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

11 In the Matter of) FPPC No. 16/20109
12)
13 CITY OF FOUNTAIN VALLEY,) **STIPULATION, DECISION, AND ORDER**
14)
15 Respondent.)
16)
17)

18 **INTRODUCTION**

19 Respondent City of Fountain Valley (the “City”) is a suburban city in the County of Orange.
20 Under the Political Reform Act (the “Act”),¹ a local government agency that spends \$1,000 or more in
21 public funds to advocate for or against a ballot measure qualifies as a campaign committee and must
22 comply with all provisions of the Act related to campaign committees, including disclosing itself on
23 advertisements and filing campaign statements and reports. The City violated the Act by failing to include
24 a disclosure statement on an advertisement, sending prohibited campaign related mass mailing at public
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26 ¹ 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 expense, failing to timely file one 24-hour independent expenditure report, and failing to timely file one
2 semi-annual campaign statement.

3 **SUMMARY OF THE LAW**

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

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

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

10 One purpose of the Act is to promote transparency by ensuring that expenditures made in election
11 campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are
12 inhibited.⁴ In furtherance of this purpose, the Act establishes a comprehensive campaign reporting
13 system⁵ and requires any committee that supports or opposes a ballot measure to print its name as part of
14 any advertisement.⁶ Another purpose of the Act is to provide adequate enforcement mechanisms so the
15 Act will be “vigorously enforced.”⁷

16 **Government Agency as a Campaign Committee**

17 A “committee” is any person or combination of persons who, in a calendar year, receives
18 contributions totaling \$2,000 or more; makes independent expenditures totaling \$1,000 or more; or makes
19 contributions totaling \$10,000 or more to or at the behest of candidates or other committees.⁸ When a
20 state or local governmental agency uses public moneys for a communication that (1) expressly advocates
21 for or against a clearly identified candidate or ballot measure or (2) to unambiguously urge a particular
22 result in an election, the Act identifies that payment as an independent expenditure.⁹

24 ² Section 81001, subd. (h).

25 ³ Section 81003.

26 ⁴ Section 81002, subd. (a).

27 ⁵ Sections 84200, *et seq.*

28 ⁶ Section 84506.

⁷ Section 81002, subd. (f).

⁸ Section 82013.

⁹ Regulation 18420.1, subd. (a).

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

11 The Commission adopted Regulation 18420.1 based on the California Supreme Court’s decision
12 in *Vargas v. City of Salinas, et. al.* (2009) 46 Cal. 4th 1.¹² In *Vargas*, the Court relied heavily on its
13 decision in *Stanson v. Mott* (1976) 17 Cal. 3d 206. *Stanson* established the analysis for determining when
14 communications by a governmental agency that do not contain express advocacy still constitute campaign
15 activity. The Court went on to conclude that certain publicly financed literature that is not clearly
16 campaign material and that purports to contain only relevant factual information can be prohibited
17 campaign activity depending on the “style, tenor and timing of the publication.”¹³

18 Neither *Vargas* nor *Stanson* directly concerned any provisions of the Act. They were decided
19 based on the constitutional prohibition against unauthorized use of public funds. But since in those cases
20 the State Supreme Court had defined when government agencies are prohibited from using public moneys
21 to pay for communications related to ballot measures, the Commission adopted the parameters described
22 in *Vargas* for determining when a government agency makes contributions and independent expenditures
23 under the Act.¹⁴

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26 ¹⁰ Regulation 18420.1, subd. (b).

27 ¹¹ Regulation 18420.1, subd. (d).

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

¹³ *Stanson*, at 222.

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

1 **Campaign Related Mass Mailing Sent at Public Expense**

2 The Act prohibits sending a newsletter or other mass mailing at public expense if (1) the item is
3 a tangible item; (2) the item expressly advocates the qualification, passage, or defeat of a clearly identified
4 measure, or unambiguously urges a particular result in an election; (3) public moneys are paid to
5 distribute the item, or to prepare the item, for more than \$50, with the intent of sending the item; and (4)
6 more than 200 substantially similar items are sent during the course of an election.¹⁵ An item is
7 “substantially similar” to another item if both expressly advocate or unambiguously urge the election or
8 defeat of the same candidate or measure.¹⁶ The unambiguously urge standard and style, tenor, and timing
9 test discussed above apply to newsletters or other mass mailings sent at public expense.¹⁷

