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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 CITIZENS FOR OAKLAND, HAROLD
SMITH, AND ROBERT SPEARS,

13 Respondents.
14

FPPC Case No. 16/20098

STIPULATION, DECISION AND ORDER

15 INTRODUCTION

16 Citizens for Oakland (the “Committee”) is a committee primarily formed to support and oppose
17 certain candidates for Mayor of the City of Oakland in the November 4, 2014 General Election. The
18 Committee’s principal officer is Robert Spears (“Spears”). The Committee’s treasurer is Harold Smith
19 (“Smith”), who has also served as principal officer.

20 Despite being primarily formed to support and oppose candidates for Mayor of Oakland,
21 Respondents failed to timely identify the Committee as primarily formed on its statement of organization,
22 and name the Committee to reflect its support of and opposition to the respective candidates. Further,
23 Respondents failed to timely file certain requisite 24-hour contribution reports prior to the election. In
24 this way, Respondents violated the Political Reform Act (the “Act”).¹

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27 ¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the
28 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 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. The violations in this case occurred
3 in 2014. For this reason, all legal references and discussions of law pertain to the Act’s provisions as
4 they existed at that time.

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

6 When enacting the Act, the people of California found and declared that previous laws regulating
7 political practices suffered from inadequate enforcement by state and local authorities.² For this reason,
8 the Act is to be construed liberally to accomplish its purposes.³

9 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in
10 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
11 practices are inhibited.⁴ Along these lines, the Act includes a comprehensive campaign reporting
12 system.⁵ Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will
13 be “vigorously enforced.”⁶

14 Duty to Identify Committee as Primarily Formed

15 The Act defines “primarily formed committee” to include a committee which is formed or exists
16 primarily to support or oppose a group of specific candidates being voted upon in the same city, county,
17 or multicounty election.⁷ A committee is primarily formed if its “primary purpose and activities” are to
18 support or oppose the group of candidates.⁸ Further, a committee is primarily formed if it makes more
19 than 70 percent of its total contributions and expenditures on all candidates and measures on a specific
20 single candidate or measure, or group of candidates or measures in the same election, during either the
21 immediately preceding 24 months or the current two-year period beginning January 1 of an odd-
22 numbered year.⁹

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24 ² Section 81001, subd. (h).

25 ³ Section 81003.

26 ⁴ Section 81002, subd. (a).

27 ⁵ Sections 84200, *et seq.*

28 ⁶ Section 81002, subd. (f).

⁷ Section 82047.5.

⁸ Regulation 18247.5, subd. (d)(2).

⁹ Regulation 18247.5, subd. (d)(3).

1 A committee that files its initial statement of organization within six months of an election in
2 connection with which the committee makes contributions and expenditures shall determine whether it is
3 primarily formed at the end of each month prior to the election unless the committee has not made
4 contributions and/or expenditures of \$1,000 or more to support or oppose candidates or measures during
5 that month.¹⁰

6 On a committee's statement of organization, required by Section 84101, the committee shall
7 include the name of the committee, as well as the full name and office sought by a candidate that the
8 committee supports or opposes as its primary activity.¹¹

9 Whenever identification of a committee is required by law, the identification must include the full
10 name of the committee as required in the statement of organization.¹² The name of a non-candidate
11 controlled committee primarily formed to support or oppose one or more candidates must include the last
12 name of each candidate whom the committee supports or opposes as listed on its statement of
13 organization, the office sought, year of the election, and whether the committee supports or opposes the
14 candidate.¹³

15 Duty to File 24-Hour Contribution Reports

16 Each candidate or committee that makes or receives a late contribution must file a report within
17 24 hours of making or receiving the contribution.¹⁴ A "late contribution" includes a contribution
18 aggregating \$1,000 or more that is made or received by a primarily formed committee during the 90-day
19 period preceding an election or on the date of the election.¹⁵

20 Joint and Several Liability of Committee, Principal Officer, and Treasurer

21 It is the duty of a committee treasurer to ensure that the committee complies with the campaign
22 reporting provisions of the Act.¹⁶ It is the duty of the committee's principal officer to authorize the
23 content of communications made by the committee, authorize expenditures made by the committee, and
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25 ¹⁰ Regulation 18247.5, subd. (e)(2)(A).

26 ¹¹ Section 84102, subd. (d).

27 ¹² Regulation 18402, subd. (c).

28 ¹³ Regulation 18402, subd. (c)(3).

¹⁴ Section 84203.

¹⁵ Section 82036.

¹⁶ Sections 81004, 84100, 84104, and 84213; Regulation 18427.

