

1 GALENA WEST  
Enforcement Chief  
2 TANYA SMITH  
Commission Counsel  
3 Fair Political Practices Commission  
428 J Street, Suite 620  
4 Sacramento, CA 95814  
Telephone: (916) 322-5021  
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant

7  
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA  
10

11 In the Matter of:

FPPC No. 14/1147

12 CITIZENS FOR YES ON MEASURE B,  
13 KEVIN BERGER, AND JIM L. THEIS,

STIPULATION, DECISION, AND ORDER

14 Respondents.  
15  
16

17 **STIPULATION**

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
19 respondents Citizens for Yes on Measure B (“Committee”), Kevin Berger (“Berger”) and Jim L. Theis  
20 (“Theis”) hereby agree that this Stipulation will be submitted for consideration by the Fair Political  
21 Practices Commission (“Commission”) at its next regularly-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 the Committee, Berger, and Theis.

25 The Committee, Berger, and Theis understand, and hereby knowingly and voluntarily waive, any  
26 and all procedural rights set forth in Government Code sections 83115.5, 11503 and 11523, and in  
27 California Code of Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not  
28 limited to, the right to personally appear at any administrative hearing held in this matter, to be

1 represented by an attorney at the Committee, Berger, and Theis' own expense, to confront and cross-  
2 examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an  
3 impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter  
4 judicially reviewed.

5         It is further stipulated and agreed that the Committee and Theis violated the Political Reform Act  
6 by failing to identify the sender on a mass mailing created by the Committee, in violation of  
7 Government Code Section 84305, subdivision (a), as described in Exhibit 1. Exhibit 1 is attached hereto  
8 and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary  
9 of the facts in this matter.

10         The Committee, Berger, and Theis agree to the issuance of the Decision and Order, which is  
11 attached hereto. The Committee, Berger, and Theis also agree to the Commission imposing an  
12 administrative penalty in the amount of Two Thousand Five Thousand Dollars (\$2,500). The  
13 Committee, Berger, and Theis submitted with this Stipulation a cashier's check in said amount, made  
14 payable to the "General Fund of the State of California," as full payment of the administrative penalty  
15 that shall be held by the State of California until the Commission issues its Decision and Order  
16 regarding this matter. The parties agree that in the event the Commission refuses to accept this  
17 Stipulation, the checks shall become null and void, and within fifteen (15) business days after the  
18 Commission meeting at which the Stipulation is rejected, all payments tendered by the Committee,  
19 Berger, and Theis in connection with this Stipulation shall be reimbursed to them. The Committee,  
20 Berger, and Theis further stipulate and agree that in the event the Commission rejects the Stipulation,  
21 and a full evidentiary hearing before the Commission becomes necessary, neither any member of the

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this  
2 Stipulation.

3  
4 Dated: \_\_\_\_\_  
5 Galena West, Chief, on behalf of the Enforcement  
6 Division of the Fair Political Practices Commission

7  
8 Dated: \_\_\_\_\_  
9 Kevin Berger, individually and on behalf of Citizens for  
10 Yes on Measure B

11  
12 Dated: \_\_\_\_\_  
13 Jim L. Theis, individually and on behalf of Citizens for  
14 Yes on Measure B

15  
16  
17  
18  
19 **DECISION AND ORDER**

20 The foregoing Stipulation of the parties "In the Matter of Citizens for Yes on Measure B, Kevin  
21 Berger, and Jim L. Theis" FPPC No. 14/1147, including all attached exhibits, is hereby accepted as the  
22 final decision and order of the Fair Political Practices Commission, effective upon execution below by  
23 the Chair.

24 IT IS SO ORDERED.

25  
26 Dated: \_\_\_\_\_  
27 Joann Remke, Chair  
28 Fair Political Practices Commission

<sup>1</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

<sup>2</sup> Section 82041.5.

<sup>3</sup> Section 84305 and Regulation 18435, subdivision (d).

<sup>4</sup> Section 84100.

<sup>5</sup> Section 84100 and Regulation 18427, subdivision (a).

<sup>6</sup> Section 84104.

<sup>7</sup> Sections 83116.5 and 91006.

