and timing of the publication.”<sup>13</sup>

21 Neither *Vargas* nor *Stanson* directly concerned any provisions of the Act. They were decided  
22 based on the constitutional prohibition against unauthorized use of public funds. But since in those cases  
23 the State Supreme Court had defined when government agencies are prohibited from using public moneys  
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25 <sup>8</sup> Section 82013.

26 <sup>9</sup> Regulation 18420.1, subd. (a).

27 <sup>10</sup> Regulation 18420.1, subd. (b).

28 <sup>11</sup> Regulation 18420.1, subd. (d).

<sup>12</sup> Fair Political Practices Commission, Minutes of Meeting, Public Session, Sept. 10, 2009, item no. 25, page 3.

<sup>13</sup> *Stanson*, at 222.

1 to pay for communications related to ballot measures, the Commission adopted the parameters described  
2 in *Vargas* for determining when a government agency makes contributions and independent expenditures  
3 under the Act.<sup>14</sup>

#### 4 **Campaign Related Mass Mailings Sent at Public Expense**

5 The Act generally prohibits sending a newsletter or other mass mailing at public expense.<sup>15</sup>  
6 Specifically, a mailing is prohibited if (1) the item is a tangible item; (2) the item expressly advocates the  
7 qualification, passage, or defeat of a clearly identified measure, or unambiguously urges a particular  
8 result in an election; (3) public moneys are paid to distribute the item, or to prepare the item for more  
9 than \$50 with the intent of sending the item; and (4) more than 200 substantially similar items are sent  
10 during the course of an election.<sup>16</sup>

11 The State Supreme Court has expounded on the style, tenor, and timing factors for campaign  
12 related communications that unambiguously urge a particular result in an election. In *Keller v. State Bar*  
13 (1989) 47 Cal. 3d 1152, the Court determined that an education packet sent by the California State Bar  
14 to its members concerning an election to confirm six appellate justices was a form of election  
15 campaigning because it was sent a month before the election, was the kind of material that state election  
16 committees send to local committees to aid in a campaign, and was informative and factual but not  
17 impartial.<sup>17</sup>

18 The *Vargas* court made an exception to this rule when the City of Salinas mailed out a newsletter  
19 that discussed the upcoming election for a ballot measure. It was significant that this particular newsletter  
20 was a regular edition of Salinas' quarterly newsletter and not a special edition; the topic of the newsletter  
21 was obvious and a natural subject to be reported, the style and tenor were consistent with an ordinary  
22 municipal newsletter; and the articles in the newsletter were objective and nonpartisan.<sup>18</sup>

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25 <sup>14</sup> Fair Political Practices Commission, Minutes of Meeting, Public Session, Sept. 10, 2009, item no. 25, page 3.

26 <sup>15</sup> Section 89001.

27 <sup>16</sup> Regulation 18901.1, subd. (a).

28 <sup>17</sup> *Keller*, at 1172.

<sup>18</sup> *Vargas*, at 38-39.

1           **Advertisement Disclosure**

2           An advertisement is any general or public advertisement which is authorized and paid for by a  
3 committee for the purpose of supporting or opposing one or more ballot measures.<sup>19</sup> Such an  
4 advertisement, that is paid for by an independent expenditure, must include a disclosure statement that  
5 identifies the name of the committee.<sup>20</sup> “Paid for by” should immediately precede the committee’s name,  
6 and all of the disclosure statement must be printed clearly and legibly in no less than 14-point bold, sans  
7 serif type font.<sup>21</sup> Any person who violates the advertisement disclosure requirements of the Act is liable  
8 in a civil or administrative action brought by the Commission for a fine that is up to three times the cost  
9 of the advertisement, including placement cost.<sup>22</sup>

10           When discussing the distinction between campaign activities and informational activities, the  
11 *Vargas* court cited opinions of the California Attorney General to state that while public agencies may  
12 generally publish a “fair presentation of facts,” there have been instances when publicly financed  
13 newspaper advertisements which claim to contain only relevant factual information have been found to  
14 be campaign literature.<sup>23</sup>

