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

10  
11 In the Matter of:

FPPC Case No. 16/766

12 YORBA LINDA TAXPAYERS  
13 ASSOCIATION, TOM BABNICK, AND  
14 JEFF DECKER,

STIPULATION, DECISION AND ORDER

15 Respondents.

16  
17 INTRODUCTION

18 Yorba Linda Taxpayers Association (the “Committee”) is a general purpose committee created to  
19 “oppose and sponsor candidates and measures in the County of Orange.” Tom Babnick (“Babnick”) is  
20 the treasurer of the Committee and Jeff Decker (“Decker”) is the principal officer of the Committee.

21 Respondents violated the Political Reform Act (the “Act”)<sup>1</sup> by failing to timely report a total of  
22 \$18,492.16 in subvendor payments on three different campaign statements; and failing to include the  
23 necessary disclosures on a mailer advertisement.

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

1 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. The violations in this case occurred  
3 between 2016 and 2017. For this reason, all legal references and discussions of law pertain to the Act’s  
4 provisions as 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.<sup>2</sup> For this reason,  
8 the Act is to be construed liberally to accomplish its purposes.<sup>3</sup>

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.<sup>4</sup> Along these lines, the Act includes a comprehensive campaign reporting system.<sup>5</sup>  
12 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be  
13 “vigorously enforced.”<sup>6</sup>

14 Duty to Report Subvendor Payments

15 A subvendor is a person or company that is hired by a committee’s agent or independent  
16 contractor to provide a good or service for the committee. The Act requires committees to report  
17 payments of \$500 or more made on its behalf by an agent or independent contractor the same way it  
18 would if it were making the payment on its own.<sup>7</sup> Disclosure of the expenditures made by an agent or  
19 independent contractor are required to be made at the same time and in the same manner and detail as  
20 required for the committee’s direct expenditures.<sup>8</sup> Specifically, the following information must be  
21 provided: (1) the subvendor’s full name; (2) his or her street address; (3) the amount of each  
22 expenditure; and (4) a brief description of the consideration for which each expenditure was made.<sup>9</sup> This  
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24 <sup>2</sup> Section 81001, subd. (h).

25 <sup>3</sup> Section 81003.

26 <sup>4</sup> Section 81002, subd. (a).

27 <sup>5</sup> Sections 84200, *et seq.*

28 <sup>6</sup> Section 81002, subd. (f).

<sup>7</sup> Section 84303.

<sup>8</sup> Regulation 18431, subd. (c); Section 84211, subd. (k).

<sup>9</sup> Section 84211, subds. (k)(1)-(4) and (6).

1 information reported by the candidate or committee is commonly referred to as “subvendor  
2 information.”

### 3 Advertisement Disclosure

4 An “advertisement” under the Act means any general or public advertisement which is authorized  
5 and paid for by a person or committee for the purpose of supporting or opposing a candidate for elective  
6 office or a ballot measure(s).<sup>10</sup>

7 Under the Act, an advertisement that supports or opposes a candidate, paid for by an independent  
8 expenditure, must include disclaimer language stating that it “was not authorized or paid for by a  
9 candidate for this office or a committee controlled by a candidate for this office.”<sup>11</sup> Further, this  
10 disclaimer must be printed clearly and legibly in no less than 14-point, bold, sans serif type font.<sup>12</sup>

### 11 Joint and Several Liability of Committee, Principal Officer, and Treasurer

12 It is the duty of a committee treasurer to ensure that the committee complies with the campaign  
13 reporting provisions of the Act.<sup>13</sup> It is the duty of the committee’s principal officer to authorize the  
14 content of communications made by the committee, authorize expenditures made by the committee, and  
15 determine the committee’s campaign strategy.<sup>14</sup> A treasurer and principal officer may be held jointly and  
16 severally liable, along with the committee, for violations committed by the committee.<sup>15</sup>

## 17 **SUMMARY OF THE FACTS**

18 The Committee qualified on August 31, 2015. In 2016, the Committee engaged in political  
19 activity in response to the Yorba Linda Water District Board of Directors’ (the “Board”) decision to raise  
20 rates by 380 percent over five years. The Committee’s efforts included supporting the recall of two  
21 members of the Board and the election of their replacements, and supporting two and opposing one  
22 candidate for open seats on the Water Board in the November 8, 2016 General Election. The Committee  
23 also supported one candidate and opposed one candidate for the Yorba Linda City Council race in the  
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25 <sup>10</sup> Section 84501.