1 determine the committee’s campaign strategy.¹⁷ A treasurer and principal officer may be held jointly and
2 severally liable, along with the committee, for violations committed by the committee.¹⁸

3 SUMMARY OF THE FACTS

4 The Committee filed its initial statement of organization on August 28, 2014, identifying itself as
5 a city general purpose committee created for “independent expenditures and voter education on rank
6 choice voting in the City of Oakland.” Respondents contend that they formed the Committee for the
7 primary purpose of educating voters on the meaning and effect of ranked choice voting with respect to
8 elections held in the City of Oakland in the November 4, 2014 General Election, given widespread
9 confusion amongst the public, and ultimately focused on the 15-person mayoral election. Respondents
10 further contend that they did not initially identify which of the 15 candidates to use in order to educate
11 the voters because, in order to have a meaningful educational impact, any communications had to focus
12 on those of the 15 candidates that were credible.

13 In 2014, the Committee received contributions amounting to \$68,250, and made expenditures
14 totaling \$65,166.16.

15 Smith has always been the treasurer of the Committee. Smith was also the Committee’s principal
16 officer until September 15, 2014, when Spears became the principal officer. On October 2, 2014, the
17 Committee changed the principal officer back to Smith, and on November 3, 2014, the Committee
18 changed the principal officer back to Spears, who remains the principal officer.

19 Prior to the November 4, 2014 General Election, the Committee sent out two different mass
20 mailings. In particular, the Committee ordered 70,000 copies of a mailer sent out on or around October
21 9, 2014, and 16,700 copies of a mailer sent out on or around October 24, 2014. Respondents provided a
22 copy of one of the mailers to the Commission prior to mailing them and requested guidance from the
23 Commission.

24 The mass mailings focused on five candidates for Oakland Mayor - Libby Schaaf, Joe Tuman,
25 Bryan Parker, Rebecca Kaplan, and Jean Quan. Although not explicit in its position regarding the
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¹⁷ Section 82047.6; Regulation 18402.1, subd. (b).

¹⁸ Sections 83116.5 and 91006.

1 candidates, based on the content of the mailers, and as confirmed by the Committee's independent
 2 expenditure reporting, the Committee opposed two of the candidates (Kaplan and Quan) and supported
 3 three (Schaaf, Tuman, and Parker). The winner of the mayoral election was Libby Schaaf, one of the
 4 candidates supported by the Committee. Joe Tuman and Bryan Parker, also supported by the Committee,
 5 were not successful.

6 Although the Committee identified itself as a general purpose committee and may have initially
 7 intended to form for the purpose of educating voters on the meaning and effect of ranked choice voting,
 8 its primary purpose and activities were to support and oppose the five aforementioned candidates for
 9 Oakland Mayor, as evidenced by the Committee's actual activity. Also, the Committee's independent
 10 expenditures qualified it as a primarily formed committee, at least starting at the end of October 2014,
 11 when it made the subject expenditures. The Committee did not make any independent expenditures
 12 besides those related to the five mayoral candidates. However, despite being primarily formed, the
 13 Committee never identified itself as primarily formed on its statement of organization, nor did it ever
 14 include the names of the pertinent candidates, the office sought, the year of the election, or its position
 15 regarding each candidate, in the name of the Committee.

16 The Committee also failed to timely file 24-hour contribution reports for the following late
 17 contributions received:

18	Statement/ Report Type	Date Received	Due Date	Date Filed	Amount of Contribution	Contributor
19	24-Hour Contribution	8/28/14	8/29/14	n/a	\$4,750	Andrea Alfano
20	24-Hour Contribution	8/28/14	8/29/14	n/a	\$4,750	Charles Freiberg
21	24-Hour Contribution	9/8/14	9/9/14	n/a	\$4,750	Derek Benham
22	24-Hour Contribution	9/8/14	9/9/14	n/a	\$1,000	Carrie Levy
23	24-Hour Contribution	9/11/14	9/12/14	n/a	\$9,500	Karen Banks
24	24-Hour Contribution	9/17/14	9/18/14	n/a	\$5,000	Noel Lawrence
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24-Hour Contribution	9/18/14	9/19/14	n/a	\$4,750	Ann Spears
24-Hour Contribution	9/18/14	9/19/14	n/a	\$4,750	Robert Spears
24-Hour Contribution	9/23/14	9/24/14	n/a	\$5,000	Ralph Long
24-Hour Contribution	10/6/14	10/7/14	n/a	\$4,750	Linda Graebner
24-Hour Contribution	10/6/14	10/7/14	n/a	\$4,750	Charles Shalvoy
24-Hour Contribution	10/6/14	10/7/14	n/a	\$1,000	Robert Townsen
24-Hour Contribution	10/14/14	10/15/14	n/a	\$3,000	Katherine Drake
24-Hour Contribution	10/18/14	10/20/14	n/a	\$5,000	J.R. Orton
24-Hour Contribution	10/30/14	10/31/14	n/a	\$2,000	Stephen Pezzola
TOTAL:				\$64,750	

Each of the foregoing late contributions was disclosed on a timely-filed campaign statement, and, with the exception of the \$2,000 contribution received on October 30, 2014, disclosed prior to the election.

