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3 **FAIR POLITICAL PRACTICES COMMISSION**
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of) FPPC No. 09/804
13)
14 PROTECT BURLINGAME AND KEVIN) STIPULATION, DECISION and
OSBORNE) ORDER
15)
16 Respondents.)
17

18 Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission,
19 and Respondents Protect Burlingame and Kevin Osborne agree that this Stipulation will be submitted for
20 consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of Respondents, pursuant to Section 83116 of the Government Code.

24 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to, the
27 right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondents Protect Burlingame and Kevin Osborne
4 violated the Political Reform Act by failing to include a proper sender identification on two mass
5 mailings in violation of Section 84305, subdivision (a), of the Government Code. This count is
6 described in Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth
7 herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

8 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
9 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
10 of Two Thousand Five Hundred Dollars (\$2,500). A cashier's check from Respondents in said amount,
11 made payable to the "General Fund of the State of California," is submitted with this Stipulation as full
12 payment of the administrative penalty, to be held by the State of California until the Commission issues
13 its decision and order regarding this matter. The parties agree that in the event the Commission refuses
14 to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
15 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in
16 connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and
17 agree that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
18 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
19 shall be disqualified because of prior consideration of this Stipulation.
20

21 Dated: _____
22 Roman G. Porter, Executive Director
23 Fair Political Practices Commission

24
25 Dated: _____
26 Kevin Osborne, Respondent,
27 Individually and on behalf of
28 Protect Burlingame

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Protect Burlingame and Kevin
3 Osborne,” FPPC No. 09/804, including all attached exhibits, is hereby accepted as the final decision and
4 order of the Fair Political Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent Protect Burlingame (“Respondent Committee”) was a general purpose committee which advocated for the passage of two measures on the ballot in Burlingame in the November 3, 2009 election. Respondent Kevin Osborne was, at all times relevant, treasurer of Respondent Committee. Measure H, which increased an occupancy tax on hotel rooms, and Measure I, a proposition to make the position of City Clerk appointive rather than elective, both passed.

Prior to the election, Respondents paid for and sent two mailers supporting Measures H and I. However, these mailers did not accurately identify the sender on the outside of each piece of mail in a mass mailing, in violation of the Political Reform Act (the “Act”).¹

For the purposes of this Stipulation, Respondents’ violation of the Act is stated as follows:

COUNT 1: On or about October 6, 2009, Respondents Protect Burlingame and Kevin Osborne caused to be sent two separate mass mailers supporting Measures H and I in the November 3, 2009, election, which failed to display required sender identification, in violation of Government Code Section 84305, subdivision (a).

SUMMARY OF THE LAW

Sender Identification Requirements

Section 84305, subdivision (a), requires candidates and committees to properly identify themselves when sending a mass mailing. Specifically, the statute provides that no candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing.

Section 82041.5 defines a “mass mailing” as over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry. Regulation 18435, subdivision (a), clarifies this section, and further defines a mass mailing as over two hundred substantially similar pieces of mail sent in a calendar month. Regulation 18435, subdivision (b), defines the term “sender,” as used in Section 84305, as the candidate or committee who pays for the largest portion of expenditures attributable to the designing, printing or posting of the mailing.

¹The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. 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 Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Liability of Committee Treasurers

Under Section 81004, subdivision (b), Section 84100, and Regulation 18427, subdivision (a), it is the duty of the committee's treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. A committee's treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee. (Sections 83116.5 and 91006.)

SUMMARY OF THE FACTS

This case was opened as the result of a complaint that alleged Respondents Protect Burlingame and Kevin Osborne were responsible for sending mass mailers which lacked proper sender identification information. The "Yes on Measure I" mailer lacked any sender identification, and the sender identification on the "Yes on H" said only, "Paid for by Protect Burlingame, FPPC # 80-0317956." However, this number is not a committee identification number issued by the Office of the Secretary of State.

After an investigation, Respondents Protect Burlingame and Kevin Osborne were determined to be the sender of the mailers. Records obtained from the printer establish that Respondents spent a total of \$2,369.18 on the printing two separate mass mailers, advocating the passage of Measures H and I. Approximately 7,000 copies of each mailer were sent to Burlingame residents. Respondents were required to provide the name, street address, and city of the committee on the outside of each piece of mail in a mass mailing. None of the mailers included this information.

By failing to provide sender identification on a mass mailer, Respondents violated Section 84305, subdivision (a), of the Government Code.

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of Five Thousand Dollars (\$5,000).

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, liability under the Act is governed in significant part by the provisions of Section 91001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

The failure to provide proper sender identification on a mass mailer is a serious violation of the Act, as it deprives the public of important information regarding the sponsor of the mailing.

AGGRAVATING FACTORS

The public harm inherent in campaign reporting violations, where pertinent information is not disclosed, is that the public is deprived of important information such as the amounts expended by the campaign and information about the recipients and reasons for the expenditures.

By not providing the true source of the mailers, Respondents misled the public into thinking the mailers were provided by a third party, other than the candidates up for recall.

MITIGATING FACTORS

Respondent Committee included the name on one of the mailers. Also, Respondents do not have any prior enforcement history, have no prior experience with campaign reporting, and cooperated fully during the investigation with the Enforcement Division staff in this matter.

PENALTY

The typical administrative penalty for this kind of violation has historically been in the middle of the penalty range, depending on the circumstances of the violation. After a review of the mitigating and aggravating factors, the imposition of Two Thousand Five Hundred Dollars (\$2,500) is appropriate.