15           **Campaign Statement and Reports**

16           If a local government agency makes expenditures and qualifies as a committee, it must file  
17 campaign statements.<sup>24</sup> The Act requires independent expenditure committees to file a late independent  
18 expenditure report within 24 hours of making an expenditure of \$1,000 or more during the 90 days prior  
19 to an election and disclose that independent expenditure on a subsequent campaign statement.<sup>25</sup> The  
20 report must include the committee’s name, committee’s address, number or letter of the measure,  
21 jurisdiction of the measure, amount, date, and description of goods or services for which the late  
22 independent expenditure was made.<sup>26</sup>

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23           <sup>19</sup> Section 84501, subd. (a); Regulation 18450.1, subd. (a)(2).

24           <sup>20</sup> Section 84506, subd. (a)(1).

25           <sup>21</sup> Section 84507; Regulation 18450.4, subd. (b).

26           <sup>22</sup> Section 84510, subd. (a).

27           <sup>23</sup> *Vargas*, at 25.

28           <sup>24</sup> Regulation 18420, subd. (d).

<sup>25</sup> Sections 84200.6, subd. (b), and 84204.

<sup>26</sup> Section 84204.

1 A committee also must file semi-annual campaign statements each year for the period ending  
2 June 30 and December 31 if they made independent expenditures during the 6-month period prior to  
3 those dates.<sup>27</sup>

4 Requiring local government agencies to file campaign reports and statements furthers the Act's  
5 purpose in disclosing expenditures made in election campaigns so that voters are fully informed and  
6 improper practices are inhibited.<sup>28</sup>

7 **SUMMARY OF THE FACTS**

8 On July 28, 2016, the District's Board of Directors placed Measure TT on the November 8, 2016  
9 ballot. Measure TT was a non-binding advisory measure which sought to gauge the public's interest in  
10 consolidating the District and the Costa Mesa Sanitary District ("CMSD"). Passing Measure TT would  
11 not have resulted in a tangible action, as any merger between the District and CMSD first would need  
12 approval from the Orange County Local Agency Formation Commission (LAFCO), an agency that  
13 reviews and approves consolidations, dissolutions, mergers, and annexations of local agencies.

14 Prior to placing Measure TT on the ballot, the District retained a consulting firm to study the  
15 potential economic impacts of a merger between the District and CMSD. That study, entitled the  
16 "Optimal Governance Structure Study" (the "Study") claimed that a consolidation between the Districts  
17 could result economic savings. The District referred to the Study in its mailings and advertisements.

18 The District's Board of Directors funded the campaign supporting Measure TT from a special  
19 appropriation they allocated on July 28, 2016 for "an educational outreach campaign consisting of, at a  
20 minimum, four separate outreach mailings or efforts to educate the public." The District's Board of  
21 Directors set aside funds specifically for an educational campaign. While the District maintains that it  
22 acted in good faith to educate the public about the potential cost savings of a consolidation, the FPPC has  
23 determined that its communications were not educational in nature, as detailed below.

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27 <sup>27</sup> Section 84200, subd. (b).

28 <sup>28</sup> Section 81002, subd. (a).

1 Measure TT passed with 54.7 percent of the votes, but the District and CMSD announced in July  
2 2018 in a joint statement that they would not seek consolidation as long as the two special districts  
3 disagreed on the matter.

#### 4 **Campaign Related Mailings**

5 The District distributed several prohibited mailers and flyers related to Measure TT to constituents  
6 through various means.

#### 7 Special Issue Newsletter

8 The District distributed a special issue of its bi-monthly newsletter, *Water District News*, which  
9 brought attention to Measure TT in advance of the November 8, 2016 General Election. The District  
10 deviated from its normal distribution schedule. The District had released its regular September/October  
11 2016 issue of the newsletter in September 2016, and it distributed an October/November 2016 “special  
12 districts shared efficiencies issue” on or around September 15, 2016 to share information about Measure  
13 TT and to explain why it supported Measure TT. The District printed 21,750 copies of this issue and  
14 shipped them through Orange County Printing Company (“OC Printing”). It paid OC Printing \$3,693.60.

