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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

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11 In the Matter of:

12 MARGARET "PEGGY" MOORE AND
13 MOORE FOR OAKLAND CITY
COUNCIL AT-LARGE 2016,

14 Respondents.

FPPC Case No. 16/19843

STIPULATION, DECISION AND ORDER

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16 INTRODUCTION

17 In 2016, Margaret "Peggy" Moore ("Moore") campaigned as a candidate for the at-large seat on
18 the Oakland City Council, which was on the November 8, 2016 General Election ballot. In conjunction
19 with the campaign, Moore created her controlled committee Moore for Oakland City Council At-Large
20 2016 (the "Committee").

21 Prior to the election, the Committee sent out two emails, through a company called EMC
22 Research, that linked to an online poll purportedly "about local issues in Oakland." The poll consisted of
23 various sections, including one portion which presented a number of statements, mostly about Moore,
24 and asked the reader to indicate how compelling each statement is a reason to vote for Moore. Despite
25 being sent by the Committee, the subject emails did not disclose the name of, or any other information
26 regarding, Moore or the Committee, as is required by Section 84305 of the Political Reform Act (the
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28

1 “Act”),¹ and Regulation 18435.

2 **SUMMARY OF THE LAW**

3 The Act and its regulations are amended from time to time. The violations in this case occurred
4 in 2016. For this reason, all legal references and discussions of law pertain to the Act’s provisions as
5 they existed at that time.

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

7 When enacting the Act, the people of California found and declared that previous laws regulating
8 political practices suffered from inadequate enforcement by state and local authorities.² For this reason,
9 the Act is to be construed liberally to accomplish its purposes.³ Further, the Act provides adequate
10 enforcement mechanisms so that the Act will be “vigorously enforced.”⁴

11 Requirements for Mass Mailings

12 The Act requires that a mass mailing disclose the name, street address, and city of the controlled
13 committee that sent the mailing, as well as the name of the person controlling the committee.⁵ Further,
14 the words “Paid for by” must precede the identifying information on the mass mailing.⁶ A mass mailing
15 has been made when more than 200 substantially similar pieces of mail are sent in a calendar month, and
16 includes electronic mail.⁷ The committee that pays for the largest portion of expenditures related to a
17 mass mailing—including design, printing, and postage—is considered the sender.⁸

18 **SUMMARY OF THE FACTS**

19 The Committee, which filed a statement of organization on August 9, 2016, was created by
20 Moore as her controlled committee for the Oakland City Council At-Large race, which culminated in the
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23 ¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the
24 Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in
25 Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2,
26 Division 6 of the California Code of Regulations, unless otherwise indicated.

27 ² Section 81001, subd. (h).

28 ³ Section 81003.

⁴ Section 81002, subd. (f).

⁵ Section 84305, subds. (a) and (c).

⁶ Regulation 18435, subd. (d).

⁷ Section 82041.5; Regulation 18435, subds. (a) and (e).

⁸ Regulation 18435, subds. (b) and (c).

1 2016 General Election on November 8, 2016. Moore, who received approximately 20 percent of the
2 vote, lost the election to Rebecca Kaplan, who garnered close to 52 percent of the vote.

3 Prior to the election, the Committee contracted with EMC Research to conduct a “scientifically
4 valid poll of public opinion” (the “Poll”) related to the City Council election.⁹ At the end of August
5 2016, the Committee, through EMC Research, sent out two different emails, an initial email and a
6 reminder (the “Emails”), to more than 200 recipients. The Emails explained to the recipient that he or
7 she was “invited to participate in a short, confidential survey about local issues in Oakland” and
8 contained a hyperlink to the Poll.

9 The Poll consisted of three components. First, at the beginning and end of the Poll, the reader
10 was asked a series of background questions. Second, the Poll displayed neutral biographical information
11 about the candidates for the City Council seat and asked the reader to select their top three choices from
12 amongst the candidates at various times during the Poll. Finally, the Poll asked the recipient to read a
13 series of statements purportedly made by supporters of Moore and indicate how compelling each
14 statement is a reason to vote for Moore by choosing an option on a scale of 1 to 7. The statements
15 included the following, amongst others: “Peggy Moore is supported by East Bay Stonewall Democrats,
16 Congresswoman Barbara Lee, and Assemblymember Tony Thurmond;”¹⁰ “Peggy Moore will push to
17 implement restorative justice practices to improve Oakland’s capacity to mediate and mitigate conflict
18 outside of our already overburdened criminal justice system;” and “While current councilmember
19 Rebecca Kaplan likes to talk about change, she has few real accomplishments to show from her 15 years
20 as a politician.” The participant was also asked to indicate his or her opinion of Moore after reviewing
21 the aforementioned statements.

22 Despite being sent by the Committee, the Email did not disclose the name of the Committee or
23 Moore, or the street address and city of the Committee, as required by Section 84305. Further, the
24 Emails did not note that they were “Paid for by” the Committee, as is necessary under Regulation 18435,
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27 ⁹ The expenditure related to the Emails and the Poll was reported on the Committee’s campaign statement covering
28 the reporting period of August 1, 2016 to September 24, 2016 as an accrued expense in the amount of \$15,000 owed to EMC
Research.

