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

10
11 In the Matter of) FPPC No. 12/782
12)
13)
14) **SOUTHERN CALIFORNIA) STIPULATION, DECISION and ORDER**
15) **TAXPAYERS ASSOCIATION,**)
16) **SPONSORED BY AND WITH MAJOR)**
17) **FUNDING FROM MILAN REI IV, LLC,**)
18) **BARRETT GARCIA, and ANN)**
19) **GARRETT)**
20)
21)
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28)
Respondent.

19 **STIPULATION**

20 Complainant, the Fair Political Practices Commission, and Respondents Southern California
21 Taxpayers Association, sponsored by and with major funding from Milan REI IV, LLC, Barrett Garcia
22 and Ann Garrett, hereby agree that this Stipulation will be submitted for consideration by the Fair
23 Political Practices Commission at its next regularly scheduled meeting.

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

27 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
28 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of

1 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
2 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
3 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
4 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
5 the hearing as a hearing officer, and to have the matter judicially reviewed.

6 It is further stipulated and agreed that Respondents violated the Political Reform Act by failing
7 to display required committee identification in advertisements, in violation of Government Code
8 Section 84504, subdivision (c) (1 count), as described in Exhibit 1. Exhibit 1 is attached hereto and
9 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of
10 the facts in this matter.

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

24
25 Dated: _____

26 Gary S. Winuk, on Behalf of the Enforcement Division
27 Fair Political Practices Commission

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1 Dated: _____

Barrett Garcia, Respondent, individually and on behalf of
Southern California Taxpayers Association, sponsored by and
with major funding from Milan REI IV, LLC, Respondent

4 Dated: _____

Ann Garrett, Respondent

7 **DECISION AND ORDER**

8 The foregoing Stipulation of the parties “In the Matter of Southern California Taxpayers
9 Association, sponsored by and with major funding from Milan REI IV, LLC, Barrett Garcia, and Ann
10 Garrett” FPPC Case No. 12/782, including all attached exhibits, is hereby accepted as the final decision
11 and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

12 IT IS SO ORDERED.

13 Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Southern California Taxpayers Association, sponsored by and with major funding from Milan REI IV, LLC (“Respondent SCTA”) was a primarily formed committee supporting Measure FF in the City of Orange in the November 6, 2012 General Election. At all relevant times, Respondent Barrett Garcia (“Respondent Garcia”) was the treasurer of Respondent SCTA. At all relevant times, Respondent Ann Garrett (“Respondent Garrett”) was the principal officer of Respondent SCTA.

This matter arose out of a sworn complaint alleging violations concerning a series of lawn signs in Orange, CA, supporting local Measure FF on the November 2012 ballot. These signs did not disclose any identifying information regarding who paid for the signs. Under the Political Reform Act (the “Act”)¹, advertisements such as lawn signs must disclose the name of the committee(s) who paid for the advertisements. The investigation in this matter revealed that Respondents used Respondent SCTA funds to pay for the yard signs identified in the complaint, and failed to disclose Respondent SCTA’s name on those yard signs, in violation of the Act.

For the purposes of this Stipulation, Respondents violated the Act as follows:

COUNT 1: On or about September 10, 2012, Respondents Southern California Taxpayers Association, sponsored by and with major funding from Milan REI IV, LLC, Barrett Garcia, and Ann Garrett, used Respondent SCTA funds to pay for and cause to be sent an advertisement in the form of 750 lawn signs supporting Measure FF in the City of Orange in the November 6, 2012, election, which failed to display required committee identification, in violation of Government Code Section 84504, subdivision (c).

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violations in question.

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that the contributions and expenditures affecting election campaigns are fully and truthfully disclosed to the public, so that voters may be better informed, and improper practices may be inhibited. The Act therefore requires persons who pay for advertisements supporting or opposing ballot measures to properly identify themselves in the advertisements.

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.

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

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes. Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.” (Section 81002, subd. (f).)

Committee Definitions

Section 82013, subdivision (a) of the Act includes within the definition of “committee” any person or combination of persons who receives contributions of \$1,000 or more during a calendar year. This type of committee is commonly referred to as a “recipient committee.” Under Section 82047.5, a primarily formed committee includes a recipient committee which is formed or exists primarily to support or oppose a ballot measure.

Advertisement

Under the Act, an “advertisement” means any general or public advertisement which is authorized and paid for by a person or committee for the purpose of supporting or opposing a candidate for elective office or a ballot measure or ballot measures. (Section 84501.) An advertisement as defined in Section 84501 includes yard signs produced in quantities of more than 200. (Regulation 18450.1, subd. (a)(5).)

Advertisement Disclosure

The Act requires any committee which supports or opposes a ballot measure, to print or broadcast its name as part of any advertisement or other paid public statement. (Section 84504, subd. (c).) The disclosure must include the words “paid for by” in the same manner as, and immediately adjacent to and above, or immediately adjacent to and in front of, the required identification, and for lawn signs, must constitute at least five percent (5%) of the height of the advertisement and printed in a contrasting color. (Regulation 18450.4, subd. (b).)