15 The FPPC has determined that such special edition newsletters are appropriately categorized as  
16 campaign activity under Regulation 18901.1, subdivision (e)(2). While Measure TT was an obvious and  
17 natural subject for the October/November 2016 issue, the FPPC found that it was not objective or  
18 nonpartisan. The special issue newsletter showed the following statements: “substantial cost-savings for  
19 ratepayers could include **\$15.6 million** one-time savings that could provide an immediate **\$650 rebate**  
20 per customer, and **\$2.7 million** annual savings that could reduce customer’s sewer rates by up to **28**  
21 **percent**. Mesa Water believes the study is valid and the findings verifiable;” “study shows substantial  
22 cost-savings for customers are possible if Mesa Water and the Sanitary District consolidate, including:  
23 **\$15.6 million one-time savings** that could provide a **\$650 rebate per customer [and] \$2.7 million**  
24 **annual savings** that could reduce customers’ sewer rates by up to **28%**.” The District strategically bolded  
25 numbers to emphasize the favorable but also speculative benefits of consolidation.

26 The District later printed another 20,000 copies of the special issue newsletter through OC  
27 Printing and paid OC Printing \$2,557.60. OC Printing shipped 19,000 of those copies to The Walking  
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1 Man, Inc. (“Walking Man”) who hand delivered them on October 31, 2016 to single-family residential  
2 customers who live in CMSD’s service area but outside of the District’s service area, and thus were  
3 eligible to vote on Measure TT. The District paid Walking Man \$2,950.00.

4 Although the District twice distributed this newsletter within 90 days prior to the election, two  
5 24-hour reports were not timely filed for these independent expenditures. Such reports would not be  
6 required if the materials were educational in nature but are required if the materials would be considered  
7 campaign related mailings under Regulation 18901.1.

8 Two Mailers

9 On or around October 6, 2016, the District printed 30,000 copies of a mass mailing (“Mailer #1)  
10 and mailed them to the public through OC Printing. The District paid OC Printing \$9,134.98. On or  
11 around October 8, 2016, Walking Man hand delivered 8,000 copies of Mailer #1 to single-family  
12 residential customers who lived in CMSD’s service area but outside of the District’s service area. The  
13 District paid Walking Man \$1,150.00. Mailer #1 contained similar statements as the special issue  
14 newsletter, including the strategically bolded numbers. Two 24-hour independent expenditures reports  
15 were not timely filed for the printing and mailing of Mailer #1 by OC Printing nor for the hand delivery  
16 completed by Walking Man. Such reports would not be required if the materials were educational in  
17 nature but are required if the materials would be considered campaign related mailings under Regulation  
18 18901.1.

19 On or around October 17, 2016, the District printed 28,000 copies of a mass mailing (Mailer #2)  
20 and shipped them through OC Printing. The District paid OC Printing \$7,774.22. On or around  
21 October 18, 2016, Walking Man hand delivered 8,000 copies of Mailer #2 to single-family residential  
22 customers who lived in CMSD’s service area but outside of the District’s service area. The District paid  
23 Walking Man \$1,150.00.

24 Mailer #2 listed the types of information that the Study analyzed. It contained similar statements  
25 as the special issue newsletter and Mailer #1, including the strategically bolded numbers. Two 24-hour  
26 independent expenditures reports were not timely filed for printing and mailing of Mailer #2 by OC  
27 Printing nor for the hand delivery completed by Walking Man. Such reports would not be required if the  
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1 materials were educational in nature but are required if the materials would be considered campaign  
2 related mailings under Regulation 18901.1.

3 Mailer #1 and Mailer #2 were consistent in the District's prior communication pattern but not in  
4 communication style. For example, in 2015, the District relied on mailers to promote water conservation  
5 and to educate its customers on conservation methods during the peak of California's drought. Those  
6 mailers conveyed their messages with concise language and fun graphics. The FPPC concluded that the  
7 Measure TT mass mailings were not impartial and were narratives in form.