¹⁰ Moore admitted, in an article published by Oakland Magazine, that the statement regarding the endorsements was a
“misrepresentation.”

1 subdivision (d). The only identification provided in the Emails was a description of EMC Research and
2 its services.

3 **VIOLATIONS**

4 Count 1: Failure to Include Proper Sender Identification on Mass Mailings

5 The Committee and Moore failed to include the proper sender identification on two mass
6 mailings, in violation of Section 84305 and Regulation 18435.

7 **PROPOSED PENALTY**

8 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per
9 count. Thus, the maximum penalty that may be imposed is \$5,000.¹¹

10 In determining the appropriate penalty for a particular violation of the Act, the Commission
11 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
12 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
13 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
14 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
15 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
16 record of violations.¹²

17 Here, the seriousness of the violations are heightened by the number of mass mailings, which
18 evidences a pattern of non-disclosure. However, Respondents do not have a prior history of other
19 violations of the Act.

20 Additionally, the Commission considers penalties in prior cases involving similar violations.
21 Recent similar cases include the following:

22 • *In the Matter of Roger Gaylord III and Roger Gaylord for Folsom City Council 2014*, FPPC No.
23 15/97. Respondents, a candidate and his controlled committee, sent out several thousand mailers that did
24 not contain the committee’s address or the “Paid for by” language. In mitigation, the candidate posted a
25 picture of himself with the mailers on Facebook, making it clear who sent them. In February 2017, the
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¹¹ Section 83116, subd. (c).

¹² Regulation 18361.5, subd. (d).

1 Commission imposed a penalty of \$1,500 on one count.

2 • *In the Matter of Margie L. Rice for Mayor 2016. Margie Rice, Anita Rice, and Committee to Elect*
3 *Anita Rice to the Sanitary Board of Midway City 2016*, FPPC No. 16/19818. Respondents, a candidate,
4 her controlled committee, and its treasurer, mailed a postcard that failed to include the committee’s
5 name, address, or the “Paid for by” language to 20,000 recipients. In mitigation, the candidate self
6 reported the violation and cooperated with the investigation. In December 2016, the Commission
7 imposed a penalty of \$2,000.

8 A central purpose of the Act is to ensure that identifying information in election campaigns is
9 fully and truthfully disclosed to the public. Here, Moore and the Committee failed to disclose the
10 necessary identifying information on two different mass mailings. The two mass mailings failed to
11 include any identifying information, including the Committee’s name, address, or “Paid for by”
12 language. Further in aggravation, the use of a “public opinion” poll may have been an attempt to
13 circumvent the disclosure requirements. For these reasons, in addition to the fact that this case involves
14 multiple mass mailings, a penalty higher than those assessed in the *Gaylord* and *Rice* cases is warranted.

15 Based on the foregoing, a penalty in the amount of \$2,500 is recommended.

16 CONCLUSION

17 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
18 Respondents, Margaret “Peggy” Moore and Moore for Oakland City Council At-Large 2016, hereby
19 agree as follows:

- 20 1. The Respondents violated the Act as described in the foregoing pages, which are a true
21 and accurate summary of the facts in this matter.
- 22 2. This stipulation will be submitted for consideration by the Fair Political Practices
23 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
- 24 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
25 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
26 liability of the Respondents pursuant to Section 83116.
- 27 4. The Respondents understand, and hereby knowingly and voluntarily waive, any and all
28 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.

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

6 5. The Respondents agree to the issuance of the decision and order set forth below. Also, the
7 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
8 \$2,500. One or more cashier's checks or money orders totaling said amount—to be paid to the General
9 Fund of the State of California—is/are submitted with this stipulation as full payment of the
10 administrative penalty described above, and same shall be held by the State of California until the
11 Commission issues its decision and order regarding this matter.

12 6. If the Commission refuses to approve this stipulation—then this stipulation shall become
13 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
14 rejected, all payments tendered by the Respondents in connection with this stipulation shall be
15 reimbursed to the Respondents. If this stipulation is not approved by the Commission, and if a full
16 evidentiary hearing before the Commission becomes necessary, neither any member of the Commission,
17 nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

18 7. The parties to this agreement may execute their respective signature pages separately. A
19 copy of any party's executed signature page including a hardcopy of a signature page transmitted via fax
20 or as a PDF email attachment is as effective and binding as the original.

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22 Dated: _____
23 Galena West, Chief of Enforcement
24 Fair Political Practices Commission

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26 Dated: _____
27 Margaret "Peggy" Moore, individually and on behalf of
28 Moore for Oakland City Council At-Large 2016

1 The foregoing stipulation of the parties “In the Matter of Margaret ‘Peggy’ Moore and Moore for
2 Oakland City Council At-Large 2016,” FPPC Case No. 16/19843 is hereby accepted as the final decision
3 and order of the Fair Political Practices Commission, effective upon execution below by the Chair.
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5 IT IS SO ORDERED.
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7 Dated: _____
8 Joann Remke, Chair
9 Fair Political Practices Commission
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