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7  
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**  
9 **STATE OF CALIFORNIA**

10  
11 In the Matter of:

FPPC No. 12/374

12  
13 CALIFORNIA VOTER GUIDE and  
GARY CRUMMITT

STIPULATION, DECISION, AND ORDER

14 Respondents.  
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17 **STIPULATION**

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
19 respondents California Voter Guide and Gary Crummitt (Respondents) hereby agree that this Stipulation  
20 will be submitted for consideration by the Fair Political Practices Commission at its next regularly  
21 scheduled meeting.

22 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this  
23 matter and to reach a final disposition without the necessity of holding an additional administrative  
24 hearing to determine the liability of Respondents.

25 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural  
26 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of  
27 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to  
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1 personally appear at any administrative hearing held in this matter, to be represented by an attorney at  
2 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to  
3 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over  
4 the hearing as a hearing officer, and to have the matter judicially reviewed.

5 It is further stipulated and agreed that Respondents violated the Political Reform Act by sending  
6 two slate mailers electronically that did not display the address and city of the Respondents in violation  
7 of Section 84305.5, subdivision (a)(1) as described in Exhibit 1. Exhibit 1 is attached hereto and  
8 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of  
9 the facts in this matter.

10 Respondents agree to the issuance of the Decision and Order, which is attached hereto.  
11 Respondents also agree to the Commission imposing an administrative penalty in the total amount of  
12 Three Thousand Dollars (\$3,000). Respondents submitted with this Stipulation a cashier's check from  
13 Respondents in said amount, made payable to the "General Fund of the State of California," as full  
14 payment of the administrative penalty that shall be held by the State of California until the Commission  
15 issues its Decision and Order regarding this matter. The parties agree that in the event the Commission  
16 refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days  
17 after the Commission meeting at which the Stipulation is rejected, all payments tendered by  
18 Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents  
19 further stipulate and agree that in the event the Commission rejects the Stipulation, and a full evidentiary  
20 hearing before the Commission becomes necessary, neither any member of the Commission, nor the  
21 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

22  
23 Dated: \_\_\_\_\_ Gary S. Winuk, on behalf of the Enforcement Division  
24 Fair Political Practices Commission

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26 Dated: \_\_\_\_\_ Gary Crummitt, individually, and on behalf of  
27 California Voter Guide, Respondents

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of California Voter Guide” FPPC No.  
3 12/374, including all attached exhibits, is hereby accepted as the final decision and order of the Fair  
4 Political Practices Commission, effective upon execution below by the Chairman.

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6 IT IS SO ORDERED.

7  
8 Dated: \_\_\_\_\_

\_\_\_\_\_ Ann Ravel, Chair  
Fair Political Practices Commission

## **EXHIBIT 1**

### **INTRODUCTION**

Respondent California Voter Guide (“Respondent Organization”) is a slate mailer organization. Respondent Gary Crummitt (“Respondent Crummitt”) is the treasurer for Respondent Organization. Under the Political Reform Act (the “Act”)<sup>1</sup>, a slate mailer organization must include the name, street address, and city of the organization on any slate mailer it sends out. Electronic versions of slate mailers are subject to these requirements as well. As set forth below, Respondents violated the Act by sending out two electronic slate mailers that did not include the Respondent Organization’s street address and city.

For purposes of this Stipulation, the proposed violations of the Act are as follows:

**COUNT 1:** On May 31, 2012, Respondents sent a slate mailer electronically that did not display the address and city of the Respondent Organization in violation of Section 84305.5, subdivision (a)(1).

**COUNT 2:** On June 1, 2012, Respondents sent a slate mailer electronically that did not display the address and city of the Respondent Organization in violation of Section 84305.5, subdivision (a)(1).

### **SUMMARY OF THE LAW**

#### **Definition of Slate Mailer**

A “slate mailer” is a mass mailing that supports or opposes a total of four or more candidates or ballot measures. (Section 82048.3.) A “mass mailing” is 200 or more substantially similar pieces of mail. (Section 82041.5.)

#### **Definition of Slate Mailer Organization**

Section 82048.4 defines a “slate mailer organization” as any person who directly or indirectly (1) is involved in the production of one or more slate mailers and exercises control over the selection of the candidates and measures to be supported or opposed in the mailer, and (2) receives or is promised payments totaling \$500 or more in a calendar year for the production of one or more slate mailers.

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<sup>1</sup> The 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.

## **Slate Mailer Organization Identification Requirements**

A slate mailer organization must include its name, street address, and city of the organization on each piece of slate mail it sends out. (Section 84305.5, subd. (a)(1).) The slate mailer identification requirements in Section 84305.5 apply to slate mailers distributed electronically. (Regulation 18435.5, subd. (d).)