10 **Advertisement Disclosure**

11 An advertisement is any general or public advertisement which is authorized and paid for by a
12 committee for the purpose of supporting or opposing one or more ballot measures.¹⁸ Such an
13 advertisement, that is paid for by an independent expenditure, must include a disclosure statement that
14 identifies the name of the committee.¹⁹ “Paid for by” should immediately precede the committee’s name,
15 and all of the disclosure statement must be printed clearly and legibly in no less than 14-point bold, sans
16 serif type font.²⁰ Any person who violates the advertisement disclosure requirements of the Act is liable
17 in a civil or administrative action brought by the Commission for a fine up to three times the cost of the
18 advertisement, including placement cost.²¹

19 **Campaign Statements and Reports**

20 If a local government agency makes expenditures and qualifies as a committee, it must file
21 campaign statements.²² The Act requires independent expenditure committees to file a 24-hour
22 independent expenditure report within 24 hours of making an expenditure of \$1,000 or more during the
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24 ¹⁵ Section 89001; Regulation 18901.1, subd. (a).
25 ¹⁶ Regulation 18901.1, subd. (d).
26 ¹⁷ Regulation 18901.1, subds. (c) and (e).
27 ¹⁸ Section 84501, subd. (a); Regulation 18450.1, subd. (a)(2).
28 ¹⁹ Section 84506, subd. (a)(1).
 ²⁰ Section 84507; Regulation 18450.4, subd. (b).
 ²¹ Section 84510, subd. (a).
 ²² Regulation 18420, subd. (d).

1 90 days prior to an election and disclose that independent expenditure on a subsequent campaign
2 statement.²³ The report must include the committee’s name, committee’s address, number or letter of the
3 measure, jurisdiction of the measure, amount, date, and description of goods or services for which the
4 late independent expenditure was made.²⁴ The 90-day period for the 2016 General Election began on
5 August 10, 2016.

6 A committee also must file semi-annual campaign statements each year for the periods ending
7 June 30 and December 31 if they made independent expenditures during the 6-month period prior to
8 those dates.²⁵ Requiring local government agencies to file campaign reports and statements furthers the
9 Act’s purpose in disclosing expenditures made in election campaigns so that voters are fully informed
10 and improper practices are inhibited.²⁶

11 **SUMMARY OF THE FACTS**

12 On July 19, 2016, the Fountain Valley City Council voted to place Measure HH on the
13 November 8, 2016 General Election ballot. Measure HH imposed a one-cent sales tax which was
14 estimated to provide \$11.5 million annually for 20 years. Voters approved Measure HH with 59.8 percent
15 of the votes.

16 **Magazine Advertisements**

17 On or about August 18, 2016, the City purchased advertisement space to promote Measure HH
18 in Fountain Valley Living Magazine (the “FVL Magazine”), a privately-owned publication that
19 distributes approximately 25,000 copies of its magazine every month to Fountain Valley residents. The
20 Measure HH advertisements were published in the September 2016 and October 2016 issues of the FVL
21 Magazine. The City paid \$800 for each of the Measure HH advertisements, for a total cost of \$1,600, not
22 including the cost to produce the advertisements.²⁷

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²³ Sections 84200.6, subd. (b), and 84204.

25 ²⁴ Section 84204.

26 ²⁵ Section 84200, subd. (b).

27 ²⁶ Section 81002, subd. (a).

28 ²⁷ The City was unable to provide information regarding who had designed and drafted the advertisements and how much time had been dedicated to those tasks. This being the case, the Enforcement Division was unable to calculate the cost to produce the advertisements.

1 The Measure HH advertisements unambiguously urged a vote in favor of Measure HH. Firstly,
2 the Measure HH mass media advertisements clearly were campaign material. Likewise, the Measure HH
3 advertisements unambiguously urged a vote in favor of Measure HH when considering the style, tenor
4 and timing of the communication. The City had purchased advertisement space in FVL Magazine in the
5 past to communicate with its residents, but those examples differed significantly in tone and style from
6 the Measure HH magazine advertisements. Previous advertisements promoted City programs and events,
7 such as shopping at local Fountain Valley businesses, home improvement loans and grants, community
8 recreation classes, summer festivals, and senior transportation programs—none related to pending ballot
9 measures. They also mostly used concise language, pictures, and graphics to convey quick and simple
10 messages. The Measure HH advertisements, on the other hand, were long narratives concerning the
11 merits of and need for Measure HH.

12 The Measure HH advertisements also contained inflammatory and argumentative language, such
13 as “state of California has taken approximately \$100,000,000 of Fountain Valley’s money – causing
14 reductions to the services our residents rely on,” “[w]e all know that adequate firefighter staffing is
15 necessary to prevent crime and save lives,” and “reliable source of locally controlled funding that can’t
16 be taken by Sacramento,” to persuade residents to vote for Measure HH.

