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

10
11 In the Matter of:

12 JEFF COLE FOR ANAHEIM
ELEMENTARY SCHOOL BOARD 2018
13 AND JEFF COLE,

14 Respondents.

FPPC Case No. 18/1276

STIPULATION, DECISION AND ORDER

15
16 **INTRODUCTION**

17 Jeff Cole (“Cole”) was a candidate for the Anaheim Elementary School District Governing Board
18 (the “School Board”) in the November 6, 2018 General Election. In 2017, Cole created the controlled
19 committee Jeff Cole for Anaheim Elementary School Board 2018 (the “Committee”) in conjunction with
20 his campaign. In 2018, Respondents violated the Political Reform Act (the “Act”)¹ by failing to include
21 the necessary disclosures on a mass mailing paid for by the Committee.

22 **SUMMARY OF THE LAW**

23 The Act and its regulations are amended from time to time. The violations in this case occurred in
24 2018. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they
25 existed at that time.

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

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

6 Requirements for Mass Mailings

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

13 **SUMMARY OF THE FACTS**

14 The Committee filed its initial statement of organization on June 13, 2017 and qualified on
15 September 13, 2018. Cole was not successful in his bid for the School Board, receiving approximately
16 47.8 percent of the vote in the November 6, 2018 General Election. In 2018, the Committee received a
17 total of \$7,519.83 in contributions and made expenditures totaling \$7,620.83. The Committee terminated
18 as of December 19, 2018.

19 The Committee failed to include the required disclosures on a mass mailing disseminated prior to
20 the election. In October 2018, the Committee paid for approximately 5,000 copies of a mailer that failed
21 to include any disclosure, including the committee name, street address and city, or “Paid for by” phrase.

22 Although the Committee failed to include the necessary disclosures on the aforementioned mass
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25 ² Section 81001, subd. (h).
26 ³ Section 81003.
27 ⁴ Section 81002, subd. (f).
28 ⁵ Section 84305, subds. (a) and (d).
 ⁶ Regulation 18435, subd. (c).
 ⁷ Section 82041.5; Regulation 18435, subd. (a).
 ⁸ Regulation 18435, subd. (b).

1 mailing, the respective expenditures were reported by the Committee on campaign statements timely
2 filed prior to the election.

3 **VIOLATIONS**

4 Count 1: Failure to Include Proper Disclosures on Mass Mailing

5 The Committee and Cole failed to include the proper disclosures on a mass mailing, in violation
6 of Section 84305, subdivisions (a) and (d), and Regulation 18435, subdivision (c).

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 \$5,000.⁹

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.¹⁰

17 Here, it appears the violations resulted from negligence on the part of Respondents. Respondents
18 do not have a prior history of violating the Act, and the violations contained herein do not appear to be
19 part of a pattern of disregard for the Act. Further, there is no evidence of an intent to conceal, deceive, or
20 mislead the public. The Committee reported the expenditures related to the mailer on timely-filed
21 campaign statements; therefore, the public had some information regarding the mailer. However, in
22 contrast, the seriousness of the violations is high since the subject mailer contained no disclosure
23 whatsoever, thereby completely depriving the viewer of the identity of the mailer's sender.

24 Additionally, the Commission considers penalties in prior cases involving similar violations.
25 Recent similar cases involving a failure to comply with the mass mailing disclosure requirements of the
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⁹ Section 83116, subd. (c).

¹⁰ Regulation 18361.5, subd. (d).

1 Act include the following:

2 • *In the Matter of Sampayan 4 Vallejo Mayor 2016 and Ruperto “Bob” Sampayan*; FPPC No.
3 16/20122. Respondents, a candidate and his controlled committee, failed to include the committee’s
4 name, street address and city, or requisite “Paid for by” phrase on approximately 60,000 copies of two
5 mass mailings, in violation of Section 84305 and Regulation 18435. The respondents self-reported their
6 non-compliance to the Enforcement Division. In July 2019, the Commission approved a penalty of
7 \$1,500 on one count.

8 As to Count 1, Respondents are deserving of a penalty similar to that approved in the *Sampayan*
9 case, given the similar nature of the violations. Although, unlike in *Sampayan*, Respondents here did not
10 self-report their deficient advertising, fewer mailers are at issue in this case.

11 Based on the foregoing, a penalty in the amount of \$1,500 is recommended.

12 CONCLUSION

13 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
14 Respondents, Jeff Cole for Anaheim Elementary School Board 2018 and Jeff Cole, hereby agree as
15 follows:

16 1. Respondents violated the Act as described in the foregoing pages, which are a true and
17 accurate summary of the facts in this matter.

18 2. This stipulation will be submitted for consideration by the Fair Political Practices
19 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

20 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
21 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
22 liability of Respondents pursuant to Section 83116.

23 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all
24 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
25 This includes, but is not limited to, the right to appear personally at any administrative hearing held in
26 this matter, to be represented by an attorney at Respondents’ own expense, to confront and cross-examine
27 all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
28 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially

1 reviewed.

2 5. Respondents agree to the issuance of the decision and order set forth below. Also,
3 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
4 \$1,500. One or more payments totaling this amount, to be paid to the General Fund of the State of
5 California, is/are submitted with this stipulation as full payment of the administrative penalty described
6 above, and they will be held by the State of California until the Commission issues its decision and order
7 regarding this matter.

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

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

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18 Dated: _____
19 Galena West, Chief of Enforcement
20 Fair Political Practices Commission

21 Dated: _____
22 Jeff Cole, individually and on behalf of Jeff Cole for
23 Anaheim Elementary School Board 2018
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1 The foregoing stipulation of the parties “In the Matter of Jeff Cole for Anaheim Elementary School
2 Board 2018 and Jeff Cole,” FPPC Case No. 16/1276 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