26 <sup>11</sup> Section 84506.5.

27 <sup>12</sup> Section 84507.

28 <sup>13</sup> Sections 81004, 84100, 84104, and 84213; Regulation 18427.

<sup>14</sup> Section 82047.6; Regulation 18402.1, subd. (b).

<sup>15</sup> Sections 83116.5 and 91006.

1 November 8, 2016 General Election.

2 The recall measures were both successful. Further, the Committee’s supported replacement  
3 candidates both won, with Brooke Jones receiving 72.1 percent of the vote and Albert Nederhood  
4 receiving 51.9 percent of the vote. Of the other Water Board races, one of the Committee’s supported  
5 candidates, John Miller, was successful, receiving 31.8 percent of the vote and one, Benjamin Parker,  
6 was not, receiving 23.2 percent of the vote. The Committee’s opposed candidate, Ric Collett, was  
7 unsuccessful, with 16.9 percent.

8 The Committee also supported Cristy Parker (“Parker”) and opposed Tara Campbell  
9 (“Campbell”) for the City Council. Campbell was successful, receiving 19.7 percent of the vote, and  
10 Parker was unsuccessful, receiving 12.8 percent of the vote. In summary, the Committee’s efforts in 2016  
11 had mixed results.

12 In 2016, the Committee received a total of \$50,001 in contributions and made a total of \$51,046  
13 in expenditures.

14 The Committee failed to timely disclose subvendor information for expenditures amounting to  
15 \$18,492.16. In particular, \$6,069.56 in payments during the reporting period of January 1, 2016 to June  
16 30, 2016; \$4,252.37 in payments during the reporting period of October 23, 2016 to December 31, 2016;  
17 and \$8,170.23 in payments during the reporting period of January 1, 2017 to June 30, 2017, failed to  
18 include the necessary subvendor information on the Committee’s campaign statements.

19 The unreported subvendor payments emanated from payments made by committee volunteers,  
20 including Decker, for expenditures related to Facebook advertisements, robocalls, and printing materials.

21 The Committee also paid for a mailer advertisement that did not meet the disclosure requirements  
22 of the Act. Specifically, the Committee spent approximately \$12,139 on a “voter guide” advertisement  
23 that featured its support for Parker and its opposition to Campbell. The Committee sent out  
24 approximately 29,000 copies of the mailer on or around October 17, 2016 and October 31, 2016.

25 Although the advertisement stated that it was “Paid for by Yorba Linda Taxpayers Association”  
26 and included the Committee’s address, the size of the disclosure was only 10-point font, instead of the  
27 required minimum 14-point font. Further, as an independent expenditure advertisement, the mailer failed  
28 to include the necessary disclaimer that the advertisement “was not authorized or paid for by a candidate

1 for this office or a committee controlled by a candidate for this office.”

2 **VIOLATIONS**

3 Count 1: Failure to Timely Report Subvendor Payments

4 The Committee, Babnick, and Decker failed to timely report \$6,069.56 in subvendor payments  
5 for the reporting period of January 1, 2016 to June 30, 2016; \$4,252.37 in subvendor payments for the  
6 reporting period of October 23, 2016 to December 31, 2016; and \$8,170.23 in subvendor payments for  
7 the reporting period of January 1, 2017 to June 30, 2017, in violation of Sections 84303 and 84211,  
8 subdivision (k)(6).

9 Count 2: Failure to Comply With Disclosure Requirements for Political Advertisements

10 The Committee and Decker paid for a mailer advertisement that failed to use the correct font size  
11 for its disclosure, and failed to disclose that the mailer was not authorized by a candidate or candidate-  
12 controlled committee, in violation of Sections 84506, 84506.5, and 84507.

13 **PROPOSED PENALTY**

14 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per  
15 count. Thus, the maximum penalty that may be imposed is \$10,000.<sup>16</sup>

16 In determining the appropriate penalty for a particular violation of the Act, the Commission  
17 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the  
18 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of  
19 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or  
20 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective  
21 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior  
22 record of violations.<sup>17</sup>

23 In this case, the Enforcement Division found no evidence that Respondents intended to conceal,  
24 deceive, or mislead the public. Further, Respondents do not have a prior history of violations.

