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8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**  
9 **STATE OF CALIFORNIA**  
10

11 In the Matter of ) FPPC No. 18/228  
12 )  
13 CITY OF UPLAND, ) **STIPULATION, DECISION, AND ORDER**  
14 )  
15 Respondent. )  
16 )  
17 )

18 **INTRODUCTION**

19 Respondent City of Upland (the “City”) is a suburban city located in San Bernardino County. The  
20 Political Reform Act (the “Act”)<sup>1</sup> prohibits the sending of a mass mailing featuring an elected official at  
21 public expense. The City violated the Act by producing and distributing over 200 copies of a letter, which  
22 included the name, photograph, and title of, and other references to an elected officer at public expense.

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25 <sup>1</sup> 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 2018, 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.<sup>2</sup>  
7 For this reason, the Act must be construed liberally to accomplish its purposes.<sup>3</sup>

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.<sup>4</sup> Another is to provide adequate enforcement mechanisms so the Act  
11 will be “vigorously enforced.”<sup>5</sup>

12 Mass Mailing Sent at Public Expense

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

- 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.<sup>8</sup> A mailing containing the  
22 name, office, and photograph of, or any other reference to an elected officer who consults or  
23 acts in concert with the agency to prepare or send the mailing also fulfills the second criteria.

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

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

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

26 <sup>5</sup> Section 81002, subd. (f).

27 <sup>6</sup> Section 89001.

28 <sup>7</sup> Section 89002, subd. (a).

<sup>8</sup> Section 89002, 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 Government Code Section 89002.

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

5 Personal pronouns that refer to the elected officer, such as “I,” “me,” “we,” “us,” and “our”  
6 constitute impermissible additional references to the elected official.<sup>9</sup>

### 7 **SUMMARY OF THE EVIDENCE**

8 Mayor Debbie Stone, other City officials, and staff composed a 2-page letter to residents and  
9 businesses that highlighted the City’s achievements from the previous year. In late January or early  
10 February 2018, the City mailed its water bills with the 2-page letter, which included Stone’s photograph  
11 on the first page, along with her name and office. Additionally, she referenced herself with personal  
12 pronouns such as “I,” “we,” and “us,” and with the possessive adjective “our” throughout the letter.

13 In total, the City produced around 14,146 copies of the letter and mailed them to residents and  
14 businesses. It cost the City \$1,728.08 to print the letter and \$866.95 to mail the water bill and letter,  
15 totaling \$2,595.03.

### 16 **VIOLATION**

#### 17 Count 1: Mass Mailing Sent at Public Expense

18 The City of Upland drafted, printed, and distributed over 200 copies of a 2-page letter at public  
19 expense, featuring the photograph, name, and title of, and other references to an elected officer, in  
20 violation of Government Code sections 89001 and 89002, subdivision (a).

### 21 **PROPOSED PENALTY**

22 This matter consists of one count. The maximum penalty that may be imposed is \$5,000.<sup>10</sup>

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 purpose of the Act. Also, the  
25 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of

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26 <sup>9</sup> Fair Political Practices Commission, advice letter (Apr. 24, 2009) pp. 220.

27 <sup>10</sup> Section 83116, subd. (c).

1 any intention to conceal, deceive, or mislead; (c) whether the violation was deliberate, negligent, or  
2 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective amendments  
3 voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior record of  
4 violations.<sup>11</sup>

5 The City improperly used public funds to pay for the development, production, and distribution  
6 of a mass mailing that featured an elected officer. No evidence indicated an intent to deceive the public,  
7 particularly as the City Attorney immediately provided his assistance in the Enforcement Division's  
8 investigation concerning this matter soon after receiving notice that a case had opened against the City.  
9 The City's violation of the mass mailing prohibition was negligent. The City contends that staff were  
10 unaware of the prohibition and that a turnover in the City Manager position right before the time of the  
11 violation likely played a role in the letter not getting referred to the City Attorney. Additionally, when  
12 staff was made aware of the mass mailing prohibition, they took measures to cease distributing the letter.  
13 The water bills are generally mailed in two billing blocks, so only the first block received the letter with  
14 the bills. The evidence also does not show a pattern of violations, and the City does not have prior record  
15 of violating the Act.

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

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

22 As in the aforementioned case, the City sent over 200 copies of a letter at public expense and  
23 featured an elected officer's photograph, name, and title of, and other references to herself. For the  
24 foregoing reasons, a penalty of \$2,000 for the violation is recommended.

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26 <sup>11</sup> Regulation 18361.5, subd. (d).

1 **CONCLUSION**

2 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
3 Respondent City of Upland hereby agree as follows:

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

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

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

11 4. Respondent has consulted with its attorney Steven L. Flower of Richards, Watson &  
12 Gershon and understands, and hereby knowingly and voluntarily waives, any and all procedural rights  
13 set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes,  
14 but is not limited to the right to appear personally at any administrative hearing held in this matter, to be  
15 represented by an attorney at the Respondent’s own expense, to confront and cross-examine all witnesses  
16 testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial  
17 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially  
18 reviewed.

19 5. Respondent agrees to the issuance of the decision and order set forth below. Also, the  
20 Respondent agrees to the Commission imposing against it an administrative penalty in the amount of  
21 \$2,000. One or more cashier’s checks or money orders totaling said amount—to be paid to the General  
22 Fund of the State of California—is/are submitted with this stipulation as full payment of the  
23 administrative penalty described above, and same shall be held by the State of California until the  
24 Commission issues its decision and order regarding the matter.

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

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

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10 Dated: \_\_\_\_\_  
11 Galena West, Chief of Enforcement  
12 Fair Political Practices Commission

13 Dated: \_\_\_\_\_  
14 \_\_\_\_\_, on behalf of the City of Upland

1 The foregoing stipulation of the parties “In the Matter of City of Upland,” FPPC No. 18/228, is hereby  
2 accepted as the final decision and order of the Fair Political Practices Commission, effective upon  
3 execution below by the Chair.

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5 IT IS SO ORDERED.

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7 Dated: \_\_\_\_\_  
8 Richard C. Miadich, Chair  
9 Fair Political Practices Commission  
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