The Committee has not been active since 2014 and intends to terminate in 2019.

VIOLATIONS

Count 1: Failure to Timely Identify Committee as Primarily Formed and Properly Name Committee

The Committee, Smith, and Spears failed to identify the Committee as being primarily formed to support and oppose certain candidates on its statement of organization, and failed to name the Committee to include the last names of the supported and opposed candidates, the office sought and year of the election, and the fact that the Committee supported or opposed each respective candidate, in violation of Sections 84101 and 84102; and Regulation 18402, subdivision (c)(3).

1 case. Like the comparable case, Respondents not only failed to meet naming requirements for primarily
2 formed committees, but also printed the improper name on campaign mailers, thereby aggravating the
3 violation. Given that the committee name appears on all advertisements and mailers, disclosing the
4 required information regarding the supported and opposed candidate(s) or ballot measure(s) in the
5 committee's name is crucial to the public's ability to easily identify the nature of the committee.

6 In further aggravation, unlike in *Mt. Pleasant*, the Committee failed to categorize itself as
7 primarily formed on its statement of organization, in addition to its failure to properly name the
8 Committee.

9 In mitigation, prior to sending the subject mailers, the Committee solicited informal advice from
10 the Commission. In particular, the Committee sent a draft of one of the mailers to the Commission and
11 asked if the related expenditure qualified as an independent expenditure. The Commission correctly
12 provided that the mailer contained express advocacy and would be considered an independent
13 expenditure. The Commission did not provide any advice regarding the qualification of the Committee
14 as a primarily formed committee, although the Committee did not ask this question or provide any
15 information regarding this issue. The Committee also directed similar inquiries to the City of Oakland.

16 The public harm inherent in campaign reporting violations is that the public is deprived of
17 important, time-sensitive information regarding political contributions. Generally, these types of
18 violations are considered to be more serious where the public is deprived of information that was
19 required to be disclosed before an election because this has the potential to affect how votes are cast - so
20 greater public harm is involved, and a higher penalty is warranted. Another factor that influences the
21 amount of the penalty is whether the public harm was mitigated because some of the reportable activity
22 was disclosed to the public on another campaign filing.

23 Comparable cases in which a penalty was charged for violating Section 84203 include the
24 following:

25 • *In the Matter of Committee to Elect David Combella Judge 2014, David W. Combella, and*
26 *Verne G. Sanders, Jr.*; FPPC No. 17/077. Respondents, a candidate, his controlled committee, and its
27 treasurer, failed to timely file 24-hour contribution reports for a total of \$41,000 in late contributions, in
28 violation of Section 84203. In February 2019, the Commission approved a fine of \$2,500 on one count.

1 As to Count 2, a penalty similar to that approved in the *Combella* case is justified. Although a
2 higher amount of financial activity went unreported on 24-hour reports here, a lesser amount of subject
3 late contributions were received during the 16-day period preceding the election that is not captured by a
4 campaign statement filed prior to the election. Whereas, here, \$2,000 fell within that time period,
5 \$40,000 fell within that time period in *Combella*.

6 In aggravation of all counts, Respondents also failed to print the required “independent
7 expenditure” disclaimer stating that the advertisements were “not authorized or paid for by a candidate
8 for this office or a committee controlled by a candidate for this office” on the two mass mailings.
9 However, in the interest of settlement, this violation is not being charged herein. In mitigation,
10 Respondents cooperated fully with the Enforcement Division and do not have a history of violating the
11 Act.

12 Based on the foregoing, the following penalties are recommended:

Count	Violation	Proposed Penalty
1	Failure to Timely Identify Committee as Primarily Formed and Properly Name Committee	\$2,500
2	Failure to Timely File 24-Hour Contribution Reports	\$2,500
TOTAL:		\$5,000

19 CONCLUSION

20 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
21 Respondents, Citizens for Oakland, Harold Smith, and Robert Spears, hereby agree as follows:

- 22 1. Respondents violated the Act as described in the foregoing pages, which are a true and
23 accurate summary of the facts in this matter.
- 24 2. This stipulation will be submitted for consideration by the Fair Political Practices
25 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
- 26 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
27 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
28 liability of Respondents pursuant to Section 83116.

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Dated: _____ Robert Spears, individually and on behalf of
Citizens for Oakland

1 The foregoing stipulation of the parties “In the Matter of Citizens for Oakland, Harold Smith, and Robert
2 Spears,” FPPC Case No. 16/20098 is hereby accepted as the final decision and order of the Fair Political
3 Practices Commission, effective upon execution below by the Chair.

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5 IT IS SO ORDERED.

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7 Dated: _____

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9 Alice T. Germond, Chair
10 Fair Political Practices Commission
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