25 The Commission also considers penalties in prior cases involving similar violations. Recent  
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16 Section 83116, subd. (c).

17 Regulation 18361.5, subd. (d).

1 similar cases involving a committee’s failure to timely report subvendor payments include the following:

- 2 • *In the Matter of Friends of Livermore, Leland Younker, and David Jonas*; FPPC No. 16/19930.

3 Respondents, a general purpose committee and its principal officer and treasurer, failed to timely report  
4 \$62,155.92 in subvendor payments made during four different reporting periods, including preelection  
5 periods, in violation of Sections 84303 and 84211, subdivision (k)(6). In January 2019, the Commission  
6 approved a penalty of \$1,500 on one count.

7 As to Count 1, a penalty similar to that approved in the *Friends of Livermore* case is appropriate  
8 here, given the similar nature of the violations and the fact that the missing activity spanned multiple  
9 reporting periods and included preelection activity.

10 Recent similar cases involving a failure to comply with the Act’s advertising disclosure  
11 requirements include the following:

- 12 • *In the Matter of San Bernardino Residents for Responsible Local Government, a Committee*  
13 *Opposing Valdivia for Mayor 2018 and Corey Addison*; FPPC No. 18/321. Respondents, a primarily  
14 formed committee and its principal officer, paid for mailer advertisements that did not include the correct  
15 name of the committee, requisite “Paid for by” phrase, or disclaimer that the mailer was not authorized  
16 by a candidate or candidate-controlled committee; and failed to place the disclosures in a printed or  
17 drawn box, in violation of Sections 84502, 84504.2, subdivision (a), and 84506.5. In December 2018, the  
18 Commission approved a fine of \$2,500 on one count.

19 As to Count 2, Respondents are deserving of a penalty lower than in the comparable case. In *San*  
20 *Bernardino Residents for Responsible Local Government*, the respondents paid for multiple non-  
21 conforming advertisements and committed more individual violations than are at issue here.

22 In aggravation of all counts, Respondents committed additional violations of the Act that are not  
23 charged herein in the interest of settlement. In particular, the Committee failed to timely report the  
24 required contributor occupation and employer information for \$2,600 in contributions received during the  
25 reporting period of January 1, 2016 to June 30, 2016.

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Based on the foregoing, the following penalties are recommended:

Count	Violation	Proposed Penalty
1	Failure to Timely Report Subvendor Payments	\$1,500
2	Failure to Comply With Disclosure Requirements for Political Advertisements	\$2,000
	<b>TOTAL:</b>	\$3,500

### CONCLUSION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondents, Yorba Linda Taxpayers Association, Tom Babnick, and Jeff Decker, hereby agree as follows:

1. Respondents violated the Act as described in the foregoing pages, which are a true and accurate summary of the facts in this matter.
2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose of reaching a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondents pursuant to Section 83116.
4. Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not limited to, the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially reviewed.
5. Respondents agree to the issuance of the decision and order set forth below. Also, Respondents agree to the Commission imposing against them an administrative penalty in the amount of \$3,500. One or more payments totaling this amount, to be paid to the General Fund of the State of

1 California, is/are submitted with this stipulation as full payment of the administrative penalty described  
2 above, and they will be held by the State of California until the Commission issues its decision and order  
3 regarding this matter.

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

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

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14 Dated: \_\_\_\_\_  
15 Galena West, Chief of Enforcement  
16 Fair Political Practices Commission

17 Dated: \_\_\_\_\_  
18 Tom Babnick, individually and on behalf of  
19 Yorba Linda Taxpayers Association

20 Dated: \_\_\_\_\_  
21 Jeff Decker, individually and on behalf of  
22 Yorba Linda Taxpayers Association

1 The foregoing stipulation of the parties “In the Matter of Yorba Linda Taxpayers Association, Tom  
2 Babnick, and Jeff Decker,” FPPC Case No. 16/766 is hereby accepted as the final decision and order of  
3 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 Richard C. Miadich, Chair  
9 Fair Political Practices Commission