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

10
11 In the Matter of:

FPPC No. 13/924

12 City of Temecula and Jeff Comerchero,

STIPULATION, DECISION AND ORDER

13 Respondents.
14

15 **STIPULATION**

16 Complainant Fair Political Practices Commission and Respondents City of Temecula and Jeff
17 Comerchero hereby agree that this Stipulation will be submitted for consideration by the Fair Political
18 Practices Commission at its next regularly scheduled meeting.

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

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

1 As described in Exhibit 1, it is further stipulated and agreed that Respondents City of Temecula
2 and Jeff Comerchero violated the Political Reform Act by: 1) Producing and sending 15,000 of a 2012-
3 2013 Brochure at public expense, on or about July 12, 2012, which featured Jeff Comerchero, an elected
4 official, in violation of Section 89001 (1 Count); and 2) Producing and sending 15,021 of a 2013-2014
5 Brochure at public expense, on or about June 27, 2013, which featured Jeff Comerchero, an elected
6 official, in violation of Section 89001 (1 Count). Exhibit 1, which is attached hereto and incorporated by
7 reference as though fully set forth herein, 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, and
9 Respondents agree to the Commission imposing upon them an administrative penalty in the amount of
10 \$4,000. A cashier's check or money order from Respondents totaling said amount, made payable to the
11 "General Fund of the State of California," is submitted with this Stipulation as full payment of the
12 administrative penalty and shall be held by the State of California until the Commission issues its
13 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to
14 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 Dated: _____

Gary S. Winuk, Enforcement Chief,
on behalf of the Fair Political Practices
Commission

21
22
23 Dated:

Jeff Comerchero, Respondent

24
25 Dated: _____

Aaron Adams, City Manager, on behalf of the City
of Temecula

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of City of Temecula and Jeff
3 Comerchero,” FPPC No. 13/924, including all attached exhibits, is hereby accepted as the final decision
4 and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

5
6 IT IS SO ORDERED.

7
8 Dated: _____

9 _____
Sean Eskovitz, Vice Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondents are the City of Temecula (“Respondent Temecula”), located in Riverside County, California, and Jeff Comerchero, an elected Temecula City Councilmember and President of Temecula Community Services District (“Respondent Comerchero”). In this matter, on or about July 12, 2012 and June 27, 2013, Respondents Temecula and Comerchero sent two brochures, at public expense, featuring Respondent Comerchero, an elected member of the Temecula City Council, with a message by, signature of and photo of Respondent Comerchero.

For the purposes of this stipulation, Respondents’ violations of the Political Reform Act (the “Act”)¹ are stated as follows:

COUNT 1: Respondents City of Temecula and Jeff Comerchero, an elected member of the Temecula City Council, produced and sent 15,000 of a 2012-2013 Brochure at public expense, on or about July 12, 2012, which featured Jeff Comerchero, in violation of Section 89001.

COUNT 2: Respondents City of Temecula and Jeff Comerchero, an elected member of the Temecula City Council, produced and sent 15,021 of a 2013-2014 Brochure at public expense, on or about June 27, 2013, which featured Jeff Comerchero, in violation of Section 89001.

SUMMARY OF THE LAW

Mass Mailing at Public Expense

A “mass mailing” is defined by Section 82041.5 of the Act to be 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.

No mass mailing may be sent at public expense. (Section 89001). FPPC Regulation 18901, subdivision (a), provides that a mailing is prohibited under Section 89001 if all of the following criteria are met:

- (1) Any item sent is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box. The item delivered must be a tangible item, such as a written document.

¹ 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.

- (2) Features an elected officer affiliated with the agency which produces or sends the mailing. An item features an elected officer when the item includes, among other things, the elected officer's photograph or signature. (Regulation 8901, (c)(2).) A mailing containing the name, office, photograph or any other reference to an elected officer who consults or acts in concert with the agency to prepare or send the mailing also fulfills the second criteria.
- (3) Costs of design production and printing exceeding \$50.00 are paid with public moneys, and the design, production or printing is done with the intent of sending the item other than as permitted by this regulation, and
- (4) More than two hundred substantially similar items are sent, in a single calendar month.²

SUMMARY OF THE FACTS

Respondents are Respondent Temecula, located in Riverside County, California, and Respondent Comerchero, a Temecula City Councilmember and President of Temecula Community Services District. In this matter, on or about July 12, 2012 and June 27, 2013, Respondents sent two brochures, at public expense, featuring Respondent Comerchero, an elected member of the Temecula City Council. Each brochure promoted the Old Town Temecula Community Theater events, which is operated and funded by the City of Temecula as part of the Temecula Community Services District. The inside of the cover of each of the brochures contained a photo of Jeff Comerchero, an elected City Councilmember and President of Temecula Community Services District, along with a message by and signature of Mr. Comerchero.