17 The Measure HH advertisement published in the October 2016 issue of the FVL Magazine
18 qualified the City as an independent expenditure committee, as the payment for that advertisement
19 exceeded the \$1,000 threshold. Despite the campaign related nature of the communication and the City’s
20 qualification as an independent expenditure committee, the magazine advertisement in the October 2016
21 issue of the FVL Magazine failed to display a proper advertisement disclosure statement. However, the
22 magazine advertisement showed the City’s seal, which might have suggested to the public that the City
23 paid for the advertisement.

24 **Other Campaign Activities**

25 On or around August 15, 2016, the City included a letter with every water bill mailed to its
26 residents. This letter contained a similar message to the Measure HH magazine advertisements, so the
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1 letter also unambiguously urged a vote in favor of Measure HH when considering its style, tenor, and
2 timing. The City paid a vendor \$150 to print and insert 15,000 copies of the letter with the water bill.

3 The City sent another letter, dated September 6, 2016, to “community leaders,” who the City
4 identified as people, including opponents, who were interested in the outcome of Measure HH. This letter
5 was printed on the City’s letterhead and also contained a similar message to the Measure HH magazine
6 advertisements, so the letter unambiguously urged a vote in favor of Measure HH when considering its
7 style, tenor, and timing. The City could not provide invoices or other documentation related to this letter
8 and informed the Enforcement Division that the letters were printed and mailed from the City’s mailroom
9 and that only 48 copies of the letter were sent. Accepting that only 48 copies of the letter were printed
10 and mailed by the City, the Enforcement Division estimated the cost of postage, ink, paper, and envelope
11 and calculated that the City paid approximately \$30 to print and mail copies of this letter.

12 **Campaign Statement and Report**

13 The City made independent expenditures totaling approximately \$1,780 in support of Measure
14 HH on September 28, 2016, when it paid for the advertisement space in the FVL Magazine. As a result,
15 the City also qualified as an independent expenditure committee on September 28, 2016. Nevertheless,
16 the City failed to timely file a 24-hour independent expenditure report by September 29, 2016 and a semi-
17 annual campaign statement by January 31, 2017 to disclose its activities in support of Measure HH.

18 **VIOLATIONS**

19 Count 1: Failure to Include Advertisement Disclosure Statements

20 The City failed to include a proper advertisement disclosure statement in its magazine
21 advertisement, in violation of Government Code sections 84506, subdivision (a)(1), and 84507; and
22 Regulation 18450.4, subdivision (b).

23 Count 2: Prohibited Campaign Related Mass Mailing Sent at Public Expense

24 The City sent two prohibited campaign related mass mailings at public expense on or around
25 August 15, 2016 and September 6, 2016, in violation of Government Code section 89001 and Regulation
26 18901.1.

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1 Count 3: Failure to Timely File a 24-Hour Independent Expenditure Report

2 The City failed to timely file one 24-hour independent expenditure report by September 29, 2016,
3 in violation of Government Code section 84204.

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

5 The City failed to timely file a semi-annual campaign statement for the period covering
6 July 1, 2016 through December 31, 2016 by January 31, 2017, in violation of Government Code section
7 84200, subdivision (b).

8 **PROPOSED PENALTY**

9 This matter consists of four counts. The maximum penalty that may be imposed is \$5,000 per
10 count.²⁸ The Commission also may impose a fine up to three times the cost of an advertisement when it
11 finds an advertisement disclosure violation.²⁹ In this matter, the maximum penalty of \$5,000 is higher
12 than a fine up to three times the cost of the October 2016 magazine advertisement. Therefore, the total
13 maximum penalty that may be imposed is \$20,000.

14 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
15 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
16 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers
17 the facts and circumstances of the violation in the context of the following factors set forth in Regulation
18 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused by the
19 specific violation; (2) The level of experience of the violator with the requirements of the Act;
20 (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence or absence
21 of any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate, negligent or
22 inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission staff or any
23 other governmental agency in a manner not constituting complete defense under Government Code
24 Section 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the violator has

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27 ²⁸ Section 83116, subd. (c)

28 ²⁹ Section 84510, subd. (a).

1 a prior record of violations of the Political Reform Act or similar laws; and (8) Whether the violator,
2 upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.³⁰

3 These violations caused a high degree of public harm, as they resulted in delayed transparency
4 for the public into the City's campaign activities. However, the Enforcement Division found that the
5 violations were negligent or inadvertent and that the evidence supports an absence of any intention to
6 conceal, deceive, or mislead the public. Each of the magazine advertisements and letters showed the
7 City's seal, which might have suggested to the public that the City paid for the advertisements and letters.
8 The City Attorney reviewed the advertisements and letters before they were published and distributed to
9 the public. The City Attorney approved the materials in question after determining that they were
10 informational. While the City demonstrated good faith in consulting with the City Attorney, the City did
11 not consult the Commission staff regarding the issues present in this matter.

