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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

FPPC No. 14/1104

12 EL DORADO IRRIGATION DISTRICT,
13 Respondent.
14

STIPULATION, DECISION AND ORDER

15 **STIPULATION**

16 Complainant Fair Political Practices Commission and Respondent El Dorado Irrigation District
17 hereby agree that this Stipulation will be submitted for consideration by the Fair Political Practices
18 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 Respondent, pursuant to section 83116 of the Government Code.

22 Respondent understands, and hereby knowingly and voluntarily waives, 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 Respondent El Dorado Irrigation
2 District violated the Political Reform Act by producing and sending over 200 substantially similar
3 newsletters in a calendar month, which included a photo featuring all of the Board Members in violation
4 of Section 89001 (1 Count). Exhibit 1, which is attached hereto and incorporated by reference as though
5 fully set forth herein, is a true and accurate summary of the facts in this matter.

6 Respondent agrees to the issuance of the Decision and Order, which is attached hereto, and
7 Respondent agrees to the Commission imposing upon them an administrative penalty in the amount of
8 \$1,500. A cashier's check or money order from Respondent totaling said amount, made payable to the
9 "General Fund of the State of California," is submitted with this Stipulation as full payment of the
10 administrative penalty and shall be held by the State of California until the Commission issues its
11 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to
12 accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
13 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in
14 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and
15 agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the
16 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
17 shall be disqualified because of prior consideration of this Stipulation.

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19 Dated: _____

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

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21
22 Dated:

Jim Abercrombie, General Manager, on behalf of
El Dorado Irrigation District, Respondent

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of the El Dorado Irrigation District,” FPPC No. 14/1104, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent is the El Dorado Irrigation District (“Respondent”), located in El Dorado County, California. In this matter, Respondent sent a January-February 2013 newsletter, “The Waterfront,” at public expense, including a photo featuring all of the elected El Dorado Irrigation District Board Members (“Board”) on the front page.

For the purposes of this stipulation, Respondent’s violation of the Political Reform Act (the “Act”)¹ is stated as follows:

COUNT 1: Respondent El Dorado Irrigation District produced and sent over 200 January-February 2013 newsletters, “The Waterfront,” at public expense, which included a photo featuring all of the elected El Dorado Irrigation District Board Members on the front page, 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.
- (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.

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.

- (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

Respondent is public agency that serves residents of El Dorado County, California. In this matter, Respondent sent a January-February 2013 newsletter, “The Waterfront,” at public expense, including a photo featuring all of the elected Board Members on the front page. The photo included the Board Member George Osborne, the newly elected Board President by the Board, the outgoing Board President Bill George, Board Member George Wheeldon, newly elected Board Vice President by the Board, the Division 5 Representative Alan Day and the Division 2 Representative John Fraser. According to Respondent, “The Waterfront” is a newsletter sent to each customer with their bill. Respondent serves over 100,000 residents in El Dorado County.

According to Respondent’s General Manager, the newsletter “The Waterfront,” is prepared exclusively by Respondent staff and staff was unaware this picture violated the requirements of the Act. After contact with the Enforcement Division, Respondent stated that staff has been advised of the requirements of the Act.

Count 1 **Mass Mailing at Public Expense**

Respondent sent a January-February 2013 newsletter “The Waterfront” to each customer served in El Dorado County with their bill, at public expense, including a photo featuring all of the Board Members on the front page. The photo included the newly elected Board President George Osborne, the outgoing Board President Bill George, the Elected Vice-President George Wheeldon, the Division 5 Representative Alan Day and the Division 2 Representative John Fraser.

By paying for and sending over 200 substantially similar newsletters in a calendar month, including a photo featuring newly elected Board Members, Respondent violated Government Code section 89001.

CONCLUSION

This matter consists of one count of violating the Act carrying a maximum administrative penalty of \$5,000.

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

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

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 the City of Rocklin; FPPC No. 14/346, in June 2014, the Commission approved a penalty of \$2,000 for one count of sending a mailer at public expense. In this matter, Respondent, the City of Rocklin, produced and sent 30,000 copies of the "Inside Rocklin" mailer at public expense, in April of 2014, which featured the mayor and members of the city council, including a message from the mayor, in violation of Government Code Section 89001. In this matter, Respondent cooperated with the investigation and had 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, including a letter signed by Respondent Michael Beverage and two photos of Respondent Michael Beverage, 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, Respondent sent a prohibited mass mailer at public expense. However, Respondent cooperated with the investigation, met with Respondent staff to ensure compliance with the Act in the future and have no prior history with the Enforcement Division. Additionally, "The Waterfront" did not include a message from the elected officials, as indicated in the two prior comparable cases.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of \$1,500 is recommended.