### 8 Walk Piece

9 The District printed 19,500 copies of a mass mailing ("Walk Piece") through OC Printing. The  
10 District paid OC Printing \$2,295.00. OC Printing shipped 19,000 copies to Walking Man, who hand  
11 delivered those copies on November 5, 2016, just three days before the election, to single-family  
12 residential customers who lived in CMSD's service area but outside of the District's service area. The  
13 District paid Walking Man \$2,950.00. Walk Piece contained similar statements as the special issue  
14 newsletter, Mailer #1, and Mailer #2. A 24-hour independent expenditure report was not timely filed for  
15 the printing and distribution of Walk Piece. Such reports would not be required if the materials were  
16 educational in nature but are required if the materials would be considered campaign related  
17 communications under Regulation 18420.1.

18 The special issue newsletter, Mailer #1, Mailer #2, and Walk Piece fit the criteria of mailings  
19 prohibited by Section 89001. More than 200 copies of each mass mailing were delivered to recipients at  
20 their home, work or post office box. The District used more than \$50 of public moneys for the  
21 distribution, production, and printing of each mass mailing. Lastly, the mass mailings, when taken as a  
22 whole and in context, unambiguously urged a vote in favor of Measure TT because the style, tenor, and  
23 timing of the mass mailings could be reasonably characterized as campaign materials and the mass  
24 mailings were not solely for informational purposes.

### 25 **Newspaper Advertisements**

26 The District purchased advertisement space in local newspapers to promote Measure TT. The  
27 District placed a full-sized, multi-colored advertisement in the October 20, 2016 and October 27, 2016  
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1 issues of *The Current*, a weekly community newspaper for Costa Mesa, for \$1,827.00 per issue for a total  
2 of \$3,654.00. The District also placed a full-sized, multi-colored advertisement in the October 23, 2016  
3 and October 30, 2016 issues of the *Daily Pilot*, a daily newspaper for Newport Beach, Costa Mesa,  
4 Huntington Beach, Laguna Beach, and Fountain Valley, for \$2,421.00 per issue for a total of \$4,842.00.  
5 The earlier advertisements are a reproduction of Mailer #1, and the later advertisements are a  
6 reproduction of Mailer #2. The District paid for all four advertisements on October 7, 2016, but a 24-  
7 hour independent expenditure report was not timely filed for them. Such reports would not be required if  
8 the materials were educational in nature but are required if the materials would be considered campaign  
9 related communications under Regulation 18420.1.

10 The FPPC found that these four advertisements were independent expenditures made by the  
11 District that unambiguously urged support for Measure TT. Newspaper advertisements are clearly  
12 campaign material, as they would be considered mass media advertising. The FPPC further determined  
13 that since they are exact replicas of Mailer #1 and Mailer #2, the style, tenor, and timing of the  
14 communications also can be reasonably characterized as campaign material that are not solely for  
15 informational purposes.

16 The District has purchased advertisement space in newspapers in the past to communicate with  
17 residents, but the FPPC found that those examples differ significantly in tone and style from the Measure  
18 TT advertisements. Previous newspaper advertisements encouraged residents to conserve water in  
19 response to a drought. They shared information, such as tips on conserving water, when people should  
20 water their lawns, and where to report individuals who waste water. They also mostly used concise  
21 language and graphics to convey quick and simple messages.

22 The FPPC concluded that the Measure TT advertisements, on the other hand, were not impartial  
23 and were narratives in form. Lastly, the District's Board of Directors allotted funds specifically for an  
24 educational campaign, but the FPPC found the content of the communications did not fit that description.

25 The District qualified as an independent expenditure committee on or around September 15, 2016,  
26 when it distributed the special issue of its bi-monthly newsletter, *Water District News*. As a result, the  
27 four newspaper advertisements, which were purchased and published after that date, should have  
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1 included disclosure statements with “paid for by” preceding the District’s name, printed clearly and  
2 legibly in no less than 14-point, bold, sans serif type font in a contrasting color to the background on  
3 which it appears.