### **Treasurer Liability**

Section 84108 requires slate mailer organizations to comply with Section 84100, which requires the entity to have a treasurer. Sections 83116.5 and 91006 provide that a treasurer may be held jointly and severally liable, along with the organization, for any violations of the Act.

### **SUMMARY OF THE FACTS**

Respondents sent a mass electronic mail message on May 31, 2012 endorsing eight candidates running for various state and local offices in the June 2012 primary election. (See attached email labeled Exhibit A.) The mailer also expressed support for two statewide ballot propositions. Respondents sent an identical mass electronic mail message on June 1, 2012. (See attached email labeled Exhibit B.) The mailers did not include the street address or city of Respondent Organization. Respondents' Campaign Statement (Form 401) for the period between March 18, 2012 and May 19, 2012 shows Respondents received total payments for the calendar year in the amount of \$396,747.78 for production of slate mailers, well in excess of the \$500 minimum needed to qualify as a slate mailer organization.

#### **COUNT 1**

##### **Failure to include Identifying Information on Slate Mailer**

On May 31, 2012, Respondents sent an electronic slate mailer. The slate mailer did not display the address and city of the Respondent Organization in violation of Section 84305.5, subdivision (a).

#### **COUNT 2**

##### **Failure to include Identifying Information on Slate Mailer**

On June 1, 2012, Respondents sent an electronic slate mailer. The slate mailer did not display the address and city of the Respondent Organization in violation of Section 84305.5, subdivision (a).

### **CONCLUSION**

This matter consists of two counts of violating the Act, which carry a maximum administrative penalty of five thousand dollars (\$5,000) per count.

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, the Commission considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondents demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

The only recent similar cases involving a violation of Section 84305.5 was *In the Matter of Paul Fickas and Decline to State Voter Guide, FPPC No. 10/959*. In that case, the respondents improperly identified all candidates as having contributed to pay for a slate mailer when in fact one candidate had not contributed. The respondents had no prior experience with producing slate mailers and did not make any effort to ensure they were in compliance with the Act. However, respondents had no prior history of violating the Act and it did not appear they intended to deceive voters. The Commission approved a penalty of \$1,500 on September 22, 2011 for this violation.

For additional comparisons, Section 84305, subdivision (a) concerns identification of mass mailers and is similar to Section 84305.5 in that it requires senders of mass mailers to include on the mailer the name, street address, and city of the person sending the mailer. Similar cases involving a violation of Section 84305 that the Commission recently approved include:

*In the Matter of Peter Cuthbert, FPPC No. 10/1000*: Respondent produced a mailer advocating the election of three local candidates that did not identify the respondent as the sender. The respondent had no experience with campaign reporting and no prior violations of the Act. The Commission approved a penalty of \$2,500 on October 13, 2011 for this violation.

*In the Matter of LA County Firefighters Local 1014 Organized, Ready & Committed in Emergencies, and John Smolin, Treasurer, FPPC No. 11/1026*: Respondents produced two mailers that made very serious negative allegations against a candidate. The mailers did not properly disclose the sender's name. They did include an acronym by which the respondent committee was known, as well as the address of the respondent committee. The Commission approved a penalty of \$2,250 per count on April 5, 2012 for the two violations.

In the case now before the Commission, Respondents failed to provide identifying information on the mailers expressing support for certain candidates and ballot measures. The failure to provide proper sender identification for a slate mailer deprives the public of important information regarding the sponsor of the mailing.

Respondent Organization has been a slate mailer organization for a number of years so it, and its treasurer, should be very familiar with the requirements of the Act. But Regulation 18435.5, subdivision (d), which explicitly makes electronic slate mailers subject to the same requirements as paper slate mailers, was fairly new at the time of the violations, having been adopted by the Commission in February of 2011.

Respondents do not have a history of violating the Act. Also, there is no indication that Respondents intended to deceive the voters as to the source of the mailer since Respondent

Organization's name appears on the mailer, as does the "Notice to Voters" indicating that Respondent Organization is not a political party and that the candidates paid to appear on the mailer. It appears Respondents' violations were negligent at worst.

### **PROPOSED PENALTY**

After considering the factors of Regulation 18361.5, including whether the violations in question was inadvertent, negligent or deliberate and the Respondent's history of compliance, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of One Thousand Five Hundred Dollars (\$1,500) per violation for a total penalty of Three Thousand Dollars (\$3,000) is recommended.