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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. 13/1133
13)
14 Graton Community Services District,) STIPULATION, DECISION and
15) ORDER
16 Respondent.)
17

18 Complainant the Enforcement Division of the Fair Political Practices Commission, and
19 Respondent Graton Community Services District 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 Respondent, pursuant to Section 83116 of the Government Code.

24 Respondent understands, and hereby knowingly and voluntarily waives, 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,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondent's 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. It is further
3 stipulated and agreed that Respondent Graton Community Services District violated the Political Reform
4 Act by causing for public funds to be used for the printing and distribution of its October 2013
5 newsletter, in violation of Section 89001 of the Government Code (1 count). All counts are described in
6 Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein.
7 Exhibit 1 is a true and accurate summary of the facts in this matter.

8 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
9 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
10 of Two Thousand Dollars (\$2,000). A cashier's check from Respondent in said amount, made payable
11 to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the
12 administrative penalty, to be held by the State of California until the Commission issues its decision and
13 order regarding this matter. The parties agree that in the event the Commission refuses to accept this
14 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
15 meeting at which the Stipulation is rejected, all payments tendered by Respondent in connection with
16 this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the
17 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
18 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
19 disqualified because of prior consideration of this Stipulation.

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Dated: _____

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

Dated: _____

Karen Hendrickson, Board President
on behalf of
Graton Community Services District

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Graton Community Services District,” FPPC No. 13/1133, 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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1 **EXHIBIT 1**

2 **INTRODUCTION**

3 Respondent Graton Community Services District (“Respondent District”) is a public agency that
4 provides wastewater management to Graton, CA. The Political Reform Act (the “Act”)¹ prohibits local
5 government agencies from sending newsletters at the public’s expense. Respondent District violated the
6 Act by causing public funds to be used for the printing and distribution of Respondent District’s October
7 2013 newsletter. The newsletter included the names and candidate statements of two Graton Community
8 Services District Board (“Board”) Members up for re-election.

9 For the purposes of this Stipulation, Respondent Graton Community Services District’s violation
10 of the Act is stated as follows:

11 **COUNT 1:** Respondent Graton Community Services District caused for public funds to be used for
12 the printing and distribution of its October 2013 newsletter, in violation of Government
13 Code section 89001.

14 **SUMMARY OF THE LAW**

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

17 **Liberal Construction and Vigorous Enforcement of the Political Reform Act**

18 When the Act was enacted, the people of the state of California found and declared that previous
19 laws regulating political practices suffered from inadequate enforcement by state and local authorities.
20 (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to
21 achieve its purposes.

22 **Prohibition Against Sending a Newsletter or Mass Mailing at Public Expense**

23 Section 89001 prohibits the sending of a newsletter or mass mailing at public expense. A
24 newsletter is prohibited by Section 89001 if four criteria are met. (Regulation 18901.)

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26
27 ¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to
28 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.

1 First, the item is “delivered, by any means, to the recipient at his or her residence, place of
2 employment or business, or post office box.” (Regulation 18901, subd. (a)(1).) The item may be any
3 tangible item, such as a videotape, record, button, or written document. (Id.)

4 Second, the item sent contains the name, office, photograph or any other reference to an elected
5 officer affiliated with the agency that coordinated or cooperated with the agency in the preparation or
6 distribution of the newsletter. (Regulation 18901, subd. (a)(2)(B).)

7 Third, any of the costs associated with distributing the item is paid for with public moneys.
8 (Regulation 18901, subd. (a)(3)(A).)

9 Fourth, more than two hundred substantially similar items are sent, in a single calendar month,
10 excluding any sent in response to an unsolicited request. (Regulation 18901, subd. (a)(4).)

11 **SUMMARY OF THE FACTS**

12 Respondent Graton Community Services District (“Respondent District”) is a public agency that
13 provides wastewater management to Graton, CA. Respondent District is governed by an elected board
14 of directors. Respondent District’s Board of Directors (the “Board”) consists of five elected members.

15 In the weeks prior to the November 6, 2014 Board election (the “Election”), Respondent District
16 caused to send out a newsletter to approximately 581 residents of Respondent District. The newsletter
17 included Respondent District’s logo and was titled “October 2013 Newsletter.” In addition to general
18 information regarding Respondent District, the newsletter included the names and candidate statements
19 of incumbent Board Members Jane Eagle and John Roehl, who were both up for re-election. The
20 candidate statements were collected in cooperation with Board Members Eagle and Roehl.