4 **Campaign Statement and Reports**

5 The FPPC determined the District made independent expenditures in support of Measure TT  
6 when it used \$1,000 or more of public moneys to distribute mass mailings and purchase advertisement  
7 space in local newspapers, qualifying it as an independent expenditure committee. As such, the Act  
8 required the District to file 24-hour independent expenditure reports from August 10, 2016 through  
9 November 8, 2016 and to report all campaign activities from July 1, 2016 through December 31, 2016.  
10 The District did not timely file eight 24-hour independent expenditure reports and a semi-annual  
11 campaign statement for its activities in support of Measure TT. As a result, campaign activities totaling  
12 approximately \$42,151.40 was not timely reported prior to the election. Such reports would not be  
13 required if the materials were educational in nature but are required if the materials would be considered  
14 campaign related communications or mailings under Regulations 18420.1 or 18901.1 respectively.

15 **VIOLATIONS**

16 Count 1: Prohibited Campaign Related Mass Mailings Sent at Public Expense

17 The District used public moneys to produce, print, and distribute more than 200 copies of five  
18 mass mailings, which the FPPC determined had unambiguously urged support for Measure TT, in  
19 violation of Government Code section 89001 and Regulation 18901.1

20 Count 2: Failure to Include Advertisement Disclosure Statements

21 The District failed to include a proper committee disclosure statement in their four newspaper  
22 advertisements, in violation of Government Code sections 84506, subdivision (a)(1), and 84507; and  
23 Regulation 18450.4, subdivision (b).

24 Count 3: Failure to Timely File 24-Hour Independent Expenditure Reports

25 The District failed to timely file eight 24-hour independent expenditure reports in the 90-day  
26 period preceding the election, in violation of Government Code section 84204.

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1 Count 4: Failure to Timely File a Semi-Annual Campaign Statement

2 The District failed to timely file a semi-annual campaign statement for the period covering  
3 July 1, 2016 through December 31, 2016 by January 31, 2017, in violation of Government Code section  
4 84200, subdivision (b).

5 **PROPOSED PENALTY**

6 This matter consists of four counts. The maximum penalty that may be imposed is \$5,000 per  
7 count. The Commission also may impose a fine up to three times the cost of the advertisement when it  
8 finds an advertisement disclosure violation.<sup>29</sup> Thus, the maximum penalty and fine that may be imposed  
9 is \$15,000 and \$126,454.20 respectively, for a combined amount of \$141,454.20.

10 In determining the appropriate penalty for a particular violation of the Act, the Commission  
11 considers the facts of the case, the public harm involved, and the purpose of the Act. Also, the  
12 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of  
13 any intention to conceal, deceive, or mislead; (c) whether the violation was deliberate, negligent, or  
14 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective amendments  
15 voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior record of  
16 violations.<sup>30</sup>

17 Although the Commission considers these violations to be serious, the absence of any evidence  
18 of an intention to conceal, deceive, or mislead; the voluntary filing of the delinquent campaign statement;  
19 and the absence of a prior record are mitigating. The District contends that it did not intend to engage in  
20 campaign activities in support of Measure TT, and that it made every effort to comply with laws and  
21 regulations applicable to lawful efforts to educate the public regarding the position it took on Measure  
22 TT, including by consulting with legal counsel in connection with each of the violations asserted. It did  
23 not file a semi-annual campaign statements or 24-hour independent expenditure reports, because it  
24 believed its activities were lawful educational activities, not campaign activities. In aggravation, due to

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27 <sup>29</sup> Section 84510, subd. (a).

28 <sup>30</sup> Regulation 18361.5, subd. (d).

1 the District’s failure to file campaign reports and statements, the public did not learn about the District’s  
2 campaign activities until this time.

3 The Commission also considers penalties in prior cases with comparable violations. Recent  
4 similar cases include the following:

5 Count 1

6 *In the Matter of City of Rialto*; FPPC No. 12/869. (The Commission approved a stipulated  
7 decision on January 15, 2015.) The City of Rialto sent three mass mailings that unambiguously urged its  
8 constituents to vote in favor of a ballot measure. The mailers included statements that clearly aimed to  
9 persuade voters. The Commission approved a penalty of \$3,000 for the violation.

10 Similar to *Rialto*, the District sent five mass mailings that unambiguously urged all eligible voters  
11 to vote in favor of Measure TT. Not only did the District mail the mass mailings to the residents in its  
12 own jurisdiction, but it also hand delivered the mass mailings to those residing outside of the District’s  
13 jurisdiction. A penalty of \$5,000 is recommended for Count 1.