According to invoices and receipts, 15,000 of the 2012-2013 Brochures were sent on or about July 12, 2012. The cost to design, print and postage of approximately \$26,637 was paid for by Respondent Temecula.

According to invoices and receipts, 15,021 of the 2013-2014 Brochures were sent on or about June 27, 2013. The cost to design, print and postage of approximately \$18,982 was paid for by Respondent Temecula.

After contact with the Enforcement Division, Respondents have changed the 2013-2014 Brochure to be in compliance with the requirements of the Act.

COUNT 1 **Mass Mailing at Public Expense**

On or about July 12, 2012, Respondent Temecula, a public agency, paid for the cost to design, print and postage of approximately 15,000 of the 2012-2013 Brochures, which featured Respondent Comerchero, an elected Temecula City Councilmember and President of Temecula Community Services District, including a photo, message and signature of Respondent Comerchero.

² Regulation 18901, subd. (b), contains numerous exceptions to the mass mailing prohibition, none of which apply in this instance.

By paying for and sending the 2012-2013 Brochure, featuring an elected official, to approximately 15,000 residents, Respondents violated Government Code section 89001.

COUNT 2
Mass Mailing at Public Expense

On or about June 27, 2013, Respondent Temecula, a public agency, paid for the cost to design, print and postage of approximately 15,021 of the 2013-2014 Brochures, which featured Respondent Comerchero, an elected Temecula City Councilmember and President of Temecula Community Services District, including a photo, message and signature of Respondent Comerchero.

By paying for and sending the 2013-2014 Brochure, featuring an elected official, to approximately 15,021 residents, Respondents violated Government Code section 89001.

CONCLUSION

This matter consists of two counts of violating the Act carrying a maximum administrative penalty of \$5,000 per violation, for a total of \$10,000.

In determining the appropriate penalty for a particular violation of the Act, the Fair Political Practices Commission (“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 Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether the Respondent, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Using public funds to pay for the design and production of a mass mailing featuring an elected officer can be a serious violation of the Act as it misuses public funds for prohibited purposes. The typical administrative penalty for a public funded mass mailing violation, depending on the facts of the case, has been in the mid range of available penalties. Recent fines approved by the Commission for sending a newsletter or mass mailing featuring an elected officer at public expense include:

In the Matter of San Gabriel Unified School District, FPPC No. 07/701, at the February 11, 2010 Commission meeting, the Commission approved a fine of \$3,000 for one count of using public funds to design and produce a mass mailing which featured two elected officers of the school district. In aggravation, the purpose of the mailers was to support the passage of a bond measure and the mailers were campaign style mailers that featured a Board Member during her re-election campaign. In mitigation, the superintendent attempted to rectify the situation by advising Board Members and had the cost of printing and postage reimbursed, they cooperated with the investigation and have no prior enforcement history.

In the Matter of Yorba Linda Water District and Michael Beverage, FPPC No. 11/499, in December 2012, the Commission approved a penalty of \$2,000 for one count of sending a newsletter at public expense that featured Respondent Michael Beverage, an elected member of the Yorba Linda Water District, in violation of Government Code section 89001. In this matter, the violation included one newsletter, the cost to the public was relatively low, Respondents cooperated with the investigation and have no prior Enforcement history.

In this matter, Respondents sent a prohibited mass mailer at public expense for two consecutive years. However, Respondents cooperated with the investigation, changed the 2013-2014 Brochure to be in compliance with the Act, and have no prior history with the Enforcement Division.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the Respondents' pattern of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of \$2,000 for each Count is recommended, for a total penalty of \$4,000.