12 The violations in this matter were isolated, as the City does not have a history of campaigning for
13 or against other ballot measures. The City does not have a prior record of violating the Act or similar
14 laws. Furthermore, the City filed a semi-annual campaign statement on February 3, 2021 to provide full
15 disclosure of campaign activities that occurred during the reporting period of January 1, 2016 through
16 November 8, 2016.

17 The Commission also considers penalties in prior cases with comparable violations. At the
18 February 18, 2021 Commission Meeting, the Commission directed the Enforcement Division to pursue
19 penalties at or above 90 percent of the maximum penalty when governmental agencies engage in
20 activities prohibited by the Act or fail to properly disclose or report campaign activities. Prior to
21 February 18, 2021, cases with similar violations include the following:

22 *In the Matter of San Francisco Bay Area Rapid Transit District (BART);* FPPC No. 16/19959.
23 (The Commission approved a stipulated decision on December 20, 2018.) BART made late independent
24 expenditures for two YouTube video advertisements in support of Measure RR during the 90-day period
25 preceding the November 8, 2016 General Election. BART failed to include a proper advertisement
26 disclosure statement in the two video advertisements, its Twitter and Facebook posts, and mass text

27 ³⁰ Regulation 18361.5, subd. (e).

1 messages. Additionally, BART failed to timely file a semi-annual campaign statement and two 24-hour
2 independent expenditure reports to disclose independent expenditures to the public. BART made
3 independent expenditures totaling \$7,791.66 to support Measure RR. The Commission approved a
4 penalty of \$3,500 for failing to include an advertisement disclosure statement; \$2,500 for failing to timely
5 file a 24-hour independent expenditure report; and \$1,500 for failing to file a semi-annual campaign
6 statement.

7 *In the Matter of Mesa Water District*; FPPC No. 16/19813. (The Commission approved a
8 stipulated decision on May 21, 2020.) Mesa Water District placed Measure TT on the November 8, 2016
9 General Election ballot. The District sent five prohibited mass mailings that unambiguously urged voters
10 to vote in favor of Measure TT. The District also paid for four newspaper advertisements in two local
11 newspapers to promote Measure TT. These campaign activities qualified the District as an independent
12 expenditure committee, but the District failed to include proper advertisement disclosure statements in
13 its newspaper advertisements. The District also failed to timely file eight 24-hour independent
14 expenditure reports and a semi-annual campaign statement to disclose to the public its campaign activities
15 totaling approximately \$42,151.40. The Commission approved a penalty of \$5,000 for sending prohibited
16 campaign related mass mailings at public expense; \$3,500 for failing to include advertisement disclosure
17 statements; \$4,000 for failing to timely file 24-hour independent expenditure reports; and \$2,000 for
18 failing to timely file a semi-annual campaign statement.

19 For Count 1, similar to *BART* and *Mesa Water*, the City failed to include a proper advertisement
20 disclosure statement in its advertisement supporting a local ballot measure but did not attempt to conceal
21 who had paid for the advertisement. Unlike in *BART* and *Mesa Water*, the City engaged residents in less
22 campaign activities, which cost the City approximately \$1,780. Like *BART* and *Mesa Water*, the City
23 fully cooperated with the Enforcement Division's investigation and contends that it did not intend to
24 produce advertisements that constituted campaign activity.

25 For Counts 3 and 4, the City failed to timely file a 24-hour independent expenditure report and a
26 semi-annual campaign statement disclosing campaign activity using public funds to support a local ballot
27 measure, just as in *BART* and *Mesa Water*.

1 Because of the high degree of public harm, the Commission expressed a desire to pursue penalties
2 at or above 90 percent of the maximum penalty when a governmental agency fails to properly disclose
3 or report its campaign activities or engages in activities prohibited by the Act. For the foregoing reason,
4 a penalty of \$4,500 each for Counts 1 through 4 are recommended, for a total in the amount of \$18,000.

5 **CONCLUSION**

6 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
7 Respondent City of Fountain Valley hereby agree as follows:

8 1. The City violated the Act as described in the foregoing pages, which are a true and
9 accurate summary of the facts in this matter.

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

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

15 4. The City has consulted with its attorney, Colin Burns of Harper & Burns LLP, and
16 understands, and hereby knowingly and voluntarily waives, any and all procedural rights set forth in
17 Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not
18 limited to the right to appear personally at any administrative hearing held in this matter, to be represented
19 by an attorney at the City’s own expense, to confront and cross-examine all witnesses testifying at the
20 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
21 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

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