Every committee must have a treasurer.<sup>4</sup> It is the duty of a committee's treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds.<sup>5</sup> In addition, a committee's principal officer is required to maintain detailed records necessary to establish that campaign statements were properly filed.<sup>6</sup> A committee's treasurer and principal officer may be held jointly and severally liable with the committee for any reporting violations.<sup>7</sup>

Liability of committee treasurers and principal officers

The Act defines a "mass mailing" as more than 200 substantially similar pieces of mail.<sup>2</sup> The sender of a mass mailing must include the words "paid for by" and the name and address of the committee sending the mailing on the item mailed.<sup>3</sup>

Sender identification on mass mailings

All statutory references and discussions of the law pertain to the Act's provisions as they existed in 2014.

**SUMMARY OF THE LAW**

Under the Political Reform Act (the "Act"),<sup>1</sup> a city ballot measure committee that sends a mass mailing must identify who paid for the mailing, including the committee's name. The Act also requires that costs associated with sending mass mailings be disclosed on campaign statements. The Committee, Berger, and Theis violated the Act by sending mass mailings without identifying the Committee as the sender.

Respondent Jim Theis was the Committee's principal officer.

Respondent Citizens for Yes on Measure B (the "Committee") was a primarily formed city ballot measure committee. Respondent Kevin Berger was the Committee's treasurer.

**INTRODUCTION**

**EXHIBIT 1**

## SUMMARY OF THE FACTS

Measure B was a Turlock city measure which appeared on the November 4, 2014 general election ballot. Measure B proposed to increase sales taxes in order to raise funds for road improvements. In August 2014, Berger formed the Committee in order to support Measure B. After Theis became principal officer, the Committee paid \$819 to print 20,000 flyers regarding Measure B. In September 2014, these flyers were inserted into city utility bills and mailed to residents in Turlock.

The flyers had an orange and blue logo which stated "Measure B/ Fix Turlock Roads." The flyers also referenced a website, [www.FixTurlockRoads.com](http://www.FixTurlockRoads.com). The website contained pictures and text supporting Measure B. However, the flyers had no "Paid for By" language or a mailing address which identified that the Committee had paid for them and arranged to have them mailed to residents.

Measure B was passed by the voters, 61% of whom voted for the measure while 39% voted against it.

## VIOLATIONS

### Count 1: Failure to identify sender on mass mailings

The Committee and Theis caused a mass mailing supporting Measure B to be sent that failed to identify the Committee as the sender, in violation of Section 84305, subdivision (a).

## CONCLUSION

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

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 conceal, deceive or mislead; whether the violation was deliberate, negligent, or inadvertent; whether the Respondents demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether the violator, upon learning of the violations, voluntarily filed amendments.

In mitigation, the Committee, Berger, and Theis cooperated with the Enforcement Division's investigation. Theis stated that the Committee members were volunteers who were unfamiliar with the Act, and that they felt they were doing their civic duty by helping their community raise funds to address local roads. Berger stated that a third Committee member coordinated the mailer insert without authorization or knowledge from the rest of the Committee members, and that any violations were inadvertent.

The Commission also considers penalties in prior cases involving similar violations. Recent similar cases include the following:

Count 1: Failure to identify sender on mass mailings

- *In the Matter of Port Hueneme Police Officers' Association Political Action Committee*, FPPC No. 14/1285. (Commission approved a stipulated decision on December 17, 2015.) The respondent committee, a general purpose sponsored committee, failed to display required sender identification on 8,182 mailers it spent \$3,496 to print and mail. The mailers supported three local candidates on the November 2014 ballot. It referenced the name of the police officer's association in several places, but did not actually identify the sender. The committee did not disclose the costs of the mailer until after the election. The Commission imposed a penalty of \$2,500 for the violation.

This case is similar to the *Port Hueneme* case because the public harm was aggravated by the fact that the Committee failed to disclose all costs related to its mailer in a pre-election campaign statement. Both this case and the *Port Hueneme* case involved one set of mass mailed material without proper sender identification. A penalty of \$2,500 for this violation is warranted.

**PROPOSED PENALTY**

After considering the factors of Regulation 18361.5, the penalties imposed in prior cases, and other relevant information, it is respectfully requested that the Commission impose a penalty of \$2,500.