14 Counts 2 and 4

15 *In the Matter of San Francisco Bay Area Rapid Transit District (BART)*; FPPC No. 16/19959.  
16 (The Commission approved a stipulated decision on December 20, 2018.) Respondent published two  
17 video advertisements on YouTube in support of Measure RR and also posted those videos on Twitter and  
18 Facebook. Additionally, Respondent sent a message to its riders to urge support for Measure RR.  
19 However, Respondent failed to include a disclosure statement with “paid for by” preceding the  
20 committee’s name in its advertisements and also failed to timely file a semi-annual campaign statement  
21 to report the independent expenditures. The Commission approved a fine of \$3,500 for the advertisement  
22 disclosure statement violation and a penalty of \$1,500 for the filing violation.

23 For Count 2, the District also used advertisements to unambiguously urge support for Measure  
24 TT but failed to include a disclosure statement with “paid for by” preceding its name. There also was no  
25 intent to conceal the true source of the advertisements, as the District’s name and logo were shown at the  
26 top of the advertisements. For Count 4, the District also failed to timely file a semi-annual campaign  
27 statement. This resulted in a lack of disclosure of approximately \$42,151.40 in independent expenditures,  
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1 which is significantly higher than the amount not reported in *BART*. A fine of \$3,500 is recommended  
2 for Count 2, and a penalty of \$2,000 is recommended for Count 4.

3 Count 3

4 *In the Matter of San Francisco Bay Area Rapid Transit District (BART)*; FPPC No. 16/19959.  
5 (The Commission approved a stipulated decision on December 20, 2018.) Respondent failed to timely  
6 file two 24-hour independent expenditure reports for a total of \$7,791.66 in independent expenditures.  
7 The Commission approved a penalty of \$2,500 for the violation.

8 In this case, the District failed to report eight 24-hour independent expenditure reports for a total  
9 of approximately \$42,151.40 in independent expenditures, significantly higher than the amount not  
10 reported in *BART*. The late independent expenditures in this case were not disclosed in any campaign  
11 statement or report with any jurisdiction, so the public was not able to learn about these late independent  
12 expenditures prior to the election. A penalty of \$4,000 is recommended for Count 3.

13 For the foregoing reasons, penalties and a fine of \$5,000 for Count 1; \$3,500 for Count 2; \$4,000  
14 for Count 3; and \$2,000 for Count 4 are recommended, for a total in the amount of \$14,500.

15 **CONCLUSION**

16 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
17 Respondent Mesa Water District hereby agree as follows:

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

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

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

25 4. The District has consulted with its attorneys, Patrick Munoz and Jennifer Farrell of Rutan  
26 & Tucker, LLP, and understands, and hereby knowingly and voluntarily waives, any and all procedural  
27 rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This  
28

1 includes, but is not limited to the right to appear personally at any administrative hearing held in this  
2 matter, to be represented by an attorney at the District's own expense, to confront and cross-examine all  
3 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial  
4 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially  
5 reviewed.

6 5. The District agrees to the issuance of the decision and order set forth below. Also, the  
7 District agrees to the Commission imposing against it an administrative penalty in the amount of \$14,500.  
8 One or more cashier's checks or money orders totaling said amount—to be paid to the General Fund of  
9 the State of California—is/are submitted with this stipulation as full payment of the administrative  
10 penalty described above, and same shall be held by the State of California until the Commission issues  
11 its decision and order regarding the matter.

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

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

21  
22 Dated: \_\_\_\_\_  
23 Galena West, Chief of Enforcement  
24 Fair Political Practices Commission

25 Dated: \_\_\_\_\_  
26 \_\_\_\_\_, on behalf of Mesa Water District

1 The foregoing stipulation of the parties “In the Matter of Mesa Water District,” FPPC No. 16/19813, is  
2 hereby accepted as the final decision and order of the Fair Political Practices Commission, effective  
3 upon execution below by the Chair.

4  
5 IT IS SO ORDERED.

6  
7 Dated: \_\_\_\_\_

\_\_\_\_\_ Richard C. Miadich, Chair  
Fair Political Practices Commission