Remedies for Violations; Fines

In addition to the remedies provided for in Chapter 11 (commencing with Section 91000) of the Act, any person who violates Section 84503 or 84504 of the Act is liable in a civil or administrative action brought by the Commission or any person for a fine up to three times the cost of the advertisement, including placement costs. This also applies to any person who purposely causes any other person to violate any provision of this article or who aids and abets any other person in a violation. (Section 84510.)

Treasurer and Principal Officer Liability

As provided in Section 84100, every committee shall have a treasurer. Under Regulation 18402.1, the principal officer of a committee is responsible for approving the political activity of

the committee including, but not limited to, authorizing the content of the communications made by the committee, authorizing expenditures, including contributions, on behalf of the committee, and determining the committee's campaign strategy.

Under Sections 81004 and 84100, and Regulations 18402.1, and 18427, it is the duty of the treasurer and the principal officer of a committee to ensure that the committee complies with the Act. A committee treasurer and the principal officer may be held jointly and severally liable, along with the committee, for violations committed by the committee. (Sections 83116.5, 84104 and 91006; and Regulations 18316.6 and 18402.1.)

SUMMARY OF THE FACTS

Respondent Southern California Taxpayers Association, sponsored by and with major funding from Milan REI IV, LLC ("Respondent SCTA") was a primarily formed committee supporting Measure FF in the City of Orange in the November 6, 2012 General Election. At all relevant times, Respondent Barrett Garcia ("Respondent Garcia") was the treasurer of Respondent SCTA. At all relevant times, Respondent Ann Garrett ("Respondent Garrett") was the principal officer of Respondent SCTA.

Measure FF would have changed the zoning for a 51-acre parcel in the city of Orange from open space to residential so that Milan REI IV, a real estate developer and owner of the property, could subdivide and build 39 luxury homes. The measure failed by a vote of 43.6% (Yes) to 56.4% (No).

On September 4, 2012, Scott Taylor & Associates ("STA"), a campaign consulting firm hired by Respondent SCTA, ordered 750 double-sided lawn signs for "Yes on Measure FF" from COGS South Signs ("COGS"), a printing shop located in Santa Ana, CA. The total cost for the lawn signs including rush fees was \$6,096.57. STA hired Impact Placements to distribute and place the lawn signs for a fee of \$1,600. None of the campaign signs contained information identifying the group that had paid for it. None of the campaign signs mentioned SCTA or Milan REI IV, LLC.

In this matter, Respondents Southern California Taxpayers Association, sponsored by and with major funding from Milan REI IV, LLC, Barrett Garcia, and Ann Garrett, used Respondent SCTA funds to pay for and cause to be sent advertisements in the form of 750 lawn signs without providing the proper committee identification. By failing to provide Respondent SCTA's proper committee information in the advertisements named above, Respondents violated Government Code Section 84504, subdivision (c).

CONCLUSION

This matter consists of one count of violating the Act, carrying a maximum administrative penalty of \$23,089.71, which is three times the amount of the total cost of the advertisements as authorized by Government Code Section 84510.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division 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, upon learning of the violation, the violator voluntarily provided amendments to provide full disclosure.

Failure to include the proper committee identification on an advertisement can be a serious violation of the Act as it deprives the public of important information regarding who paid for the advertisement.

In this matter, the public was deprived of a means to discover the identity of the committee who paid for the lawn signs.

In mitigation, Respondents have no history of violating the Act, and cooperated with the investigation. Additionally, Respondents used Respondent SCTA funds to pay for several other campaign advertisements supporting Measure FF, which included the proper committee identification, the expenditures for the lawn signs were disclosed in Respondent SCTA's applicable campaign statements, including the sub-vendor information, and no evidence was obtained showing this violation was deliberate. Thus, treble damages are not appropriate under the circumstances.

The Commission does not have any prior recent prosecutions for violations of Section 84504, subdivision (c). However, failure to include proper committee identification in lawn signs is similar to violations in which mass mailings fail to include proper sender identification in accordance with Section 84305. Similar cases regarding violations of Section 84305, subdivision (a) that have been recently approved by the Commission include:

In the Matter of Peter Cuthbert, FPPC No. 10/1000. This case involved a mailer in a local election campaign, sent to approximately 15,000 households, which lacked proper sender identification. The total cost of the mailer was approximately \$5,100. Respondent in this matter did not have an enforcement history, and no other campaign activity. A \$2,500 penalty was approved by the Commission on September 22, 2011.

In the Matter of Ken Ortega and Committee to Elect Ken Ortega, FPPC No. 06/841. This case involved a mailer in a local election campaign, sent to approximately 6,000 households, which lacked proper sender identification. The total cost of the mailers was approximately \$3,000. Respondent in this matter did not have an enforcement history. A \$2,000 penalty was approved by the Commission on January 14, 2010.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and whether the Respondent engaged in a pattern of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Two Thousand Five Hundred Dollars (\$2,500) for Count 1 is recommended.

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