21 In October 2013, Respondent District’s staff provided a template of Respondent District’s
22 October 2013 newsletter to Sonoma County Reprographics (“SCR”), an agency of Sonoma County, for
23 printing and distribution. SCR subsequently printed the newsletters, distributed them by US mail to 581
24 residents of Respondent District, and billed Respondent District \$527.95 for the costs of printing and
25 distribution.

26 Following the Election, Respondent District’s general manager, Robert Rawson, paid the
27 outstanding balance to the County using checks drawn from his personal bank account.
28

1 The newsletter did not include any disclaimer or disclosure indicating who paid for its
2 production and distribution.

3 **COUNT 1**

4 **Failure to Include Proper Identification on Mass Mailing**

5 Respondent District's staff produced a template for Respondent District's October 2013
6 newsletter that included the names and candidate statements of two elected officials on Respondent
7 District's Board. Respondent District collected the candidate statements in cooperation with the two
8 Board Members. Respondent District provided the template to Sonoma County Reprographics, an
9 agency of Sonoma County, for printing and distribution. Shortly thereafter, Sonoma County
10 Reprographics printed the newsletter, distributed it via US mail to 581 residents of Respondent District,
11 and billed Respondent District \$527.95 for their services.

12 In acting as described above, Respondent committed one violation of Section 89001.

13 **CONCLUSION**

14 This matter consists of one count, which carries a maximum possible administrative penalty of
15 Five Thousand Dollars (\$5,000).

16 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
17 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
18 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division
19 considers the facts and circumstances of the violation in context of the factors set forth in Regulation
20 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to
21 deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the
22 Respondent demonstrated good faith in consulting with Commission staff; whether there was a pattern
23 of violations; and whether the Respondent, upon learning of a reporting violation, voluntarily filed
24 amendments to provide full disclosure.

25 Recent stipulations show that violations arising from newsletters sent at the public's expense
26 generally settle in the range of \$1,500 to \$3,500 per count, depending on the circumstances surrounding
27 the violation.

1 On January 15, 2015, the Commission approved a penalty of \$2,000 per count, \$4,000 total,
2 against the Truckee Tahoe Airport District for distributing two newsletters featuring members of the
3 District Board, at the public's expense, to approximately 15,000 households. (In the Matter of the
4 Truckee Tahoe Airport District, FPPC No. 13/924.) Each of the newsletters featured an interview with
5 a District Board Member accompanied by a picture of the Board Member being interviewed. The
6 newsletter was not produced in connection with an election and did not advocate for a candidate or
7 ballot measure.

8 On June 19, 2014, the Commission approved a penalty of \$2,000 against the City of Rocklin for
9 sending out a mailer that included names, offices, and photographs of the city's elected officials. (In the
10 Matter of City of Rocklin, FPPC No. 14/346.) The mailer contained an events schedule and other
11 articles of general interest to city residents. It was not produced in connection with an election and did
12 not advocate for a candidate or ballot measure.

13 In this matter, Respondent District caused for public funds to be spent on the printing of
14 Respondent District's October 2013 newsletter and its distribution to 581 residents of Respondent
15 District. In contrast to the cases above, the newsletter here was sent in close proximity to an election in
16 which the candidates included in the newsletter were participating. This is particularly troublesome as
17 the public may interpret a candidate's appearance in an official District newsletter as an endorsement
18 from the District.

19 In mitigation, Respondent District has no prior history of violating the Act and fully cooperated
20 with our investigation.

21 Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty
22 in the amount of \$2,000 is justified. A higher penalty is not being sought because, in contrast to the
23 cases above, Respondent District's general manager reimbursed Sonoma County for all costs associated
24 with printing and distributing the newsletter.

25 **PROPOSED PENALTY**

26 After consideration of the factors of Regulation 18361.5, including whether the behavior in
27 question was inadvertent, negligent or deliberate and the Respondent's pattern of behavior, as well as
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1 consideration of penalties in prior enforcement actions, the imposition of a penalty of Two Thousand
2 Dollars (\$2,000) is recommended.

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